

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

MICHAEL GEARY,
Appellant

v.

Case No. G1-11-327

TOWN OF FOXBOROUGH,
Respondent

Appearance for Appellant:

Michael Geary
Pro Se

Appearance for Respondent:

Joshua R. Coleman
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062

Commissioner:

Cynthia A. Ittleman¹

DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, Michael Geary (“Appellant” or “Mr. Geary”), filed a timely appeal with the Civil Service Commission (“Commission”) on November 16, 2011, contesting the decision of the Town of Foxborough (“Town” or “Appointing Authority” or “Respondent”) to bypass him for original appointment to the position of permanent intermittent police officer with the Foxborough Police Department (“FPD” or “Department”). A pre-hearing conference was held on December 20, 2011, at the offices of the Commission. A full hearing was held at the same location on March 27, 2014.² The witnesses were sequestered. The hearing was digitally recorded and the parties were provided with copies of the CD of the hearing. The hearing was also transcribed. The Town

¹ The Commission acknowledges the assistance of Law Clerk Beverly J. Carey, Esq., in the drafting of this decision.

² The full hearing was delayed due to continuances requested by Mr. Geary while he continued in military service.

submitted a recommended decision on or about May 12, 2014. The Appellant declined to submit a recommended decision.

FINDINGS OF FACT

Based on the fourteen (14) exhibits entered into evidence, the stipulations of the parties, the testimony of:

Called by the Town:

- Sgt. Corrina Carter, Plainville Police Department;
- Chief Edward O’Leary, Foxborough Police Department;

Called by Mr. Geary:

- Mr. V, friend of the Appellant;
- Mr. Michael Geary, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, and policies, a preponderance of the credible evidence and reasonable inferences therefrom, establishes the following findings of fact:

1. Mr. Geary enlisted in the National Guard at the age of seventeen (17), on or about December 14, 2001. (Testimony of the Appellant)
2. Mr. Geary has been deployed to Iraq three (3) times: in 2004-2005; 2007-2008; and 2009-2010. (Testimony of the Appellant)
3. Mr. Geary sustained a back injury in Iraq in 2005 but continued his service until 2012, when he was referred to the Warrior Transition Unit (WTU). At the time of the hearing before the Commission, Mr. Geary was considered to be on active duty with the WTU. (Testimony of the Appellant)

4. In December 2006, on a weekend between the first week of December and Christmas, Mr. Geary and his roommate, Mr. W, hosted a party at the house they rented in Plainville, MA. (Testimony of the Appellant & Mr. V; Ex. 8)
5. Mr. Geary invited a female acquaintance of his (the Accuser), who was also a member of the same military police unit of the National Guard as Mr. Geary, to the party. (Testimony of the Appellant)
6. After the party, the Accuser contacted the Plainville Police Department, met with Sgt. Corrina Carter and alleged that she had been the victim of a crime at the party. As a result, Sgt. Carter conducted an investigation and wrote a police report. Sgt. Carter learned that, prior to attending the party, the Accuser described her relationship with Mr. Geary as friendly and “not at all romantic in nature.” (Testimony of Sgt. Carter; Ex. 8 (Sgt. Carter’s police report)) The accuser had socialized with Mr. Geary in a group setting, following National Guard drills, and on at least one occasion she gave Mr. Geary a ride home following a drill weekend. (Ex. 8)
7. The Accuser also worked as a bartender and arrived at the party at Mr. Geary’s home when her shift was over, between approximately 11:00 PM and midnight. (Ex. 8; Testimony of Mr. V)
8. The party was taking place in the main house but there was an attached in-law apartment that Mr. Geary rented. (Ex. 8)
9. When the Accuser arrived at the party, Mr. Geary introduced her to his friends. (Testimony of Mr. Geary & Mr. V)
10. As indicated by Plainville Sgt. Carter, one of the hosts of the party, Mr. W, made the Accuser a mixed drink of soda and what the Accuser believed to be rum. Shortly after

having the drink, the Accuser began to feel dizzy, disoriented, and very drunk. She reported feeling “out of control.” (Testimony of Sgt. Carter; Ex. 8)

