

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

ANTHONY D. BOYD,

Appellant

v.

G1-14-305

NEW BEDFORD POLICE DEPARTMENT,

Respondent

Appearance for Appellant:

Eric B. Langfield, Esq.
Cohen Cleary, PC
10 Commerce Way, Suite 4
Raynham, MA 02767

Appearance for Respondent:

Eric Jaikes, Esq.
Assistant City Solicitor, City of New Bedford
133 William Street, Room 203
New Bedford, MA 02740

Commissioner:

Paul M. Stein

DECISION

The Appellant, Anthony D. Boyd, acting pursuant to G.L.c.31, §2(b), appealed to the Civil Service Commission (Commission) from the decision of the City of New Bedford (New Bedford), reviewed and approved by the Massachusetts Human Resources Division (HRD), to bypass him for appointment as a Police Officer with the New Bedford Police Department (NBPD). A pre-hearing conference was held on September 12, 2014 and a full hearing was held on February 13, 2015, both at the UMass School of Law in North Dartmouth.¹ Five exhibits (1a-1g and 2 through 5) were introduced in evidence and additional documents were received from HRD by letter (HRD Letter). The hearing was digitally recorded, with copies provided to the parties.² Both parties submitted proposed decisions.

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.

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.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- NBPD Officer Jared Lizotte
- NBPD Detective Michael Lopes
- NBPD Lieutenant Ricard Rezendes

Called by the Appellant:

- Anthony D. Boyd, Appellant
- Ana Miranda

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following facts:

Appellant's Background

1. The Appellant, Anthony D. Boyd is a New Bedford resident where he has resided with his fiancé, Ana Miranda, since 2009. He graduated from Middleton [RI] High School in 1999 and earned an Associate's Degree in Law Enforcement from the Community College of Rhode Island in December 2012. (*Exhs. 2, 3 & 5; Testimony of Appellant and Miranda*)

2. Mr. Boyd is a combat veteran who served five years of active duty with the U.S. Army (April 2003 to May 2008) including a tour in Iraq. He also served two years as a military police officer in the Air National Guard (April 2012 to May 2014) during which time he held a "Secret" security clearance. He held the rank of Sergeant (E-5) and received an Honorable Discharge from both the Army and the Air National Guard. (*Exhs 3 & 5; Testimony of Appellant*)

3. Mr. Boyd has a Rhode Island License To Purchase Firearms. In 2012, he was issued a Class A License to Carry a Large Capacity firearm through the NBPD. (*Exhs 2, 3 & 4; Testimony of Appellant*)

Appellant's NBPB Application

4. Mr. Boyd took and passed the civil service examination for municipal police officer administered by HRD on June 15, 2013. His name appeared on the eligible list established on October 15, 2013. (*HRD Letter*)

5. On December 13, 2013, HRD issued Certification #01446 to New Bedford for 18 new permanent full time NBPB Police Officers. Mr. Boyd's name appeared 16th of those who signed willing to accept appointment, tied with two other candidates. (*Exh. 1e; HRD Letter*)

6. New Bedford is a "Consent Decree Community" under the so-called "Castro Decree", which requires that, in appointment of Police Officers, preference in hiring be given to certain minority candidates (by placing them on the Certification one for every three non-minority candidates) and also requires that HRD must review and approve bypass decisions of all candidates prior to appointment of other candidates. (*HRD Letter; Administrative Notice [See "Police Officer Appointments – Consent Decree, <http://www.mass.gov/anf/employment-equal-access-disability/civil-serv-info/guides-and-publications/police-info/>]; Testimony of Rezendes*)

7. Mr. Boyd qualified for minority status under the Castro Decree and he was listed as a "C" candidate accordingly on the Certification. (*Exh. 1e*)

8. In anticipation of the issuance of a Certification, the NBPB decided to get a head-start so that it could make appointments in time to place candidates in the March 2014 police academy. As a result, prior to actually receiving Certification #01446, the NBPB contacted candidates at the top of the eligible list, mainly veterans, including Mr. Boyd, and invited them to begin the application process. (*Testimony of Rezendes*)

