

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MARK MICHAUD,
Appellant

v.

G1-14-135

SAUGUS POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Mark Michaud

Appearance for Respondent:

Jay Sullivan, Esq.
Holtz & Reed, LLP
225 Friend Street
Boston, MA 02114

Commissioner:

Cynthia A. Ittleman

DECISION

On June 16, 2014, the Appellant, Mark Michaud (Mr. Michaud) pursuant to G.L.c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Saugus Police Department (SPD) to bypass him for original appointment to the position of permanent full-time police officer. A pre-hearing conference was held on July 29, 2014 at the offices of the Commission and a full hearing was held at the same location on September 9, 2014.¹ The hearing was digitally recorded and both parties were provided with a CD of the hearing². The Town submitted a post-hearing brief. Mr. Michaud did not.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

FINDINGS OF FACT

Four (4) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

Called by SPD:

- Lt. Ronald Giorgetti, Executive Officer; SPD;

Called by Mr. Michaud:

- Mark Michaud, Appellant;

and taking administrative notice of all matters filed in the case, including, without limitation, documents provided to the Commission by the state's Human Resources Division (HRD) and provided to the parties; pertinent statutes, regulations, policies and case law; and reasonable inferences from the credible evidence; a preponderance of credible evidence establishes the following facts:

1. Mr. Michaud is twenty-seven (27) years old. He is divorced and has custody of his four (4)-year old daughter. (Testimony of Mr. Michaud)
2. Mr. Michaud is a life-long resident of Saugus. He graduated from Saugus High School; obtained an Associate's degree in criminal justice and is currently pursuing a Bachelor's degree. (Testimony of Mr. Michaud)
3. Prior to graduating from high school, Mr. Michaud joined the United States Army Reserves. He served as an Army Reservist from 2004 to 2007. In 2007, he began serving active duty in the United States Army. While on active duty, he served one (1) tour of duty in Iraq. (Testimony of Mr. Michaud; Exhibit 3)

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

4. Mr. Michaud was honorably discharged from the Army in 2010 due to a medical issue and is classified as a disabled veteran. (Testimony of Mr. Michaud; Exhibit 3)
5. Prior to his active duty in the Army, Mr. Michaud was employed at Resolute Management in Cambridge as a file clerk from 2006 to 2007. (Testimony of Mr. Michaud; Exhibit 3)
6. Since 2011, Mr. Michaud has been employed at Sears Auto Center in Saugus. (Testimony of Mr. Michaud; Exhibit 3)
7. On June 15, 2013, Mr. Michaud took and passed the civil service examination for police officer. He received a score of 92. (Stipulated Facts; HRD Information Packet)
8. Having passed the civil service examination, Mr. Michaud's name appeared on an eligible list of candidates for police officer, established by HRD on November 1, 2013. (Stipulated Facts; HRD Information Packet)
9. On December 5, 2013, HRD sent the SPD Certification No. 01437 from which the SPD could appoint three (3) police officers. (Stipulated Facts; HRD Information Packet)
10. Mr. Michaud was ranked second (2nd) on Certification No. 01437 among those willing accept appointment. (Stipulated Facts)
11. The Town ultimately appointed two (2) candidates to the position of police officer from Certification No. 01437, both of whom were ranked below Mr. Michaud. (SPD Pre-Hearing Memorandum; HRD Information Packet)³
12. On or about December 11, 2013, Mr. Michaud completed a lengthy "Applicant Background Information Form" (Application) required of all SPD police officer candidates. (Exhibit 3 and Testimony of Lt. Giorgetti)

³ The SPD post-hearing brief states that only one (1) of the appointed candidates was ranked below Mr. Michaud. The SPD's pre-hearing brief, when compared with the HRD Information Packet, shows differently.

