

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

PAUL ALDEN,
Appellant

v.

Case No.: G2-14-217

TOWN OF PLYMOUTH,
Respondent

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Town of Plymouth to bypass Mr. Alden for promotional appointment to District Fire Chief is affirmed and Mr. Alden's appeal under Docket No. G2-14-217 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 12, 2015.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chairman

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:

John M. Becker, Esq. (for Appellant)

David C. Jenkins, Esq. (for Respondent)

Edward B. McGrath, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

Suffolk, ss.

Paul F. Alden,
Petitioner

v.

Docket No. G2-14-217
DALA No. CS-14-769

Date: September 28, 2015

Town of Plymouth,
Respondent

Appearance for Petitioner:

John M. Becker, Esq.
Sandulli Grace, PC
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Appearance for Respondent:

David C. Jenkins, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110

Administrative Magistrate:

James P. Rooney, Esq.

Summary

Appointing authority has shown sufficient justification for its decision to bypass a fire captain for promotion to the rank of Fire Battalion Chief – Training Division. The candidate bypassed did not interview as well as the candidate chosen. The position requires an individual with good communication skills; the bypassed candidate's lengthy answers that appear to have confused the interview panel sufficed to justify the bypass.

RECOMMENDED DECISION

Plymouth Fire Captain Paul Alden timely appealed a August 19, 2014 decision by the Town of Plymouth to bypass him for a promotion to Fire Battalion Chief – Training Division. I held a hearing on behalf of the Civil Service Commission on December 1, 2014 and January 5, 2015 at the offices of the Division of Administrative Law Appeals.

I accepted thirty documents into evidence. I made a digital recording of the hearing. The Town of Plymouth presented the testimony of Edward Bradley, Chief of the Fire Department for the Town of Plymouth, and Michael Young, the Fire Department’s Deputy Chief. Mr. Alden testified on his own behalf and presented the testimony of Scott J. Saba, a Plymouth firefighter. The administrative record closed on May 18, 2015 when the parties filed post-hearing briefs.

Findings of Fact

Based on the evidence and testimony and reasonable inferences drawn from them, I make the following findings of fact:

1. The Town of Plymouth has over one hundred firefighters who work out of seven fire stations. Its command structure is made up of a Fire Chief, two Deputy Chiefs, and six Battalion Chiefs who are assigned to the Fire Department’s headquarters. Four of the Battalion Chiefs act as shift commanders to the four working groups into which the firefighters are divided. One Battalion Chief is responsible for fire code enforcement; one acts as the training and safety officer. The Town Manager is the appointing authority. (Bradley testimony.)

2. Paul Alden began his career as a firefighter in 1987 in the Town of Bourne. After he was laid off from Bourne in 1991, he became a firefighter in Plymouth the following year. He was promoted to lieutenant in 2005 and made a captain in 2010. His first assignment as captain was to Station 4, a small station in the southwest part of town that was not very busy. The station was rumored among the firefighters to be to be a “punishment station,” although firefighters were not assigned there for disciplinary reasons. Mr. Alden found morale to be low. He

advocated for changes to the physical plant, and morale improved. He was told by Chief Edward Bradley that, previously, firefighters had stayed at the station for one year, but now more firefighters were opting to stay longer. In 2013, Mr. Alden was transferred to Station 5. Immediately prior to this move, a crew at that fire station, while responding to a fire, bent the tip of an aerial ladder. This was not reported until one week later, when an officer from another station noticed this potential safety problem. The Department responded by transferring the captain and all the other officers. Mr. Alden was brought in because this station was geographically near his prior assignment. (Alden and Bradley testimony.)

3. In 2012, the Plymouth Fire Department hired Badgequest to run an assessment center for future openings for Battalion Chief. The assessment consisted of three parts: a written exam on the Department's standard operating guidelines (SOGs), a role-playing fire scenario, and a time-limited round robin on various personnel issues. Mr. Alden had the second highest score, an 85. The highest score was an 86 received by Captain Bruce Eddy; the third highest score was an 84 received by Captain Michael Meehan. (Alden and Bradley testimony; Ex. 2.)