11. Shortly after having the drink, Mr. Geary led the Accuser to his apartment in the in-law area. (Testimony of Sgt. Carter; Ex. 8)

12. Further, as Sgt. Carter report indicates, in Mr. Geary’s bedroom, he told the Accuser to remove her clothes. She refused to do so, but felt unable to argue. The Accuser experienced several periods of “blacking out” and lost consciousness, but she “came to” periodically and discovered that Mr. Geary had removed her clothing. The Accuser also recalled Mr. Geary being on top of her and having intercourse with her. At no point did the Accuser consent to have sex with Mr. Geary. (Testimony of Sgt. Carter; Ex. 8)

13. Approximately ten (10) minutes after Mr. Geary took the Accuser to his apartment, he returned to the party in the main house. Shortly after that, the Accuser returned to the party as well and was in the kitchen talking to Mr. W. (Testimony of Mr. V)

14. As Sgt. Carter found, the Accuser was still feeling very disoriented when she was talking to Mr. W. She recalled that when she was sitting down, Mr. W attempted to kiss her. The Accuser told him no, but she felt “drugged” and unable to push him away. Mr. W then brought the Accuser to his bedroom and told her to remove her clothes. The Accuser told Mr. W that she did not feel well and repeatedly told him that she wanted to go to sleep. Mr. W became impatient and removed the Accuser’s clothing. Although he did not rip anything, the Accuser felt that Mr. W was being rough with her but felt unable to fight him off. Mr. W then removed his clothing and began to have sex with the Accuser. The Accuser told him to stop and said “no” over and over. She then lost consciousness and does not recall Mr. W getting off of her. (Ex. 8)

15. Sgt. Carter found that when the Accuser woke up, it was daylight out. She was still in Mr. W's bed and he was asleep next to her. She got dressed and immediately left the house. (Ex. 8)
16. The Accuser went home and showered. She did not seek medical attention and she washed the clothing that she had been wearing the previous night. She felt embarrassed and did not know what to do. (Ex. 8)
17. The Accuser did not report the incident right away because she felt embarrassed and was very upset about the incident. (Testimony of Sgt. Carter)
18. Sgt. Carter found that on or about December 30, 2006, the Accuser confided in her friend, GR, what had happened to her at the party. The Accuser told GR that she thought she had been drugged and then raped by two different men at the party. GR encouraged the Accuser to go to the police to report the incident. (Ex. 8)
19. On or about January 9, 2007, the Accuser went to the Plainville Police Department with a friend, GR. The Accuser wanted to speak to a police officer about the incident that had happened at Mr. Geary's party. (Testimony of Sgt. Carter; Ex. 8)
20. At the Plainville police station, the Accuser was interviewed by Sgt. Carter, who has been a sexual assault investigator with the Plainville police department for over twenty-five (25) years. While the Accuser was accompanied to the station by her friend, Sgt. Carter conducted the interviews individually. (Testimony of Sgt. Carter)
21. During the interview with the Accuser, Sgt. Carter observed the Accuser become very emotional and upset. The Accuser was crying to the point of shaking at times. In Sgt. Carter's experience, this behavior and demeanor is very typical of someone reporting a sexual assault. (Testimony of Sgt. Carter)

