

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

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

**LENCOL S. MONTEIRO,**  
*Appellant*

v.

**G1-14-77**

**BOSTON POLICE DEPARTMENT,**  
*Respondent*

Appearance for Appellant:

Pro Se  
Lencol Monteiro

Appearance for Respondent:

Nicole I. Taub, Esq.  
Boston Police Department  
One Schroeder Plaza  
Boston, MA, 02120

**DECISION ON RESPONDENT’S MOTION TO MODIFY RELIEF**

The Appellant, Lencol Monteiro (Mr. Monteiro or Appellant), duly appealed to the Civil Service Commission (Commission) on March 28, 2014, from the decision of the Boston Police Department, the Appointing Authority (hereinafter “BPD” or “Respondent”), to bypass him for appointment to the position of BPD police officer. The Commission allowed Mr. Monteiro’s appeal by Decision dated October 2, 2014, and directed the BPD to begin the process forthwith to process Mr. Monteiro for entry into the next available Police Academy. On October 10, 2014, the Commission received “The Boston Police Department’s Motion to Modify the Grant of Relief Awarded to the Appellant”, together with the supporting “Affidavit of Ian C. Mackenzie”. The thrust of the BPD’s motion seeks to modify the relief granted by the Commission so as to exclude Mr. Monteiro from the opportunity to be processed for the next Police Academy, scheduled for December and, instead, place him in queue for consideration, along with all other candidates on the current eligible list in the next BPD hiring cycle, presumably sometime in 2015. For the reasons stated herein, the BPD’s motion is denied.

## Background

Mr. Monteiro is a 35-year old Cape Verdean native who is a naturalized US citizen and resident of Roxbury MA. He has received conditional offers for employment by the BPD on two prior occasions, most recently on June 27, 2013, each after extensive background investigations that included a home visit, review of his criminal and driving records, a financial check, and interviews with his neighbors and personal references, all of which were positive, with most references noting his reputation in the neighborhood as a “peacemaker” who is “good at defusing situations” and “likes to help people” and is “calm and not agitated in everything he deals with”, only to be rejected each time as unqualified by the BPD’s psychological screeners. His current employer, Paul Revere Transportation, where he has worked as a bus driver since 2012, calls him “a very good employee” who is “never late for work”, “very courteous to passengers”, “never refuses to work extra if requested to cover a sick colleague or emergency”, “has very good customer skills” and “wishes he had more employees like him”. (Commission Decision, Findings Nos. 4 through 13)

The only negative information disclosed in the 2013 background investigation related to one prior employer for whom Mr. Monteiro worked briefly, who claimed Mr. Monteiro had “walked off the job”. The Commission Decision found this assertion factually unsupported and noted that the BPD was fully aware of it when it decided to make a conditional offer to Mr. Monteiro. (Commission Decision, Findings No. 5 & 11);

The current appeal arose from the withdrawal of the conditional offer made on June 13, 2013, based on a psychological evaluation that Mr. Monteiro was unsuitable to be appointed as a BPD officer, a conclusion that the Commission found to be without reasonable justification on the facts and the applicable law. In particular, the evaluators relied on factually incorrect

information, relied on inconsistent claims and inconclusive testing that flagged Mr. Monteiro for potential psychological conditions such as depression and suicidal tendencies that even the expert evaluators agreed had no support in any empirical evidence about his actual behavior. The only traits he allegedly possessed were being both simultaneously “defensive” and “angrier than most” and a “lack of candor”. These conclusions were not supported by credible empirical evidence from Mr. Monteiro’s “daily life” and were based, in part, on assumptions about his employment history that even the evaluator agreed had been mistaken. (Commission Decision, Finding Nos. 21-37; Conclusion, pp. 16-19)

Moreover, the alleged “lack of candor” and “defensiveness” fall far short of describing a “psychiatric condition or disorder”, as defined under the applicable HRD Medical Standards, that would meet the BPD’s burden of proof to disqualify Mr. Monteiro for a psychiatric medical reason that “prevents him from performing the essential functions of the job” without risk of harm to himself or others, as prescribed in Boston Police Dep’t v. Kavelski, 463 Mass. 680,694-95 (2012). See also Memorandum and Decision, Boston Police Dep’t v. Kaveleski, C.A. 2009 SUCV 4978 (August 14, 2014, Lauriet, J)

Under the circumstances, including the facts that the present appeal was Mr. Monteiro’s second successful challenge to a psychological bypass and the paucity of evidence of any basis for such a disqualification, the Commission determined that the appeal was not an appropriate occasion to simply place Mr. Montiero back on the eligible list to begin the hiring process anew for yet another round. Rather, the Commission concluded that it was appropriate to exercise its authority to order Mr. Montiero to be inserted into the current Certification so that he may be processed for the next police academy, subject only to updating his background and medical records for developments since his last conditional offer on June 27, 2013. See Boston Police