13. Question 63 of the Application asked candidates to list all employment since the age of 17 and to “List your present employer first.” (Exhibit 3)(emphasis in original)
14. Instead of listing his present employer first, Mr. Michaud listed his employment at a company by the name of Resolute Management, a third party insurance claims administrator from 2006 to 2007 first. (Exhibit 3)
15. In the section on the Application in which he was asked to list his “salary” at Resolute Management, Mr. Michaud wrote “unknown.” (Exhibit 3)
16. In the section on the Application in which he was asked to list the “Name of Supervisor and contact number” regarding Resolute Management, Mr. Michaud wrote the name of a person and “unknown” for contact number. (Exhibit 3)
17. In the section on the Application in which he was asked to list the phone number for Resolute Management, Mr. Michaud wrote “unknown.” (Exhibit 3)⁴
18. Mr. Michaud’s mother, at one point, was one of his supervisors while he was employed at Resolute Management. (Testimony of Mr. Michaud)
19. Mr. Michaud also listed Sears Auto Center as his current employer and provided the name and contact number of his supervisor. (Exhibit 3)
20. In regard to his employment at Sears Auto Center, Mr. Michaud wrote in his application that he had once violated company policy by wearing an Army hat at work on Veterans Day. (Exhibit 3)
21. On page 33 of the Application, Mr. Michaud was asked to provide an explanation for the reason he answered “yes” to any one of a series of questions, including the question: “Is

⁴ In his testimony, Mr. Michaud stated that Resolute Management has been “disbanded” and “rolled into” another company that his mother now works for. Subsequent to the hearing, I did a brief online search for a company by the name of Resolute Management. I found several job postings for a company by this name in Boston including the following: <http://www.indeed.com/cmp/Resolute-Management-Inc?attributionid=vjcmpinfo>

there anything, not previously addressed, that may cause a problem concerning your possible appointment to the Saugus Police Department”, to which Mr. Michaud had answered “yes”.

(Exhibit 3)

22. In his explanation, Mr. Michaud hand-wrote (in print) a one and one-half (1½)-page narrative focusing primarily on issues related to his divorce. The narrative is well developed, legible, clear and does not appear to contain any spelling or grammatical errors. (Exhibit 3)

23. Page 24 of the Application includes fourteen (14) questions related to “Military Record”.

Mr. Michaud answered all fourteen (14) questions. None of the questions in this section ask the applicant to provide the name and/or other contact information for a supervisor. (Exhibit 3)

24. A background investigator⁵ from the SPD was assigned to conduct a background investigation of Mr. Michaud, which included a review of Mr. Michaud’s Application; interviews with his references, neighbors, ex-wife, girlfriend, two (2) managers at Sears Auto Center; a CORI check; a credit history check; and a meeting with Mr. Michaud. (Exhibit 2)

25. At the commencement of the meeting with Mr. Michaud, the background investigator handed him a one (1) page form that states, “Write, in cursive hand writing, why you want to be a Saugus Police Officer.” The form contains twenty-eight (28) blank lines where the candidate can complete his/her written response. (Exhibit 3; Testimony of Mr. Michaud)

26. Mr. Michaud was given ten (10) minutes to write his response. He asked for and received an additional two (2) minutes. Mr. Michaud does not usually write in cursive and he had trouble remembering how to write the letter “I” in cursive. (Testimony of Mr. Michaud)

27. Mr. Michaud, in response to the assignment, wrote the following in cursive handwriting:

⁵ The background investigator did not testify at the hearing before the Commission. His supervisor, who is responsible for coordinating and assigning the background investigation, did testify.

“I want to be a Saugus Police Officer because it is a job that I have enjoyed in the past with the military. I believe in doing what is right in my community and assisting people in need. This is the career choice that suits me to the abilities I have gained throughout my military and civilian education and training.” (Exhibit 3)

28. The above narrative took thirteen (13) of the twenty-eight (28) lines available on the form. (Exhibit 3)

29. On January 21, 2014, the background investigator penned a six (6)-page report to the Police Chief⁶ regarding his findings and conclusions about Mr. Michaud. (Exhibit 2) Some of the relevant findings and conclusions from that report follow.