4. Although no Battalion Chief positions were open then, Mr. Alden heard that the Battalion Chief for training, Anthony Thompson, would be retiring in the near future. He asked Chief Bradley what he should do to prepare himself for this position. Chief Bradley told him to take the course listed in the job description for that position. (Alden testimony.) The job description for Fire Battalion Chief – Training Division states that the person holding this position “[p]erforms instructional training and demonstrations to members of the Department and public on all aspects of fire prevention and extinguishment, hazardous materials, rescue, emergency medial and department polices.” It also states that the person holding the position must take and complete seven courses – Fire fighter 1, Fire fighter II, Fire officer I, Fire officer II, Certified fire

instructor, CPR instructor, and Safety officer – within three years of obtaining the position, if all are not completed beforehand. (Ex. 10.)

5. All firefighters are required to take the Fire fighter I and II courses. Over the next two years, Mr. Alden proceeded to take and pass the remaining five courses. The other two high scorers on the assessment did not. (Alden testimony.)

6. The Fire Battalion Chief – Training Division position became vacant in June 2014. Chief Bradley discussed the opening with his deputies and decided to conduct interviews of the top three candidates from the 2012 list. The three candidates were told to submit resumes; no mention was made of references. (Bradley testimony.)

7. Mr. Alden solicited letters of recommendation from Battalion Chief Daniel Braley, with whom he had worked previously, Mike Feeley, a District Fire Chief/Incident Safety Officer with the Boston Fire Department, from whom he had received training, and retired Deputy Chief Arthur Lamb. Firefighter Scott Saba, who worked for Mr. Alden at Stations 4 and 5, learned that Mr. Alden had been seeking letters of recommendation and offered to provide one. He told Mr. Alden that, in the military, it was routine for subordinates to write letter of recommendation for their superior officers. Mr. Alden submitted each of these letters with his resume. (Alden testimony; Ex. 12.) Firefighter Saba, in his letter, mentioned that he worked for Mr. Alden. In explaining why he thought Mr. Alden was qualified for the Fire Battalion Chief – Training Division position, he wrote:

Captain Alden follows through on training evolutions during shifts, making sure that firefighters are properly educated and aware of current changes in the field of firefighting. His drills are usually very challenging, but always fun and interesting. . . . The fact that he even asked me to write a letter for him shows that he cares about those under his charge and respects their opinions.

(Ex. 12.) At the time, Firefighter Saba was being investigated for non-compliance with the Department's residency restrictions. (Bradley testimony.) Mr. Alden had no role in any disciplinary decision that might arise out of this investigation. (Alden testimony.)

8. The candidates were interviewed on August 8, 2014 by a panel made up of Chief Bradley, Deputy Chief Michael Young, Deputy Chief Stanley Eldridge, and Human Resources Director Cindy DePina. (Bradley testimony.) The candidates had been sent a memo listing a schedule of interviews: Mr. Eddy at 9:30 a.m., Mr. Alden at 10:00 a.m., and Mr. Meehan at 10:30 a.m. The memo told the candidates to expect the interviews to last twenty minutes. (Ex. 15.) Mr. Alden saw the schedule, but did not enter the other interview times in his calendar. (Alden testimony.)

9. Mr. Alden had previously spoken about the interview process to retired Deputy Chief Lamb, who advised him to take control of the interview. Just before going into the interview, he asked Deputy Eldridge about the interview format; Deputy Eldridge told him to take all the time he needed to answer questions. (Alden testimony.)

10. The interviewers asked each candidate the same series of questions. Each interviewer took notes; the interviews were not recorded. (Bradley testimony; Ex. 5.)

11. Mr. Alden's interview took over one hour; the two other candidates' interviews took twenty-five minutes apiece. (Bradley testimony.) The first question concerned the role of the training officer. In line with the advice to take charge of the interview, Mr. Alden went beyond the question to address areas in which he thought the Fire Department could improve training. His answer to this question alone took twelve to fifteen minutes. (Alden and Bradley testimony.)

12. One of Mr. Alden's suggestions for improvement concerned an addition to the Department's standard operating guidelines. He declared that he thought firefighters needed

more training on high risk/low frequency events, like gas emergencies and confined space emergencies. He noted that he thought the Department should develop a confined space standard operating guideline. Mr. Alden was aware that the Department had a standard operating guideline on gas emergencies; he had reviewed it with the firefighters in his command. (Alden testimony.) Yet, the manner in which he answered, left the interviewers with the impression that Mr. Alden thought the Department did not have a standard operating guideline for gas emergencies. (Bradley and Young testimony.)