22. Due to the amount of time that had passed since the incident occurred, it was too late for the police to initiate a “rape kit” to document the incident so none was performed. (Testimony of Sgt. Carter)
23. On or about January 9, 2007, Sgt. Carter also had the opportunity to interview the Accuser’s friend, GR. According to GR, who has been friends with the Accuser for a number of years, the Accuser is not the type of person to have sexual relations with two (2) different people at a party. GR knew the Accuser to be an upstanding person and a social drinker; she was not the type of person who gets intoxicated to the point of blacking out. (Testimony of Sgt. Carter; Ex. 8)
24. On or about January 23, 2007, Sgt. Carter had the opportunity to speak with GI, another friend of the Accuser. GI indicated that she had been friends with both the Accuser and Mr. Geary. GI spoke to Sgt. Carter about a conversation she had been part of, along with Mr. Geary, on or about January 6 or January 7, 2006. During this conversation, Mr. Geary told GI about a plan he had devised with his roommate, Mr. W, prior to the party, so that they could both have sex with the Accuser that night. GI described the Accuser as truthful and stated that she had never seen the Accuser have more than one (1) or two (2) drinks when going out and that she has never seen the Accuser acting out of control. When GI heard Mr. Geary’s account of the incident that occurred at the party, GI did not think it sounded like the Accuser’s usual behavior. (Testimony of Sgt. Carter; Ex. 8)
25. On or about January 26, 2007, Sgt. Carter attempted to contact Mr. W. She called his cell phone and left a message indicating that she wanted to discuss the incident between the Accuser, Mr. Geary, and himself. Mr. W did not respond to Sgt. Carter’s phone call. (Testimony of Sgt. Carter; Ex. 8) Sgt. Carter was unable to speak with either Mr. W or Mr.

Geary during the course of her investigation because they did not return her calls.
(Testimony of Sgt. Carter)

26. Based on Sgt. Carter's experience and her investigation into the incident, she felt that the Accuser was credible and that her complaint was valid. The Accuser was articulate about what had happened, to the extent that she could remember what had happened. (Testimony of Sgt. Carter)

27. Sgt. Carter has extensive experience in sexual assault investigations and appropriately interviewed the Accuser and her friend, GR, separately, except for a few brief moments when the Accuser was very upset. (Testimony of Sgt. Carter) She spoke clearly and without reservation or inconsistency and she did not exhibit any bias against Mr. Geary. I credit her testimony. (Administrative Notice)

28. Mr. Geary denied the rape allegations and claimed, in fact, that he and the Accuser engaged in consensual sex on the night of the party at his home and on one (1) occasion prior to the party, on the night of a military police ball on or about December 2, 2006. Mr. Geary claimed that following the ball, he went to a hotel room with six (6) or seven (7) other people, including the Accuser, and that some of those in the hotel room knew that he had sex with the Accuser that night. (Testimony of the Appellant) However, Mr. Geary did not call any of the alleged witnesses to testify about this incident at the hotel. I do not find Mr. Geary's testimony on this matter to be credible. (Administrative Notice)

29. Other than Mr. V's testimony that he saw Mr. Geary and the Accuser leave the party together at some point, I do not find Mr. V's testimony to be credible. Mr. V was evasive when asked about the drinking that occurred at the party and did not directly observe some of the events about which he testified. (Testimony of Mr. V; Administrative Notice)

30. Mr. Geary was arraigned by the Norfolk County District Attorney on rape charges on or about February 6, 2007. (Ex. 6)
31. On or about February 12, 2007, Chief O'Leary sent a letter to Mr. Geary stating that due to the pending criminal case against him, he was no longer being considered for the position of permanent intermittent police officer with the FPD. The letter encouraged Mr. Geary to take the next police examination (i.e., the 2008 exam) and, depending on the outcome of his criminal case, he may be considered in the future. (Ex. 12)
32. On or about February 14, 2007, Mr. Andrew Gala, Foxborough's Town Manager, sent a letter to the Civil Service Unit of the Massachusetts Human Resources Division (HRD). In this letter, Mr. Gala requested that Mr. Geary's name be removed from Certification No. 261125 for permanent intermittent police officers due to the pending rape charge against him. (Ex. 1)
33. On or about April 4, 2007, HRD informed Mr. Geary, via letter, that his name had been removed from Certification No. 261125 pursuant to PAR .09. A copy of the FPD's letter to HRD requesting Mr. Geary's removal from the list was enclosed. (Ex. 2)
34. On or about May 29, 2007, the Accuser signed an affidavit stating that she was the victim of a sexual assault in December 2006 and that although her statements to the Plainville Police Department were true, she did not want to pursue the matter any further. (Ex. 7)
35. In Sgt. Carter's experience, it is common for victims of sexual assault to decline to testify and it happens one-third (1/3) to one-half (1/2) of the time. (Testimony of Sgt. Carter)
36. On or about June 6, 2007, the Commonwealth filed a *nolle prosequi* in its case against Mr. Geary. (Exs. 6 & 7) The *nolle prosequi* was granted on or about July 5, 2007.³ (Ex. 6)