30. Under a heading titled “Military Service”, the background investigator wrote: “Mr. Michaud was a member of the United States Army from May of 2007 to December of 2010. Mr. Michaud obtained the rank/pay grade of E-4. During his time in the Army Mr. Michaud has received various training and achievement certificates. Mr. Michaud was honorably discharged and is a Disabled Veteran. Copies of his DD214, his military certificates, and a report detailing his disability have been included for your review.” (Exhibit 2)(emphasis added)

31. Under a heading titled “Employment History”, the background investigator wrote: “Mr. Michaud is currently employed at Sears Auto Center in Saugus. I spoke with his supervisor .. via telephone. [Supervisor] told me that Mark is dependable, hardworking, and always shows up on time. [Supervisor] does not socialize with Mark outside of work but has no reason to believe that he wouldn’t make a good police officer. Before working at Sears Mr. Michaud was in the United States Army. Mark does not list the Army on the employment section of his background packet. No contact information is provided by Mark to contact any

⁶ The Police Chief did not testify at the hearing before the Commission.

of his supervisors while in the Army. The only other employment listed by Mark was 2006-2007. He states that he was a file clerk for Resolute Management in Cambridge; no supervisor contact information was given. In his background Mr. Michaud list (sic) a complaint that he filed with the Human Resources Department at work for not being allowed to wear an Army hat on Veterans Day. No conclusion is listed in his statement.” (Exhibit 2)

32. Under a heading titled “References” the background investigator wrote: “Mr. Michaud was provided with 6 references form (sic) to provide to his references (3 personal and 3 professional). These forms were to be completed and submitted with the completed application. 5 of Mr. Michaud’s references were completed and turned in on time as instructed. The 6th reference was turned in on time but not as instructed. The 6th reference was a photocopy or fax and not properly notarized. All of Mr. Michaud’s references spoke well of him noting that he is responsible, dependable and hard working.” (Exhibit 2)

33. Under a heading titled “Ex wife”, the background investigator wrote: “I spoke with [ex-wife] over the phone. [Ex-wife] said that Mark was a good father to [daughter] and that he currently has custody because he is better able to provide for her. [Ex-wife] stated that things didn’t work out with Mark and they decided that a divorce was necessary. [Ex-wife] had nothing negative to say about Mark and wishes him well in his pursuit to become a police officer.” (Exhibit 2)

34. Under a heading titled “Applicant Interview”, the background investigator wrote in part:

[Lieutenant] and I interviewed Mr. Michaud at the Saugus Police Department. Mr. Michaud arrived for our interview on time. Mr. Michaud had a neat appearance (sic) he was wearing dress pants with a shirt and necktie. Before we started the interview Mr. Michaud was given a sheet of paper and asked to write in cursive why he wanted to become a Saugus Police Officer. Mr. Michaud was given 10 minutes to complete the task. I noticed that Mr. Michaud only filled ½ of the sheet of paper and when I asked if he had any difficulty with the assignment, he replied that he forgot how to make a cursive I. I placed a copy of his response in the background packet for your review. ...

While going through the packet I pointed out to Mark that there were a few omissions. I asked Mark if he lived with [ex-wife] while they were married and he replied, yes, for about 2 ½ years. I then pointed out to him the section of the background packet that clearly asks the candidate to list anyone that they have lived with for more than one month other than children. I asked him why this section was left blank; his response was he didn't think he needed to list his ex-wife. I informed him that it was my opinion that he should have listed her. I then pointed out to Mark that he failed to list his time in the United States Army under the employment section. He stated that he didn't realize that he needed to. He stated that he felt that it was covered under the military section of the background packet. I informed him that I considered it part of his employment past and it should have been listed along with contact information for his past supervisors so that I could speak to them. I then asked Mark for contact information so that I could speak with a past military supervisor (sic) he told me that he had lost contact with them or they had changed their numbers. I told him that I felt it was odd, and that I am surprised that he is unable to provide me with any supervisor contact information for his service time. Mark was unable to provide me with an answer on why he didn't have any contact information for military personnel other than he lost contact with them. Mark also failed to list contact information for a company that he worked at before going into the military. When I asked Mark about this he told me that he could get it because his mother still worked there. I told Mark that he should have provided that information to me before he turned in his background. I explained to Mark that part of the background packet was problem solving and being able to fully complete a task.