9. In or about the end of October 2013, Lt. Rezendes, NBPB Director of Training, held a group meeting with the invited candidates and provided them application packets. Upon receipt

of the completed packets, an NBPD detective was assigned to perform background investigations on the candidates, including, among other things, a review of the application, credit, criminal and driver history, personal references and employment history. Candidates whose background investigation is satisfactory are then interviewed by a “Captain’s Board” of NBPD superior officers. Ultimately, Lt. Rezendes recommends to the NBPD Police Chief which candidates should be hired and who should be bypassed, which the Police Chief passes along to the Mayor of New Bedford, who is the NBPD Appointing Authority. (*Testimony of Lopes & Rezendes*)

10. The application packet includes a 24-page Employment Application and a five-page Personal History Questionnaire with approximately 100 questions covering a variety of topics, including personal history, Employment history, Financial history, Motor Vehicle History, Organizations, Weapons Permits, Military Service, Criminal History, Licenses, Drug Use, and References. Candidates provided releases so that the NBPD could obtain personal, employment, credit and CORI information directly from third parties. The application packet also required all candidates to submit an Application for a License to Carry a Firearm. (*Exhs. 2 & 3; Testimony of Lopes & Rezendes*)

11. Mr. Boyd attended the group meeting and, on or about November 8, 2013, submitted his completed full application packet to the NBPD. (*Exhs. 2, 3 & 4; Testimony of Appellant*)

12. In his Employment Application, Mr. Boyd answered “NO” to Question VI.b.: “Have you ever been convicted of a felony?” He answered “NO” to Question Nos. VI.b. and VI.d.: “Have you ever been convicted of a misdemeanor [under certain specified circumstances]” (*Exh. 3*)³

³ Section VI of the Employment Application, entitled “Criminal Record” contains the following instruction: “With regard to questions contained in this section, under Massachusetts law, you may answer “no record” if any of the following circumstances are applicable: . . . (3) *You have been tried for a criminal offense but were not convicted;* (4) *You have a first conviction for any of the following misdemeanors: (a) drunkenness (b) simple assault (c) speeding (d) minor traffic violation (e) affray or (f) disturbance of the peace;* (5) *You have not been convicted of a criminal offense within the five years before the date of this application . . . (6) You have felony or misdemeanor convictions which have been sealed pursuant to Massachusetts law . . .*” (*Exh. 3*) (*emphasis in original*)

13. In his Personal History Questionnaire, Mr. Boyd answered “NO” to nearly 80 of the questions. He answered “YES” to 22 questions, including:

- Have you ever been terminated from a job?
- Have you ever been refused credit?
- Have you ever had property repossessed?
- Have you ever been delinquent on any credit payment, utility bills, alimony, child support payment or tax payment?
- Have you ever had a charge account cancelled?
- Have you ever had your bills turned over to a collection agency?
- Have you ever had a traffic accident?
- Have you ever had a drivers’ license suspended or revoked?
- Have you ever been given a traffic ticket?
- Have you ever been convicted of a misdemeanor offense?
- Have you ever been the subject of a restraining order, stay away, no contact, refrain from abuse, or similar order?
- Have you ever hit another person in anger or been in a fight as an adult?
- Have you ever been involved in an act of vandalism?
- Have you ever been the subject of any restraining/protective order?
- Have you ever used or possessed marijuana or hash?
- Have you ever been in the presence of someone using or possessing any drug?

14. In the License to Carry Firearms Application Mr. Boyd answered “YES” to Question 10: “Have you ever appeared in any court as a defendant for any criminal offense (excluding non-criminal traffic offenses)?” and provided the following detail: “Arrested for possession of a firearm in 2001 by MA State Police for a weapon that was not mine [and] the charge was dismissed after being found not guilty.” (*Exhs. 2, 3 & 4*)

NBPD Background Investigation

15. Det. Michael Lopes, a nine year veteran of the NBPD, was assigned to perform the background investigation on Mr. Boyd. (*Testimony of Lopes & Rezendes*)

16. Det. Lopes “briefly” reviewed Mr. Boyd’s application packet. He then ran a criminal history check (BOP) which disclosed criminal proceedings in the Wrentham District Court, which had been dismissed in 2001 and proceedings in Norfolk Superior Court in 2001-2002. He obtained copies of the court records and the arrest report. These documents disclosed that, on

August 4, 2000, Mr. Boyd had been stopped by the Massachusetts State Police for speeding and, ultimately, arrested and arraigned in Wrentham District Court on charges of unlawful possession of a dangerous weapon and ammunition along with various civil motor vehicle infractions. After a Grand Jury returned indictments for these offenses, the District Court case was dismissed and the case proceeded in Norfolk Superior Court where Mr. Boyd was eventually acquitted of all charges after a jury trial. Neither the RMV Driver History nor other evidence was produced to indicate the disposition of the civil motor vehicle offenses. (*Exh. 4; Testimony of Lopes*)