13. Mr. Alden was also asked to describe a situation he had experienced at the Department, whether good or bad, from which he had learned. He chose to discuss a fire at Samoset Road on New Year's Eve of 2013. He arrived at the scene of a house fire that had advanced beyond the incipient stage. He confirmed with a neighbor that no one was inside. With only three firefighters at the scene, one of whom was a rookie, he decided not to send any firefighter inside to put down the fire, but instead to fight it from the outside and wait for additional fire companies to arrive. He was concerned that what looked to be a balloon-framed structure with a chimney in the center might collapse with firefighters inside. He intended to follow a Department standard operating guideline called the "Two-In/Two-Out Rule," which advises firefighters that, when a fire is past the incipient stage and there is no person at risk in the building, two firefighters should enter the building with protective equipment and two other firefighters should stand by outside in case the two who have entered the building need to be rescued. Mr. Alden hoped the rookie firefighter would learn that this was a rule to be followed. He recalls that the officer in the engine that next appeared on the scene criticized him for not sending firefighters into the building interior to fight the fire. He hoped to show the interview panel that he could make difficult decisions and stand by them. (Alden testimony; Exs. 29 and

30.) Chief Bradley, however, was left with the impression that Mr. Alden chose not to send a rookie inside to fight the fire. He thought such a decision was incorrect because rookie firefighters have training in entering burning buildings and they need to gain the experience by going into fires to fight them. (Bradley testimony.)

14. During the interview, Mr. Alden also mentioned that he had taken a four-day-long rapid intervention training that the other candidates for the Fire Battalion Chief – Training Division position had an opportunity to take, but did not. (Alden testimony.)

15. After the interviews, the panel members shared their impressions of the three candidates. They did not use any particular scoring system. They all agreed that Mr. Meehan had given the best interview, with Mr. Alden next. Chief Bradley thought Mr. Meehan’s answers were efficient and showed instinct and experience, while Mr. Alden’s answers were overlong and, at least as to the question concerning the role of the Fire Battalion Chief – Training Division, non-responsive. (Bradley testimony.) Deputy Young thought Mr. Alden’s answers strayed from the question topics and that he “filibustered” on his experiences and opinions. (Young testimony.) The panel also reviewed the personnel files of the candidates after the interviews, looking for positive and negative aspects of the applicants’ careers. (Bradley testimony.)

16. The Department chose to appoint Mr. Meehan to the Fire Battalion Chief – Training Division position. In a letter the Town Manager sent to Mr. Alden on August 19, 2014, the decision in favor of Mr. Meehan was explained as follows:

Captain Meehan has served with the Plymouth Fire Department since April 12, 1986. . . . While placing third on the assessment scoring, Captain Meehan possesses a wealth of experience and skills that make him a well-respected officer in the department. His temperament, demeanor and knowledge are demonstrated in his fire ground actions and decisions. . . . The candidate performed the duties of Shift Commander previously as an Acting Battalion Chief; he was confident and capable during the assignment. . . . The panel found . . . Captain Meehan to have an outstanding command presence as exhibited

by his forthright answers, self-confidence and positive attitude. He was comfortable and articulate in his interpersonal relations.

(Ex. 11.)

17. The letter explained the decision to bypass Mr. Alden as follows:

Captain Alden is certainly motivated, but needs to develop his interpersonal skills in relating to subordinates. When asked his first question by the panel, he lacked the ability to answer the question(s) during the interview in a clear manner. He often went off on tangents that were completely unrelated to the questions or scenarios. At times he didn't answer the questions asked at all, but rather began stating all the things he could do and/or change. He inferred that there were no SOPS/SOGs that dealt with 'Response to Gas Emergencies'. The Department has an SOG for responding to natural gas, propane and cryogenic emergencies; it was distributed several months ago. The Hazardous Material Response Guide was an eight month project for the Deputy Chiefs and was reviewed by members of the State Hazardous Materials Team for content and expert advice. Apparently the candidate was not aware, which indicates a serious concern. (Dept. SOP 412 and SOP 301 are each posted on the department's server and available to all personnel.)