(Exhibit 2)

35. Under a hearing titled "Criminal Record" the background investigator wrote that he had checked various computerized criminal records concerning Mr. Michaud and that "No criminal history was found." (Exhibit 2)

36. Under a heading titled "Conclusion" the background investigator summarized many of the findings referenced above. The final paragraph of the conclusion narrative states: "Mark was a member of the United States Army from May of 2007 to December of 2010. Mark received a medical discharge and is a disabled veteran. A copy of Mark's disabled veterans report has been included for your review. A formal request was made for Mark's personnel record form (sic) the Army but as of this writing I have not received it." (Exhibit 2)(emphasis added)

37. Lt. Ronald Giorgetti is the Executive Officer for the SFD and reports directly to the Police Chief. He is responsible for coordinating background investigations on recruit applicants and assigning individual police officers to conduct investigations. (Testimony of Lt. Giorgetti)
38. Lt. Giorgetti and the Police Chief⁷ reviewed the background investigator's report regarding Mr. Michaud and concluded that he was not suitable to be a police officer. (Testimony of Lt. Giorgetti)
39. On February 20, 2014, the Police Chief wrote a letter to the Town Manager⁸, who is the Appointing Authority for police officers in Saugus. (Exhibit 1)
40. The Police Chief's letter to the Town Manager stated: "The background investigation was completed on Mr. Mark Michaud and submitted to me for review. I read the packet that was submitted to me by [Detective] and I am recommending bypassing this candidate for the following reasons. Prior to his interview Mr. Michaud was given 10 minutes to write in cursive an essay on why he wanted to be a Police Officer. This is done for all candidates to complete before their (sic) interview. Mr. Michaud couldn't complete the page because he said he forgot how to do cursive. He didn't complete the employment section of the application and when he was told to complete it by [Detective] he didn't list any contact information for his supervisors. When asked about it he said he lost contact with them. He couldn't submit any contact information from any supervisor from his employment record. (Exhibit 1)(emphasis added)
41. On June 9, 2014, the Town Manager notified Mr. Michaud that he was being bypassed for appointment. He attached the letter from the Police Chief along with another letter from the

⁷ The Police Chief did not testify at the hearing before the Commission.

⁸ The Town Manager did not testify at the hearing before the Commission.

Police Chief stating the positive reasons for one (1) (of the two) other candidates ranked below Mr. Michaud who were appointed. (Exhibit 1)

42. In regard to the positive reasons cited for the selected candidate, the Police Chief stated that that candidate was honorably discharged from the Marine Corps; that he was currently employed a security officer; that he had positive references from his supervisors; that he has good communication skills; and that he was working toward obtaining a bachelor's degree. (Exhibit 1)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, et al, 434 Mass. 256, 259 (2001), citing Cambridge v. Civil Serv. Comm'n, et al, 43 Mass.App.Ct. 300, 304 (1997). "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, s. 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but 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." Watertown v. Arria, 16

Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n, 447 Mass. 824, 825-26 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. Beverly citing Cambridge at 305, and cases cited. "It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree." Town of Burlington, et al. v. McCarthy, 60 Mass.App.Ct. 914, 915 (2004).

Analysis

Multiple issues, discussed in detail below, point to a flawed appointment process here that warrant intervention by the Commission.

First, G.L. c. 151B, § 4(16) states, in part:

An employer may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or severity of the handicap, except that an employer may condition an offer of employment on the results of a medical examination conducted solely for the purpose of determining whether the employee, with reasonable accommodation, is capable of performing the essential functions of the job, and an employer may invite applicants to voluntarily disclose their handicap for purposes of assisting the employer in its affirmative action efforts.

In Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 682 fn.5 (2012), the SJC stated, that "to comport with the requirements of the Massachusetts antidiscrimination law, G.L. c. 151B, § 4 (16), and provisions of the Americans with Disabilities Act, 42 U.S.C. § 12112(d) 2006, an

employer may not conduct medical or psychological testing prior to making an offer of employment, but may condition an offer of employment on the successful completion of testing.” In Police Dep’t of Boston v. Kavaleski and Civ. Serv. Comm’n and Kavaleski v. Reade and City and City of Boston, Suffolk Sup. Ct. No. 09-4978-C (consolidated cases)(August 14, 2014), the Superior Court stated, that,

... Apart from this footnote [fn.5 in SJC decision in Kavaleski, supra], there does not appear to be any Massachusetts case law on this issue.

The MCAD guidelines do offer some guidance, however. MCAD Guidelines at V(B). See Dahill, 434 Mass. at 239 (‘The guidelines represent the MCAD’s interpretation of G.L. c. 151B, and are entitled to substantial deference even though they do not carry the force of law.’) Specifically, the Guidelines provide as follows: ‘An employer must make a conditional job offer before requiring a medical examination (and/or making inquiries). A conditional job offer is an offer of employment to a job applicant which is contingent upon the satisfactory results of a medical examination (and/or inquiry). Prior to making a conditional job offer, the employer should have evaluated all relevant non-medical information. MCAD Guidelines at V(B).

Applied here, it was an error for the Town to review and/or consider a report detailing Mr. Michaud’s disability prior to making a conditional job offer and prior to evaluating all non-medical information. (See Findings 30 and 36). Such reviews and inquiries can only be made *after* all non-medical factors related to Mr. Michaud have been reviewed and *after* Mr. Michaud has been given a conditional offer of employment. This is particularly true when it comes to those applicants, such as Mr. Michaud, who have been granted a disabled veteran preference.

The Massachusetts state legislature has created one of the more generous preferences in the country for veterans seeking to be appointed to civil service positions, (G.L. c. 31, §26; *see also* Personnel Administrator of Mass. V. Feeney, 442 U.S. 256 (1979)), including a provision that places all disabled veterans ahead of veterans. Using an applicant’s disabled veteran status as a trigger to review his/her medical history prior to issuing a conditional job offer turns the disabled

veteran preference upside down, is inconsistent with federal laws meant to protect veterans and is contrary to a merit-based hiring process.

Second, the first stated reason for bypass is simply not true. The Police Chief, in his letter to the Town Manager, who is the appointing authority, stated: “Prior to his interview Mr. Michaud was given 10 minutes to write in cursive an essay on why he wanted to be a Police Officer. This is done for all candidates to complete before the interview. Mr. Michaud couldn’t complete the page because he said he forgot how to do cursive.” There is nothing in the background investigator’s report that reaches this conclusion. Rather, after completing the assignment, Mr. Michaud was asked if had any problems with completing it, to which he answered that he had trouble remembering how to write the letter “I” in cursive. There were no written or verbal instructions stating that the applicant was required to fill the entire blank page nor did Mr. Michaud ever state that he didn’t “complete” the assignment. Rather, he used thirteen (13) of the available twenty-eight (28) lines to list his education, military training and desire to help the community as reasons for wanting to be a police officer. There do not appear to be any spelling or grammatical errors in his legible written response, which was indeed done in cursive. Setting aside the questionable requirement that the written assignment be done in cursive, when nothing in the job duties and responsibilities of a police officer seems to require such, the Town Manager accepted the Police Chief’s statement as being accurate, which it was not. What happened here is that the Town Manager, who never spoke to Mr. Michaud, accepted a written summary of what occurred here from the Police Chief, who also never spoke to Mr. Michaud, after he spoke with the coordinator of background investigations, who also never spoke with Mr. Michaud. The result: an offhanded remark by Mr. Michaud about having trouble remembering how to write the

letter “I” in cursive turned into the false assumption that he could not complete a full page regarding why he wanted to be a police officer because he forgot how to write in cursive.