17. After reviewing the documents he had obtained regarding Mr. Boyd's criminal case, Det. Lopes concluded that the documents contradicted answers Mr. Boyd had given to five of the questions on the Personal History Questionnaire, namely, answering "NO" to the following:

- Have you ever driven a car not properly registered/insured?
- Have you ever been detained by a law enforcement officer, game warden, animal control officer or military police officer?
- Have you ever carried a firearm that you did not have a permit for?
- Has anyone ever accused you of committing a crime?
- Is your name in a case report file with any police department or law enforcement agency that you are aware of?

(*Exh. 4: Testimony of Lopes*)

18. Thereafter, Det. Lopes took no further steps in his background investigation of Mr. Boyd. On November 22, 2013, Det. Lopes submitted an investigation report to Lt. Rezendes, in which he summarized the information contained in documents obtained from the Massachusetts State Police and concluded: "I believe that police applicant Boyd was untruthful as to his answers on the personal history questionnaire, therefore I do not recommend that this applicant move forward in the hiring process." (*Exh. 4: Testimony of Lopes*)

19. New Bedford appointed eighteen candidates from Certification #01446 (three qualified minority candidates and fifteen others), including three ranked above Mr. Boyd (one a minority),

two NBPB cadets⁴, and thirteen other candidates from tie groups 16 through 26 (two were minorities), all ranked below Mr. Boyd on the Certification. (*Exh. 1g; HRD Letter*)

20. By letter dated February 24, 2014 to HRD, drafted by Lt. Rezendes, New Bedford Mayor Jonathan E. Mitchell detailed the following three reasons for deciding to bypass Mr. Boyd:

False Information supplied by the applicant

All prospective Police Applicants are given a Personal History Questionnaire to complete The questionnaire instructs applicants to answer all questions truthfully. Applicants are warned that if false, incomplete or misleading information is given, it may be sufficient cause for disqualification and termination from employment. The applicant falsely answered the following questions on the questionnaire:

"Have you ever driven a car that was not properly registered/Insured"?.....
Applicant answered "NO"

*"Have you ever been detained by a Law Enforcement Officer, Game Warden, Animal Control Officer or Military Police Officer"?.....*Applicant answered "NO"

*"Have you ever carried a weapon you didn't have a permit for"?....*Applicant answered "NO"

*"Has anyone ever accused you of committing a crime"?.....*Applicant answered "NO"

*"Is your name in a case report file with any police department or Law enforcement agency that you are aware of"?*Applicant answered "NO"

Investigators learned that on August 4, 2000, the applicant was operating a vehicle and was accompanied by a male passenger. This vehicle was stopped by Mass State Police for M.V. violations on Rte 95 in Foxboro, Mass. The Investigating Trooper noted in his arrest report that during the traffic stop, both the applicant and his male passenger were acting in a nervous manner. Both gave conflicting stories on where they were headed.

During the course of the in [sic] investigation, Mass State Police Troopers on scene conducted a search of the vehicle the applicant was operating. A fully loaded "Tech Nine" semi[-]automatic pistol was found wrapped in a towel in the vehicle's trunk. Both the applicant and his male passenger were later arrested. The vehicle was also found to be unregistered.

The applicant was charged with firearm possession charges as well as speeding and operating an unregistered motor vehicle.

The applicant was later found "Not Guilty" of all the charges [sic] however Investigators believe that the applicant answered the questionnaire falsely. He also failed to . . . mention . . . this arrest in the space allotted in the employment application packet.

As a result of the false information provided . . . the Departments [sic] Command Staff feel that the applicant is an unsuitable candidate for the position of Police Officer. . . . "

(*Exh. 5 (emphasis in original); Testimony of Rezendes*)

⁴Candidates who have completed the NBPB cadet program and have passed the civil service examination for Police Officer can be appointed outside the traditional civil service process. See G.L.c.147,§21A; St.1979, c.639.

