

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

Anthony W. Genduso
Appellant,

v.

No. G1-06-90

City of Worcester,
Respondent.

For the Appellant:

Pro Se
Anthony Genduso

Attorney for the Respondent:

Lisa M. Carmody
Assistant City Solicitor
City of Worcester
455 Main Street, Rm. 109
Worcester, MA, 01608

Commissioner:

Daniel M. Henderson¹

DECISION

Anthony W. Genduso (“the Appellant”) applied to the City of Worcester (“the City”), for an original appointment as a permanent, full-time police officer in the Worcester Police Department. The Human Resources Division (“HRD”) approved the City’s stated reasons for bypassing the Appellant. The City found the Appellant’s criminal record and

¹ The Commission acknowledges the assistance of Legal Intern Kate Borgondy in the preparation of this Decision.

interview performance strongly indicated he lacked judgment and maturity to qualify as a police officer. The Appellant filed a timely appeal with the Civil Service Commission, and a hearing was held on January 28, 2008. One audio tape was made of the hearing.

Findings of Fact

Based on the documents entered as Exhibits 1 through 6, a stipulation and the testimony of: the Appellant, Officer Armando Garcia, Officer Samuel Rivera, and Lt. Jeremiah O'Rourke, I make the following findings of fact:

1. The Appellant took an open civil service examination for the Worcester Police Department in March, 2005 seeking an original appointment as a police officer. (Stipulated Fact)
2. The City made a requisition to HRD for a Certification list for the appointment of 35 police officers. On November 04, 2005, HRD Certification list 25106 was sent to the City with 71 listed applicants. (Exhibit 2)
3. The Appellant scored high on the Civil Service Exam, scoring a 90. This placed him as 13 on the Certification List, with 25 applicants below him. (Stipulated Fact)
4. The Appellant had been a soldier in the United States Army, and served in combat in Iraq. (Letter from Appellant attached to Appeal request filed May 1, 2005) He voluntarily assented to a second tour of duty. (Letter from grandfather, Joseph P. Genduso, former Worcester Police Officer)

5. On November 04, 2005, the Appellant's name appeared on the Certification List for the Worcester Police Department under Certification number 251061.
(Stipulated Fact)
6. The Department made 29 appointments out of the applicant pool. (Stipulated Fact)
7. The City submitted the written reason for bypassing the Appellant to HRD on March 10, 2006, stating he was "[r]ejected for [his] criminal history", proceeding to list his criminal offenses. (Exhibit 1)
8. The City further explained in the March 10, 2006, bypass letter that although the events took place more than 5 years before the bypass, the events "document that [the Appellant] has had repeated occasions of violent, uncontrolled behavior, he has exhibited a disregard for the law, immaturity, irresponsibility, and poor judgment. In [the Appellant's] case, the quantity and nature of the charges are more significant than the dates on which they occurred." (Exhibit 1)
9. HRD notified the Appellant that the bypass reasons were accepted by letter dated July 11, 2006. (Stipulated Fact)
10. HRD approved the reasons for the Appellant's bypass, and notified him by letter on July 11, 2006. (Exhibit 1)
11. The Appellant also had a juvenile record, but the juvenile record was not considered in the decision to bypass the Appellant. The Appellant's date of birth is July 4, 1979. However, the City claimed that the "6 adult Board of Probation entries" were considered and listed them in its bypass letter. (Exhibits 1 & 5, Testimony of Lt. O'Rourke)

12. The Appellant became an adult regarding criminal responsibility on his seventeenth birthday, on July 4, 1996. Therefore, actually only three (3) entries qualify as adult offenses. On July 19, 1996 the Appellant was arrested in Worcester and charged with: Trespassing, Disturbing the Peace and Minor Transporting Alcohol. These matters were eventually dismissed. He was also arrested for incident's occurring on August 29, 1999 and December 19, 1999. (Exhibits 1-6 and Testimony of Lt. O'Rourke)
13. On August 29, 1999, the Appellant was part of a group of rowdy and disorderly party-goers who were arrested by Officer Armando Garcia. Before Officer Garcia arrested the group, he already been called to the party on 3 separate occasions following numerous neighbors' complaints and warned the group. Garcia estimated the crowd to be between 100-150 people. (Exhibit 1, 4, and Testimony of Garcia)
14. Matthew Genduso, the Appellant's brother, and a third well-known or notorious individual to the Worcester Police Department, were also present at this party. These two individuals were also arrested. (Testimony of Garcia)
15. On December 19, 1999, the Appellant was also involved in a bar brawl. Officer Garcia was off duty and wore plain clothes when he went to the Bravo Café. The Appellant's brother, Mathew Genduso, approached Officer Garcia saying "You are the cop that arrested me." Officer Garcia testified he did not recognize either Mathew Genduso or the Appellant as those he had arrested previously on August 29, 1999. The interaction erupted into a fight, with Officer Garcia being punched