Third, the Town’s second reason for bypass is also not supported by the record. In the Police Chief’s letter to the Town Manager, he stated: “He didn’t complete the employment section of the application and when he was told to complete it by [the Detective] he didn’t list any contact information for his supervisors.” Had this actually been true, the Town Manager might have been on solid ground bypassing Mr. Michaud. Here, like the writing assignment, the Town Manager appears to have received some bad information. Mr. Michaud, at the time of his application, had been employed by Sears Auto Center in Saugus for over two (2) years, his only employment since being honorably discharged from the military. He wrote this on his application and provided the names of two (2) supervisors and one (1) co-worker at Sears, all of whom were contacted by the background investigator and all of whom indicated their belief that Mr. Michaud was suitable to be a police officer.

Mr. Michaud also listed the name of a former employer where he was employed for less than a year when he was a teenager, prior to his active military duty. He did not list the contact information for a supervisor but later told the background investigator that his mother had actually served as his supervisor. The background investigator appropriately concluded that Mr. Michaud should have written this information down on the application, as opposed to waiting to be asked during a background interview. The problem here, however, is that it is unclear if the Town Manager, who made the decision to bypass Mr. Michaud, understood that this was the extent of the “failure to complete the employment section” or, whether, as the bypass letter suggests, he was under the mistaken impression that Mr. Michaud failed to provide any prior employment information, including the names of current or past supervisors.

The other related issue here is also troublesome. The Town's application has two (2) different sections for an applicant to list: a) his / her employment background; and b) his/her military background. Mr. Michaud answered each of the questions under the military background section but was then told that he failed to follow instructions because he did not also include his military service under the employment background section, which requires the name and contact information of past supervisors.

I accept Mr. Michaud's testimony that, when told that he should have also listed his military service in the employment section, he told the background investigator that he would have trouble providing contact phone numbers for some of his prior "supervisors" as they were now overseas on active military duty. Mr. Michaud could have – and should have – upon being told of the background investigator's concern, provided more information to assist the background investigator in speaking with military personnel who would have access to his military records. Again, it is impossible to discern whether the Town Manager understood these details, or, as stated above, he likely believed that Mr. Michaud provided no information regarding his employment background.

For all of the above reasons, the Town has failed to show, by a preponderance of the evidence, that the reasons proffered for bypassing Mr. Michaud were valid, or, more precisely, accurate.

That leaves the positive reasons put forward in support of appointing one (1) of the two (2) candidates ranked below Mr. Michaud, which included his military experience, his experience as a hospital security officer, positive references from his supervisors; and his pursuit of a Bachelor's degree, which had not been completed at the time of his application. With the exception of the security officer experience, those positive reasons are almost identical to the

positive attributes found by the background investigator who reviewed Mr. Michaud's application.

Conclusion

Mr. Michaud's appeal under Docket No. G1-14-135 is hereby **allowed**. Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, it is hereby ordered that:

1. The state's Human Resources Division shall place the name of Mark Michaud at the top of any current or future Certifications for the position of police officer in the Town of Saugus until he is appointed or bypassed;
2. Upon Mr. Michaud's reconsideration, the Town shall take all appropriate steps to insure that his medical history shall not be reviewed or considered prior to a conditional offer of employment. The Town should consider taking steps that would allow for a "fresh look" at Mr. Michaud's candidacy that includes individuals who have not already reviewed his medical history.
3. If and when Mr. Michaud is appointed as a Saugus Police Officer, he shall receive a retroactive civil service seniority date for civil service purposes only. This retroactive date is not intended to provide Mr. Michaud with any additional benefits such as retroactive pay and/or creditable service toward retirement.

Civil Service Commission

/s/ Cynthia Ittleman
Cynthia A. Ittleman
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on October 15, 2015.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding

Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in Superior Court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the Court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Mark Michaud (Appellant)

Eugene J. Sullivan, Esq. (for Respondent)

Patrick Butler, Esq. (for HRD)

John Marra, Esq. (HRD)