21. Prior to drafting the February 24, 2014 letter, Lt. Rezendes reviewed Det. Lopes's report as well as the documents he had obtained. (*Testimony of Rezendes*)

22. By letter dated October 31, 2014, HRD informed Mr. Boyd that HRD had determined that the reasons stated in Mayor Mitchell's letter area "acceptable for bypass" and informed him of his right to appeal the bypass decision to the Commission. (*HRD Letter*)

23. This appeal duly ensued. (*Exh. 5; Claim of Appeal*)

Details of the August 2000 Incident

24. According to the Massachusetts State Police incident report, when Mr. Boyd was stopped for speeding in Foxboro at approximately 2:30 p.m. on August 4, 2000, he was driving from Rhode Island with a male companion to visit a relative in Massachusetts.⁵ Mr. Boyd did not own the vehicle and didn't know the owner. It had been parked at his cousin's house and he took the Mitsubishi so that his cousin could use his truck, a Ford Explorer. (*Exh. 4*)

25. Mr. Boyd did not have his driver's license with him, but a registry check confirmed an active Rhode Island license with no warrants. (Mr. Boyd's cousin later brought Mr. Boyd's license to him.) A bill of sale was found in the vehicle showing the owner was a female with a Providence, RI address. A registry check confirmed this information and disclosed that there was no active registration and the license plates attached belonged to a different vehicle. (*Exh. 4*)

26. When asked by the Trooper, the male passenger admitted that he had done jail time in Massachusetts for a firearms violation. Thereafter, a search was made of the vehicle's trunk which disclosed a fully-loaded semi-automatic pistol wrapped in a towel. Both Mr. Boyd and the passenger denied knowing that any weapon was in the trunk. (*Exh. 4*)

⁵ The report contains conflicting information as to whether they were headed to Taunton as Mr. Boyd stated or Lawrence as indicated by a sheet of directions the Trooper found in the vehicle. (*Exh. 4*)

27. Both Mr. Boyd and the passenger were placed under arrest and brought to the Massachusetts State Police barracks in Foxboro where they were booked, photographed and fingerprinted and placed in cells pending bail. A trace was placed on the serial number taken from the firearm but no information was provided as to the result of that trace. The report on the passenger's fingerprints confirmed his prior conviction. The vehicle's owner was interviewed and stated she had lent the car to her son a few days earlier and had no idea how it had come into Mr. Boyd's possession. Mr. Boyd's cousin came to Foxboro with Mr. Boyd's driver's license and confirmed that the vehicle had been parked at his house but claimed not to know who put it there and claimed not to be there when Mr. Boyd took it. (*Exh. 4*)

28. Mr. Boyd was arraigned in Wrentham District Court on two firearms felony charges and various motor vehicle infractions, including speeding, failure to signal while turning, unlawfully attaching plates and operating an unregistered vehicle. In March 2001, Mr. Boyd was indicted by the Norfolk County Grand Jury on two counts of unlawful possession of a firearm without a license to carry, one count of unlawful possession of ammunition, and one count of unlawfully attaching a number plate to a motor vehicle. In November 2002, a jury trial was held on the three firearms charges. Mr. Boyd was acquitted of all firearms charges and the motor vehicle criminal charges were dismissed.

29. No evidence was produced to indicate that the NBPD investigated what charges, if any, were brought against the passenger or what disposition if any was made of them. (*Exh. 4*)

30. Mr. Boyd's 2000 criminal case is the only criminal matter in which he has ever been charged. (*Exh. 4; Testimony of Appellant*)

31. At some point in 2012, when Mr. Boyd was going through his military security clearance, the 2000 criminal case was flagged. Although it did not prevent him from obtaining his

“Secret” clearance, he went to Wrentham District Court to seek to have the record of his case “expunged”. According to Mr. Boyd and his fiancé, they paid a fee to the court and obtained a receipt, but Mr. Boyd could not produce any other documentation to establish that the court records had actually been sealed or expunged. (*Testimony of Appellant & Miranda*)⁶

32. Mr. Boyd now agrees that he incorrectly answered the questions on the Personal History Questionnaire about ever having been detained by a law enforcement officer, ever having been accused of committing a crime or having his name in a law enforcement case file. He admits that the Mitsubishi he operated in August 2000 was not properly registered but contends that he did not know it at the time he took the vehicle and that he had forgotten about that aspect of the case until he saw the court documents for the first time when they were produced to his attorney after this appeal was filed. He denies that he ever “carried” a weapon without a license. (*Testimony of Appellant*)