Dep't v. Kavelski, 463 Mass. 680,695 n. 24 (2012) (nothing in the HRD rules requires further [psychological] screening after BPD candidate had successfully appealed a psychological bypass decision); Funaro v. Chelmsford Fire Dep't, 8 MCSR 29 (town precluded from rescinding conditional offer to candidate for firefighter after invalid rejection of reason for psychological disqualification except for circumstances arising after original offer). See generally, St. 1993, c.310 (granting Commission broad authority to fashion relief to remediate violations of civil service law)

The relief ordered by the Commission tracked the relief granted to another successful BPD applicant who had successfully challenged his psychological bypass. Dunn v. Boston Police Dep't, CSC No. G1-14-80, 27 MCSR --- (2012). After the Commission's initial decision in Dunn, counsel for that Appellant and the BPD negotiated an agreed form of relief that would permit Mr. Dunn to be processed into the next police academy, subject only to allowing BPD to update his background and medical records. The Commission entered the requested relief in the Dunn matter. See Decision on Joint Motion for Reconsideration by vote of the Commission at its Executive Session on September 18, 2014. (copy appended as Attachment "A")

When the present appeal was presented to the full Commission for decision only two weeks later, at the next Executive Session on October 2, 2014, the Commission adopted the same form of relief for Mr. Monteiro as the BPD had previously proposed for Mr. Dunn.

#### The BPD's Motion to Modify Relief

The BPD's present Motion seeks to replace the relief granted to Mr. Montiero with the more "traditional" relief awarded in successful bypass cases, namely to place Mr. Montiero at the top of the current "eligible list", from which future "Certifications" will be drawn for consideration

of applicants for appointment as Boston Police Officers, until such time as he is appointed or bypassed again.

The BPD does not appear to question the authority of the Commission to grant the relief contained in the Decision in this appel (which is, in fact, precisely the same relief to which the BPD agreed in the Dunn matter a few weeks earlier). The BPD contends, however, that it is not feasible to process Mr. Monteiro for inclusion in the next Police Academy, scheduled to begin in December 2014, because it will take a minimum of two weeks to complete an updated background investigation and approximately another two weeks to complete the drug testing and medical screening which is a pre-requisite for taking the required Physical Abilities Test (PAT) scheduled for the week of November 17, 2014, with a practice scheduled a week earlier. The BPD assumes that it will not be able to complete its updated background investigation sooner than October 24, 2014, and that will not leave enough time to process Mr. Monteiro through the drug testing and medical screening prior to the scheduled PAT test date.

After carefully considering the BPD's motion, the Commission concludes that is not fair to Mr. Monteiro to preclude him from the chance of enrollment in the December 2014 Police Academy on the basis of a "worst case" scenario assumption posited by the BPD.<sup>1</sup> The Commission notes that, based on the evidence at the hearing of Mr. Monteiro's appeal (June 11, 2014), Mr. Monteiro's home, employment and other relevant history has not changed since he was last evaluated. Thus, the Commission is not persuaded that, through best, good faith efforts, the BPD cannot complete the steps necessary to clear Mr. Monteiro for inclusion in the

---

<sup>1</sup> The Commission takes notice that, among other things, civil service rules require an applicant who fails a PAT the opportunity to take a retest, and therefore, the November 17, 2014 date is not an absolute deadline for entry into the December academy. See G.L.c.31, §61A. The Commission also takes notice that, in most cases, some candidates can be expected to fail the PAT and other candidates will not complete the academy for various reasons.

December 2014 academy, and, under the circumstances of this case and basic merit principles of civil service law, should be required to do so. Clearly, Mr. Monteiro also is required to exercise his best, good faith efforts to supply the necessary information required to update his application. In the unlikely event that, despite such best efforts by both the BPD and Mr. Monteiro, he has not been cleared through the PAT process before the first date of the December academy, the Commission would not preclude revisiting this matter. At this time, however, no reasonable justification appears to treat Mr. Monteiro any differently than Mr. Dunn.

Accordingly, for the reasons stated, “The Boston Police Department’s Motion to Modify the Grant of Relief Awarded to the Appellant” is *denied*. The BPD shall use its best, good faith effort to process Mr. Monteiro for entry into the December Police Academy and HRD shall take such action as may be necessary to ensure that Mr. Monteiro’s name appears on, or is inserted forthwith, on the current Certification from which candidates are now being processed for that academy.

Civil Service Commission

---

Paul M. Stein  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on October 16, 2014.

A true record. Attest:

---

Commissioner

Notice VIA EMAIL AND FIRST CLASS MAIL:

Lencol S. Monteiro (Appellant)

Nicole I. Taub, Esq. (for Respondent)

John Marra, Esq. (HRD)