³Mr. Geary testified at the Commission hearing that the National Guard conducted its own investigation into the accusations against him and that he was assigned to another unit at that time at his own request. However, there is

37. In 2008, Mr. Geary took the civil service examination. (Stipulated Fact)
38. On or about May 12, 2009, HRD issued Certification No. 290273 to the FPD for the appointment of six (6) permanent intermittent police officers. (Stipulated Fact) Mr. Geary's name appeared first on the Certification. (Ex. 4)
39. On or about June 6, 2009, Mr. Geary completed the application and forms for the FPD. Attached to Mr. Geary's application is an additional page with handwritten explanations and additional information, including the following statement: "In January 2007 I was accused of rape. It was nul processed [sic] in May 2007 and Chief O'Leary has also done his own investigation into the issue and it has been cleared up." (Ex. 5)
40. Chief O'Leary has known Mr. Geary since Mr. Geary was approximately five (5) years old. Mr. Geary went to school with Chief O'Leary's son and they both played on the same soccer team, coached by Chief O'Leary. (Testimony of Chief O'Leary)
41. The Town conducted background investigations of the candidates, including Mr. Geary. Officer Charles Gallagher, who was assigned to conduct background investigations at the time, contacted the Plainville Police Department to obtain a copy of the police report regarding the rape allegation against Mr. Geary and spoke with Sgt. Carter about her investigation. (Testimony of Sgt. Carter & Chief O'Leary)
42. The FPD attempted to reach out to the Accuser, through Sgt. Carter, so that they could speak with the Accuser directly about the matter. However, the Accuser declined to meet with Chief O'Leary to be interviewed about the incident. (Testimony of Chief O'Leary)

no documentary evidence in the record regarding any such investigation and reassignment, as one would expect in the military, especially regarding such serious allegations. Mr. Geary claims that in the case of a Commander's inquiry, no documentation is needed. According to Mr. Geary, once the *nolle prosequi* was granted in the civilian case against him, the National Guard told him they had no reason to believe that the allegations were true and transferred him back to his company. (Testimony of Mr. Geary) I do not find Mr. Geary's testimony on this subject to be credible.

43. The Town conducted interviews of the candidates prior to making its selection. However, the Town could not interview Mr. Geary because he was deployed shortly after he submitted his application. (Testimony of Chief O’Leary)
44. Six (6) candidates that were ranked below Mr. Geary were selected for appointment. (Stipulated Fact)
45. None of the selected candidates had been charged with a felony. (Testimony of Chief O’Leary)
46. Chief O’Leary made a recommendation to the Town Manager to bypass Mr. Geary because he was unable to participate in the interview process and because of the criminal case brought against him in 2007. (Testimony of Chief O’Leary)
47. Despite the fact that the charges against Mr. Geary resulted in a *nolle prosequi*, the charges could impact Mr. Geary’s credibility or cast doubt on his testimony, should he be appointed to the FPD. (Testimony of Chief O’Leary)
48. On or about August 28, 2009, after appointing the first four (4) candidates, then-Town Manager Andrew Gala sent a letter to HRD. This letter provides bypass reasons for several candidates that were not selected, including Mr. Geary. The reason given to HRD for the bypass of Mr. Geary is as follows: “He was not available for our screening and interview process because he was activated and deployed to Afghanistan⁴ in the Army for one year.” (Ex. 3)
49. On or about September 27, 2011, Mr. Geary was notified of his bypass for the position of permanent intermittent police officer by HRD via letter. Enclosed with this letter was the letter sent from Chief O’Leary to HRD on or about March 21, 2011. As stated in the Chief’s letter to HRD, the reason for Mr. Geary’s bypass was as follows: “Mr. Michael

⁴ Mr. Geary was, in fact, deployed to Iraq, not Afghanistan. (Administrative Notice; Testimony of the Appellant)

Geary was a candidate on a previous roster. He was arrested in 2006 for a serious felony.