33. Lt. Rezendes agreed that one does not “carry” a firearm merely by being the operator of a vehicle in which a weapon was found. (*Testimony of Rezendes*)

34. Lt. Rezendes places a candidate’s knowingly false statements in answering questions on his application on a different footing than a candidate’s “honest but mistaken” error in a response, although both are matters of concern. (*Testimony of Rezendes*)

35. A candidate who makes a false statement or omission to conceal information raises issues about the candidate’s honesty and integrity that are critical qualities that a police officer must possess in order to perform his duties, especially when it comes to serving as a credible witness in court cases in which he or she is a key witness for the prosecution. Lt. Rezendes considers such behavior almost always disqualifying. (*Testimony of Rezendes*)

⁶ At the close of the evidence, I left the hearing record open to permit Mr. Boyd to produce evidence to support his contention that his 2000 criminal record had been expunged or sealed, but no such evidence was forthcoming.

36. Lt. Rezendes does not consider an “honest” mistake necessarily to be reason to disqualify a candidate. Such an error does raise questions about a candidate’s attention to detail which is also an important quality that a police officer must have in order to maintain vigilance on duty and prepare accurate reports. Mistakes in the application, alone, would not generally keep a candidate from being considered further in the application process. (*Testimony of Rezendes*)

37. Det. Lopes agreed that it did not make sense that Mr. Boyd would have disclosed his 2000 criminal case in the License to Carry portion of his application and also intentionally omit disclosure in the Personal History Questionnaire. Officer Lizotte, a witness called by the NBPd, also agreed that it would not be logical to disclose information in one part of the application and attempt to conceal it in answering other parts of the application. (*Testimony of Lopes & Lizotte*)

APPLICABLE CIVIL SERVICE LAW

This appeal involves a bypass for original appointment to a permanent civil service position of police officer. 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.”

Pursuant to the Personnel Administration Rules (PAR) promulgated by HRD, the statement of reasons must be specific and complete:

“Upon determining that any candidate on a certification is to be bypassed . . . an appointing authority shall, immediately upon making such determination, send . . . a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked. . . . Such statement shall indicate all . . . reasons for bypass on which the appointing authority intends to rely or might, in the future, rely to justify the bypass. . . . No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed . . . shall later be admissible as reasons for selection or bypass in any proceeding before the . . . Civil Service Commission.” PAR.08(4)

When a candidate appeals from a bypass, the Commission's role is not to determine if the candidate should have been bypassed. Rather, the Commission determines whether, by a preponderance of evidence, the decision was made after an “impartial and reasonably thorough review” and that there was “reasonable justification” for the decision. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Brackett v. Civil Service Comm’n, 447 Mass. 233, 241 (2006), citing G.L.c.31, § 2(b); Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 187 (2010) See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (appointing authority must establish, by a preponderance of evidence, that the reasons assigned to justify the bypass were “more probably than not sound and sufficient”); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) (same)

“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.’ ” Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006) and cases cited; 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).

In selecting public employees of skill and integrity, appointing authorities are vested with a certain degree of discretion. City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997). In deciding “whether there was reasonable justification” shown for an appointing authority’s exercise of discretion, the Commission's primary concern is to ensure that the action comports with “[b]asic merit principles,” as defined in G.L.c.31, §1. See Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 188 (2010); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass.

1102 (1997); MacHenry v. Civil Serv. Comm’n, 40 Mass. App. Ct. 632, 635 (1995), rev.den., 423 Mass. 1106 (1996); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991). “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration.” G.L.c.31,§1.

The commission, however, is not required to find that the appointing authority acted “arbitrarily and capriciously.” Rather, the governing statute, G.L.c.31,§2(b), gives the commission broad “scope to evaluate the legal basis of the appointing authority's action, even if based on a rational ground.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997). Although it is not within the authority of the commission “to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority”, when there are “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.” Id. (*emphasis added*)

ANALYSIS

Applying the applicable legal principles to the facts of this appeal, the NBPD’s justification for bypassing Mr. Boyd for untruthfulness in giving negative responses to five questions on the NBPD’s Personal History Questionnaire is not supported by the preponderance of the evidence. All of the allegedly untruthful responses relate to an incident in 2000 which resulted in criminal charges against Mr. Boyd for which he was subsequently acquitted. Of the five questions that Mr. Boyd allegedly answered untruthfully, the evidence established that, in fact, as to the questions about specific prior criminal behavior, he truthfully answered one (having never “carried” a firearm without a permit and having been acquitted of those charges) and answered