The Team also questions the submittal of a letter of reference, written by a direct subordinate, who works on his shift and the station. This was a decision that shows lack of judgment. The firefighter was placed in the unenviable position of writing a letter or incurring the wrath of the supervisor. Whether or not the firefighter felt any pressure or conflict, or if he wrote the endorsement of his own volition is inconsequential; the supervisor should not have submitted a letter of reference from an employee under his oversight. There is an appearance of coercion and unethical behavior.

The candidate has gone to great lengths to build an impressive list of training certificates in the past two years, but his actions and decision making at training and incidents is of concern. On one occasion he guided a 4-wheel drive brush breaker, while on a training session into the middle of a sand pit, resulting in the vehicle getting totally bogged down and needing to be towed out. The truck was out of service for over two hours, during which time he neglected to notify Fire Alarm over the radio of his predicament and used his cell phone to call the Shift Commander instead, to avoid the embarrassment of having the department hear his plight. Cell Phones, by the way, are prohibited from being carried by personnel on department apparatus. He also spoke disparagingly about his fellow candidates and made assumptions about their lack of ability or desire to prepare for this role.

When asked about past experiences he deflected personal responsibility while implicating others for situations and issues that involved poor performance and decision making. The candidate's intentions and motivation are good, but he needs more time to develop and learn how to be a better leader.

(Ex. 11) (parentheticals in original.)

18. A brush truck is used to fight fires. (Alden and Bradley testimony.) The bypass letter referred to an incident with this truck when Mr. Alden was assigned to Station 4. (Alden testimony.) It was not mentioned at the interview, although Deputy Young thought Mr. Alden should have brought it up on his own when asked about a learning experience at the Department. (Young testimony.) Mr. Alden had taken two firefighters to an area near a cranberry bog to practice use of the brush truck. One of the firefighter tried to turn the truck around and its wheels became stuck in soft sand. Mr. Alden called Battalion Chief Daniel Braley to report that the truck was stuck. He called in because he knew the repair shop would need to be notified. (Alden testimony.)

The Department has a policy against personnel carrying cell phones and using them on duty because cell phones are not manufactured to prevent sparks, and thus could potentially cause an explosion. (Bradley testimony.) Mr. Alden was aware of this policy. (Alden testimony.) The Department requires that officers call in on the radios in their fire trucks. Doing so, in this situation, would have made other stations aware that the brush truck was temporarily out of service. Deputy Young spoke to him about his use of a cell phone, but he was not otherwise disciplined. (Bradley testimony.) Shortly after this incident, the Department circulated a memo reminding its personnel of the rule against use of cell phones. (Alden testimony.)

19. Mr. Alden timely appealed. (Ex. 21)

Discussion

The decision of the Town of Plymouth to bypass Captain Paul Alden for promotion to the rank of Fire Battalion Chief – Training Division should be affirmed. The Town has shown that its decision was based on sound reasons.

When “selecting public employees of skill and integrity, appointing authorities are invested with broad discretion.” *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 305, 682 N.E.2d 923, 926(1997). An appointing authority will be presumed to have acted in good faith and with honesty. *Mayor of Revere v. Civil Service Comm’n*, 31 Mass. App. Ct. 315, 321 n.11, 577 N.E.2d 325, 329 n.11 (1991). However, it has the burden to show that the bypass was “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.” *Selectman of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482, 160 N.E. 427 (1928). A bypass will not be upheld when “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” *Vitale v City of Beverly*, 24 MCSR 363, 365 (Mass. Civ. Serv. Comm’n., July 1, 2011), quoting *Borelli v. MBTA*, 1 MCSR 6 (Mass. Civ. Serv. Comm’n., 1988).

In this instance, the reason the appointing authority bypassed Mr. Alden for promotion was primarily because of his performance during the interview for the position of Fire Battalion Chief – Training Division. The interview panel thought he did not perform as well as the candidate ultimately selected, Captain Michael Meehan, who had scored one point below him on the assessment for the position.