The case was later dismissed as the victim would not testify.” The letter also listed the names of the selected candidates and the positive reasons for their selection. (Ex. 10)

50. Mr. Geary filed this bypass appeal with the Commission on November 16, 2011.
(Administrative Notice)

DISCUSSION

Applicable Law

The authority to bypass a candidate for original appointment to a permanent civil service position is set forth in G.L. c. 31, § 27, which states, in pertinent part:

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

Upon an appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for the bypass are justified. G.L. c. 31, § 2(b); 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. Municipal 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 [C]ommission is not limited to examining the evidence that was before the appointing authority.” City of Beverly, 78 Mass.App.Ct. 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). The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether 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, 334, rev. den., 390 Mass. 1102 (1983). As a result, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown.” City of Beverly, 78 Mass.App.Ct. at 188.

“In making that analysis, the commission must focus on the fundamental purposes of the civil service system – to guard against political considerations, favoritism, and bias in governmental employment decisions” City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304, rev. den., 426 Mass. 1102 (1997) (citing Murray v. Second Dist. Court of E. Middlesex, 389 Mass. 508, 514 (1983); Kelleher v. Personnel Adm’r of the Dept. of Personnel Admin., 421 Mass. 382, 387 (1995); Police Comm’r of Bos. v. Civil Serv. Comm’n, 22 Mass.App. Ct. 364, 370, rev. den., 398 Mass. 1103 (1986)). “When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission.” City of Cambridge, 43 Mass.App.Ct. at 304. “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.” City of Cambridge, 43 Mass.App.Ct. at 304 (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’r of Health & Hosps. of Bos. v. Civil Serv. Comm’n, 23 Mass.App.Ct. 410, 413 (1987)).

USERRA

In McLain v. City of Somerville, the United States District Court of Massachusetts applied the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301-4333, to a case involving an active duty applicant for the position of police officer. McLain v. City of Somerville, 424 F.Supp.2d 329 (2006). The issue in this case was whether USERRA prevents discrimination in initial hiring on the basis of unavailability due to active service in the military. Id. at 333. The relevant provision of USERRA states:

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

38 U.S.C. § 4311(a). “Uniformed service” is defined broadly to include active duty, training, and National Guard duty. See 38 U.S.C. § 4303(13) & (16). In McLain, the court held that Somerville’s failure to hire McLain to be a police officer because his military service prevented him from being available on the day Somerville wanted him to start work constituted a violation of the plain terms of USERRA. McLain v. City of Somerville, 424 F.Supp.2d at 333.

Similarly, in King v. Medford Fire Dep’t, the bypass of a candidate for the position of firefighter was “fatally flawed” because King was never appropriately considered by the Medford Fire Department “solely because he was on active duty in the military.” King v. Medford Fire Dep’t, 19 MCSR 317, 321 (2006). While the Appointing Authority claimed that

King was bypassed for a poor driving record, the evidence demonstrated that King's application was "treated in contravention of the law because of his military status." King v. Medford Fire Dep't, 19 MCSR at 320.

The Respondent's Argument

The Town argues that, consistent with HRD policy regarding candidates on military leave, Mr. Geary should be placed at the top of next list because he was unavailable for an interview due to his military deployment. Alternatively, it is the Town's position that it had reasonable justification to bypass Mr. Geary based on the felony rape charges that were brought against him. The Town also argues that the Commission should decide that it is premature to evaluate Mr. Geary's bypass until he is given an opportunity to be interviewed.