“NO” to the other (“driving a car that had not been properly registered/insured”) because, at the time, he had a good faith belief that response was truthful, having totally forgotten that aspect of the 2000 incident. Although he also did incorrectly answer “NO” to three other generic questions (because he had once been “detained” by law enforcement, was once “accused of committing a crime” and his name does appear in a law enforcement “case report file”), the 2000 incident had been his only brush with the law and he fully disclosed that incident in his application to the NBPD. His negative answers to those questions, at best, are inconsistent with his other disclosures, but they do not raise any legitimate doubt about his truthfulness, which is thoroughly and credibly established through all other aspects in the application packet, which includes the facts that Mr. Boyd is a combat veteran who carried a high level security clearance as a military police officer and holds a Large Capacity Firearm license issued by the NBPD.

The duty imposed upon a police officer to be truthful is one of the most serious obligations he or she assumes. An officer who has a demonstrated record of untruthfulness may compromise the officer’s ability to serve as a credible witness in the prosecution of a criminal case. See generally, United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392, 2400 (1976), citing Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). See also Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995); United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375 (1985).⁷ In addition, any Appointing Authority is well within its rights to take disciplinary action when a police officer

⁷It bears notice that the Commonwealth takes a somewhat different path in the type of exculpatory evidence that must be disclosed in a criminal prosecution and, in particular, evidence “beyond information held by agents of the prosecution team”, including, in particular, internal affairs investigatory material, does not generally come within the sweep of the “Brady” test, but is subject to other, stricter rules. See, e.g., MASS.R.CRIM.P. 14(a)(1)(A); Commonwealth v. Laguer, 448 Mass. 585 (2007); Commonwealth v. Tucceri, 412 Mass. 401 (1992); Commonwealth v. Daye, 411 Mass. 719 (1992); Commonwealth v. Gallerelli, 399 Mass. 17 (1987); Commonwealth v. Wilson, 381 Mass. 90 (1980) See also Commonwealth v. Wanis, 426 Mass. 639, 643-44 (1998); Reporter’s Notes – Revised, 2004, *Subdivision (a)(1)(A)*, MASS.R.CRIM.P. 14(a)(1)(A); Commonwealth v. Thomas, 451 Mass. 451 (2008)

has “a demonstrated willingness to fudge the truth in exigent circumstances” because “[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” Falmouth v. Civil Service Comm’n, 61 Mass. App. Ct. 796, 801 (2004) citing City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (“The city was hardly espousing a position devoid of reason when it held that a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer. . . . It requires no strength of character to speak the truth when it does not hurt.”) See, e.g., Desmond v. Town of West Bridgewater, 27 MCSR 645 (2014); Ung v. Lowell Police Dep’t, 24 MCSR 567 (2011); Gallo v. City of Lynn, 23 MCSR 348 (2010).

Likewise, an Appointing Authority is well within its rights to bypass an individual for “purposefully” fudging the truth as part of an application process for the position of police officer. See, e.g., Minoie v. Town of Braintree, 27 MCSR 216 (2014) (multiple omissions about prior domestic abuse restraining orders and residences); Noble v. Massachusetts Bay Trans. Auth., 25 MCSR 391 (2012) (concealing suspension from school for involvement in criminal activity); Burns v. City of Holyoke, 23 MCSR 162 (2010) (claiming he ‘withdrew’ from another law enforcement application process from which he was actually disqualified) Escobar v. Boston Police Dep’t, 21 MCSR 168 (2008) (misrepresenting residence)

The corollary to the serious consequences that flow from a finding that a police officer or applicant has violated the duty of truthfulness requires that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings. See, e.g., Morley v. Boston Police Dep’t, CSC No. G1-16-096, 29 MCSR --- (2016) (candidate unlawfully bypassed on misunderstanding appellant’s

responses about his “combat” experience); Lucas v. Boston Police Dep’t, 25 MCSR 420 (2012) (mistake about appellant’s prior medical history)

In the present appeal, Mr. Boyd established that the allegedly untruthful responses on his application, which were the only stated reason for his bypass, were not purposeful omissions designed to “fudge the truth” or conceal something negative in his record.