Poor interview performance can be a sufficient reason for a bypass. *See MacMillan v. Town of Plymouth*, 21 MCSR 446, 452 (Mass. Civ. Serv. Comm’n., Aug. 12, 2008) (candidate for promotion to police sergeant bypassed because, in an interview, he was “evasive, unsure, weak, immature, and lacking in command presence) and *Bariamis v. Town of Tewksbury*, 20 MCRS 47, 50 (Mass. Civ. Serv. Comm’n., Jan. 30, 2006) (candidate for original appointment as

police office bypassed because of negative comments made during interview). Because an interview can be critical to a promotion decision, the Civil Service Commission has recommended that interviews be recorded. Although the failure to record an interview does not by itself mean that an appointing authority cannot justify a bypass based on interview performance, the Commission has cautioned:

When confronted with a bypass decision that is heavily weighted on the performance of the candidates at the interview, in the absence of any record of the interview, the Commission's conclusions about what took place, necessarily, will turn on the evidence and credibility of the witnesses presented to the Commission at the formal hearing. Thus, an appointing authority that makes no record of the interviews it uses in the promotional appointment process to distinguish between otherwise qualified candidates, may do so at its own peril.

Moses v. Town of Winthrop, 21 MCSR 420, 426 (Mass. Civ. Serv. Comm'n., Aug. 4, 2008).

The failure of the Fire Department to record Mr. Alden's interview has consequences here because there is considerable disagreement about what Mr. Alden said during the interview, and, thus, about whether the interview panel had reason to conclude that his interview performance was poor. The panel heard Mr. Alden say the Fire Department had no standard operating guideline for gas emergencies, when it does. It heard him say that he did not send firefighters in the interior of a house fire at Samoset Avenue because one of the firefighters at the scene was a rookie. Mr. Alden's handling of the criticism he received for his decision-making at the Samoset fire is evidently the source for the conclusion in the bypass letter that he had deflected responsibility for situations in which he performed poorly.

Mr. Alden denied the statements attributed to him. He testified credibly that he knew of the gas emergency standard operating guideline and had reviewed it with the firefighters in his command. He also testified credibly that he did not send any firefighters into the burning house

on Samoset Avenue, not because one of the firefighters was a rookie, but because he wanted to show the rookie that he adhered to the policy of having two firefighters remain outside a burning building while two went inside, something he could not do until more firefighters arrived at the scene.

Chief Bradley and Deputy Chief Young also testified credibly that they heard Mr. Alden comment that the Department lacked a gas emergency guideline and that he decided not to send a rookie into the interior of a burning building. There is nothing in their testimony to suggest that they bear any prejudice toward Mr. Alden or that they were in any way fabricating.

This conundrum can be resolved by focusing on the main complaint the interview panel had about Mr. Alden's interview performance, namely that he went on at length and did not answer questions in a straightforward manner. Although the interview was not recorded, the hearing was, and the Town, in its closing brief, quoted some examples of Mr. Alden's lengthy responses to questions at the hearing. The quoted answers are discursive, and tend to wander afield from the main thrust of the question asked. Although they do answer the questions, they do so in such a roundabout fashion as to create the possibility of confusion. It is very likely that answers of this sort led the interview panel to believe that Mr. Alden, while discussing both gas emergencies, for which there is a standard operating guideline, and confined spaces, for which there is not, left the impression there was no standard operating guideline for gas emergencies. Similarly, his emphasis on the rookie firefighter at the Samoset fire may have led the panel to conclude that the presence of the rookie influenced his decision not to send firefighters into the interior of the burning building.

A petitioner's handling of questions at a hearing may be considered when evaluating his interview performance. *See Brown v. Town of Duxbury*, 19 MCSR 407 (Mass. Civ. Serv.

Comm'n., Dec. 1, 2006) (Commission thought, as did the interview panel, that applicant for police sergeant position showed that he lacked sufficient experience as a police officer to warrant promotion), *Wooster v. Division of Employment and Training*, 16 MCSR 43 (Mass. Civ. Serv. Comm'n., Sept. 5, 2003) (clerk applicant gave impression of being unfocused to both interview panel and the Commission), and *Barber v. Dept. of Mental Health*, 6 MCSR 132 (Mass. Civ. Serv. Comm'n., June 16, 1993) (interview panel and Commission thought mental health case manager applicant's answers lacked coherence). Although I did not find Mr. Alden's answers to questions at the hearing unclear at the time, I can see where their length and roundabout nature could cause confusion.