16. The incident at the Bravo Café was instigated by the Appellant's brother Matt Genduso, and the third well-known or notorious individual was also involved.
(Testimony of Garcia)
17. Although the circumstances were chaotic at the Bravo Café, Officer Garcia believed that everyone in the Appellant's group attacked and struck him.
(Testimony of Garcia)
18. Officer Garcia sustained injuries, including a split lip and bumps on the back of his head. He was driven to UMass Medical Center by a coworker. (Testimony of Garcia)
19. The Commission finds that the third named well known individual was known to the Worcester Police Department "as a basic troublemaker and a no-good."
(Testimony of Rivera) Further, that this individual was involved in both instances.
(Testimony of Garcia, Rivera and Appellant)
20. Although Mathew Genduso was not known to the Worcester Police Department at the time, he was also involved in both instances. He instigated the confrontation at Bravo Café. (Testimony of Garcia and Rivera)
21. During the Department interview, the Appellant expressed his belief to the interview panel that Officer Garcia, still a member of the Worcester Police Department, had a "vendetta" against him and his brother. (Exhibit 1)
22. Similarly, in the hearing before the Commission the Appellant stated the same belief. (Appellant's Testimony)

23. The Appellant exhibited continuous bad judgment by being a willing participant with a well-known troublemaker, in public and in adverse circumstances, on multiple occasions over a period of 5 years, from the time of his first arrest up until his December, 19, 1999 arrest. He also continued to claim he was a victim of a police officer's vendetta, through his job interview up to and including the time of this hearing before the Commission. (Exhibits, testimony, testimony of Appellant)

CONCLUSION

The Civil Service Commission determines "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken...." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

Appointing Authorities are expected to employ sound discretion when choosing individuals from a certified civil service list. In the present instance, the City exercised their discretion soundly to bypass the Appellant for appointment because the incidents in his criminal record and the underlying circumstances created enough valid concern that the Appellant was unsuitable to work as a police officer. There is a heightened scrutiny that is rightly imposed upon police officers, Police Commr. of Boston v. Civil Serv. Commn., 22 Mass. App. Ct. 364, 370-371 (1986). The City has shown through a preponderance of the credible and reliable evidence in the record that the Appellant did not possess the requisite maturity, judgment and character to hold the position of police officer, at the time of his bypass.

The position of police officer necessarily requires sound judgment, cool headedness, and maturity. The City may consider the Appellant's past to determine how competently he aligns with these indicia. In particular, the Appellant seems to become involved in aggressive public offenses while in the company of certain individuals, notably his brother and the notorious third person. The fact that he continued to associate with them in situations that clearly created troubling encounters with the police does in fact undermine his judgment or character. The Appellant should have known that associating with such persons creates a reasonable likelihood of a public disturbance or other crime. Further, at the interview the Appellant evaded responsibility for his past poor judgment, which indicates his maturity had not substantially improved. Considering these encounters in the record, and particularly the Appellant's history of adverse

involvement with the police, the City has satisfied the reasonable justification benchmark.

Further, as Lt. O'Rourke noted in his testimony, police officers must be able to work together and respond collectively to dangerous situations. The Appellant noted on several occasions his belief that Officer Garcia has a vendetta against him, although Officer Garcia had only arrested the Appellant on 1 occasion 10 years ago. The Commission finds the assessment of Officer Rivera correct: the claim is unreasonable that Officer Garcia is somehow biased or prejudiced based on 1 arrest, which arose only after the party-goers—including the Appellant—had been cautioned on 3 separate instances. Moreover, the Appellant has not persuaded the Commission that the bypass was motivated by this alleged vendetta of Officer Garcia or any other unpermitted consideration. If the Commission believed the Appellant's contention was credible, the Commission would intervene. See City of Cambridge, 43 Mass. App. Ct. at 304 (emphasizing the Commission's charge to be vigilant against acts that appear born out of prejudice, political influences or objectives unrelated to merit standards or neutrally applied public policy).

The Commission notes the laudable service to the United States serving in combat in Iraq. Also, the fact that the Appellant has not been involved in troubling situations requiring the police since 1999 is encouraging. *At the time this bypassed occurred*, the Department had reasonable justification to conclude the criminal record and related circumstances called into question the Appellant's judgment and maturity. As time goes on, the current reasons offered by the Department will lose their weight. Assuming the

Appellant continues to abstain from acts of bad behavior or judgment and poor attitude, the City will consider his application favorably in the future.

Based upon a preponderance of the credible and reliable evidence in the record, the Appointing Authority has established there was reasonable justification to bypass the Appellant for original appointment as a police officer. Wherefore, for all of the above, the Appellant's appeal is *dismissed*.

Civil Service Commission,

Daniel M. Henderson
Commissioner

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

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:
Anthony Genduso
Lisa M. Carmody, Atty.
John Marra, Atty. HRD