In the case of the alleged false answer to whether he ever “carried” an unlicensed firearm, the evidence established that he was acquitted of all charges concerning that allegation. Even the NBPd witnesses confirmed that merely operating a vehicle in which a weapon was found does not establish the element of the crime of as “carrying” an unlawful weapon. In the case of the other allegedly “untruthful” negative responses, the preponderance of evidence established that none of those responses were intentionally false or knowingly made with the intent to conceal the truth. The NBPd witnesses confirmed that it did not make sense that Mr. Boyd, who had elsewhere fully disclosed the details of his 2000 offense as he best recalled them, as well as fully acknowledging other prior questionable conduct that would not likely be discovered in an investigation, would have any reason to be untruthful about his answers to the more generic questions about those matters. At best, his answers were mistaken but not untruthful.⁸

In addition, the questions involved can legitimately be viewed as ambiguous. For, example, the question that asked: “*Is* your name in a case report file . . . [with law enforcement]”, may

⁸ A question could be presented as to the validity of relying on such questions that call for an applicant to disclose alleged pending or prior criminal offenses for which he or she was never charged or convicted, as inconsistent with the statutory requirements set forth in G.L.c.31,§20 and G.L.c.151B, §4(9), but it is not necessary to address that question in this appeal. See also Conner v. Department of Correction, CSC No. G1-14-23, 27 MCSR 556 92014) (DALA Magistrate’s decision, adopted by the Commission, analyzing the requirements of a “reasonable review” in detail, with specific reference to the recent “sweeping changes in the CORI law” and the Governor’s Executive Order No. 495 regarding agencies use of CORI information See G.L.c.6,§171A, St.2010, c. 256; Exec. Order No. 495 (Jan. 11, 2008) (a CORI record “should not be an automatic and permanent disqualification for employment”); 803 CMR 2.17 (notice to applicant is now required prior to taking adverse employment action based on a CORI review)

fairly be construed to seek information about current pending matters, and not about a decades-old closed case. Construing the ambiguities in favor of Mr. Boyd, would mean that his answers were not only truthful in his mind but actually correct. These simple errors and/or honest misunderstandings do not rise to the level of the kind of untruthful behavior that warrants bypassing a qualified candidate.

I have not overlooked that questions could have been raised about certain aspects of Mr. Boyd's judgment in the 2000 incident itself. His behavior, however, was not the basis for his bypass and there may well be good reason why New Bedford would not view his conduct in that incident, alone, as disqualifying. The episode occurred 14 years earlier, when he was a teenager. He has since compiled an honorable record with the military, where he held a highly sensitive military position requiring a Secret clearance that was confirmed by the military with knowledge of the 2000 incident. Overall, his answers to the nearly 80 questions on the Personal History Questionnaires demonstrated a willingness to be completely honest and candid about nearly every other aspect of his past behavior, even admitting prior marijuana use, acts of vandalism (for which there was never any police report), knowing that those disclosures also might have been (but were not) viewed unfavorably by the NBPD.

In sum, Mr. Boyd is a qualified, minority candidate, who was not untruthful with the NBPD and the decision to bypass him for that reason is not reasonably justified. He deserves to be reconsidered on the merits of his record and abilities at the next opportunity.

CONCLUSION

For all of the above stated reasons, the bypass appeal of Anthony D. Boyd, under Docket No. G1-14-305 is *allowed*. Pursuant to the powers of relief inherent in Chapter 310 of the Acts o

1993, the Commission ORDERS that HRD and/or the NBPD in its delegated capacity shall:

- Place the name of Anthony D. Boyd at the top of any current or future Certification for the position of NBPD Police Officer until he is appointed or bypassed after consideration consistent with this Decision.
- If Mr. Boyd is appointed as an NBPD Police Officer, he shall receive a retroactive civil service seniority date of 3/30/14, the same date as the first candidate ranked below Mr. Boyd who was appointed from Certification No. 01446. This retroactive civil service seniority date is not intended to provide Mr. Boyd with any additional pay or benefits including, without limitation, creditable service toward retirement.

Civil Service Commission

/s/ Paul Stein

Paul Stein

Commissioner

By 4-1 vote of the Civil Service Commission (Bowman, Chairman [Aye]; Ittleman[No], Camuso [Aye] , Stein [Aye] & Tivnan [Aye], Commissioners) on October 13, 2016.

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. 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 to:

Eric B. Langfield, Esq. (for Appellant)

Eric Jaikes, Esq. (for Respondent)

John Marra, Esq. (HRD)