The Appellant's Argument

Mr. Geary argues that the rape accusations made against him and his friend are false and slanderous. He claims that the military investigation determined that the allegations made against him were false, despite the fact that there is no documentary evidence in the record regarding any military investigation or the results of such an investigation. Mr. Geary maintains that he is a good candidate for the position of permanent intermittent police officer with the FPD.

Analysis

At the hearing before the Commission, Chief O'Leary acknowledged that the reason Mr. Geary was not interviewed in 2009, unlike the other candidates, was that Mr. Geary was on active duty and deployed in 2009. Initially, then-Town Manager Andrew Gala provided a letter to HRD on or about August 28, 2009 stating that Mr. Geary was to be bypassed because "he was not available for our screening and interview process because he was activated and

deployed to [Iraq] in the Army for one year.” The Town never sent Mr. Geary a bypass letter related to the 2008 exam and application. Rather, on or about September 27, 2011, Mr. Geary was notified of his bypass for the position of permanent intermittent police officer by HRD via letter. Enclosed with this letter was the letter sent by Chief O’Leary to HRD on or about March 21, 2011. As stated in the Chief’s letter to HRD, the reason for Mr. Geary’s bypass was as follows: “Mr. Michael Geary was a candidate on a previous roster. He was arrested in 2006 for a serious felony. The case was later dismissed as the victim would not testify.”

Had Mr. Geary been available for an interview during the candidate screening process, the Town would have had an opportunity to question Mr. Geary directly about the 2007 felony rape charges. However, the sole reason that Mr. Geary was not interviewed was that he was not available due to his deployment to Iraq with the National Guard. Under USERRA, it was impermissible for the Town to fail to give appropriate consideration to Mr. Geary for employment solely because he was on active duty in the military. While Chief O’Leary later provided an additional reason to HRD to bypass Mr. Geary, specifically, the felony charge brought against Mr. Geary, a preponderance of the evidence establishes that his active duty military status still played a significant role in the Town’s decision to bypass him and prevented him from being given appropriate consideration. The Town acknowledges that, consistent with the HRD policy regarding candidates on military leave, Mr. Geary should be placed at the top of the next list because he was unavailable for an interview due to his military deployment.

Despite the fact that the rape charges that were brought against Mr. Geary resulted in a *nolle prosequi*, rather than a conviction, the Town may give appropriate consideration to this grave allegation, as well as any appropriate mitigation evidence, when making its decision whether to appoint Mr. Geary. Labriola v. Town of Stoneham, 25 MCSR 36, 38 (2012) (citing

Thames v. Bos. Police Dep't, 17 MCSR 125, 127 (2004)); Soares v. Brockton Pol. Dep't, 14 MCSR 109, 110 (2001); Brooks v. Bos. Police Dep't, 12 MCSR 19, 20 (1999); Frangie v. Bos. Police Dep't, 7 MCSR 252, 253 (1994). This is especially true when an applicant is seeking appointment to a public safety position. Campbell v. Bos. Fire Dep't, 22 MCSR 489 (2009).

Conclusion

For the foregoing reasons, Mr. Geary's appeal under Docket Number G1-11-327 is hereby ***allowed*** and the Commission hereby orders as follows:

Pursuant to the powers of relief inherent in Chapter 534 of the Acts of 1976, as amended by Chapter 310 of the Acts of 1993, the Commission orders HRD to place Mr. Geary's name at the top of the existing Certification, or the next Certification if the current one has expired, requested by the Town of Foxborough from HRD and from which the next original appointment to the position of permanent intermittent police officer in the FPD shall be made by the Town until such a time as Mr. Geary is selected or appropriately bypassed for the position of permanent intermittent police officer with the FPD.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on July 10, 2014.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(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:

Michael Geary (Appellant)

Joshua R. Coleman, Esq. (for the Respondent)

John Marra, Esq. (HRD)