Ultimately, while I do not believe Mr. Alden is ignorant of the Fire Department's standard operating guidance on gas emergencies or that he attempted to deflect criticism of his handling of the Samoset fire by blaming it on the presence of a rookie, the fact that he left the opposite impression than he intended with the interview panelists detracted from his ability to meet the communications capability expected of a Fire Battalion Chief – Training Division. The person holding that position must conduct trainings and demonstrations for members of the Fire Department and the public. Thus, the ability to communicate clearly is a key component of the job. Mr. Alden's inability to convey his thoughts clearly in the interview was an appropriate factor for the interview panel to consider given the communications responsibilities of the job, and thus it could have concluded appropriately that a candidate who gave crisper answers was better suited for the position.

Two of the other criticisms the panel had of Mr. Alden concerned his handling of delicate situations: his discussion of a training he took that the other candidates for the position had not taken and his use a letter of reference from a subordinate. The numerous trainings Mr. Alden

took in the two years before the position opened separate him from the other candidates who did not take those trainings. In addition to showing that he had taken and completed the courses the Fire Battalion Chief – Training Division must ultimately take, they also show his level of enthusiasm for the position. Although Mr. Alden contends that the completion of required trainings should have been the most important factor in the Town’s promotion decision, the Town had discretion to determine how much weight to give this factor. *See MacMillan*, 21 MCSR at 452 (appointing authority may determine how much weight to give to education and experience). In this instance, the trainings listed in the job description include trainings that the Fire Battalion Chief – Training Division would have to take within three years of obtaining the position, and hence there was no need for the Town to favor the one candidate who had already taken all the required courses. Still, Mr. Alden had every reason, during the course of the interview, to emphasize that he had taken all the required courses. He needed to be careful, however, when contrasting his efforts with those of his fellow candidates, a line the panel thought he crossed by disparaging the other job applicants. This may simply be another miscommunication, but I am inclined to think it is something more. Mr. Alden testified at the hearing that he had no intention to disparage his fellow officers, but his comments suggested that he viewed their deferral of the courses ultimately necessary for the Fire Battalion Chief – Training Division position as a sign of a lack of interest.

As for the letter of reference, the panel was concerned that the letter came from a subordinate who might have felt pressured to write it. The panel had reason to be concerned that Mr. Alden had taken advantage of a subordinate because Mr. Saba’s letter suggested it was written at Mr. Alden’s urging. I credit Mr. Saba’s and Mr. Alden’s testimony that the idea to write the letter came from Mr. Saba. Although Mr. Saba volunteered to write the letter, there

was still reason for concern about a letter of reference from a subordinate. Mr. Alden evidently initially thought so because he needed to be reassured by Mr. Saba that letters of reference from subordinates are routine in the military. I find no evidence that Mr. Saba thought writing such a letter would influence any discipline he might have faced regarding the investigation into whether he lived too far away from Plymouth, nor is there any evidence that Mr. Alden suggested any such assistance in return for the letter. The panel was, however, justified in concluding that Mr. Alden should have recognized the potential problems with a direct subordinate preparing a letter of reference.

The final reason offered by the appointing authority for bypassing Mr. Alden was his use of a cell phone to call in when a brush truck used in a training exercise was stuck in the sand. Mr. Alden conceded that he acted contrary to Department policy when he used a cell phone to report the stuck truck. The Department evidently thought he was not the only firefighter using a cell phone while on duty because it issued a memo shortly thereafter reminding personnel about the cell phone policy. The incident occurred sometime between 2010 and 2013, when Mr. Alden was the captain at Station 4. There is no evidence that Mr. Alden failed to follow the policy after the memo was issued.

In sum, the record establishes that the appointing authority had legitimate grounds for bypassing Mr. Alden, primarily because of his interview performance, and a few other points that appear to have been secondary. Mr. Alden comes across as talented and appropriately ambitious. Should his interview performance improve, he deserves consideration for future vacancies. But at present, I recommend that the decision of the Town of Plymouth to bypass Captain Paul Alden for promotion to the rank of Fire Battalion Chief – Training Division be affirmed.

DIVISION OF ADMINISTRATIVE
LAW APPEALS

James P. Rooney
First Administrative Magistrate

Dated: September 28, 2015