

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

JAMAINE GAITOR,
Appellant

CASE NO. G1-16-178

v.

BOSTON POLICE DEPARTMENT
Respondent

Appearance for Appellant:

Pro Se

Appearance for Respondent:

Jaclyn R. Zawada, Esq.
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Paul M. Stein

DECISION

The Appellant, Jamaine Gaitor, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.31,§2(b), to contest his non-selection for appointment as a full-time permanent Police Officer with the Boston Police Department (BPD).¹ The Commission held a pre-hearing conference on November 15, 2016, after which the BPD filed a Motion for Summary Decision asserting that Mr. Gaitor voluntarily failed to complete the hiring process which is not a bypass from which Mr. Gaitor has any right of appeal to the Commission. I denied the motion, without prejudice, and held a full evidentiary hearing of the appeal on February 3, 2017, which was digitally recorded.² Ten exhibits were received in evidence. On March 3, 2017, in lieu of a post-hearing proposed decision, the BPD filed an Amended Motion for Summary Decision.

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 Copies of the CDs of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CDs to supply the court with the stenographic or other written transcript of the 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:

- BPD Police Detective Charise Brittle-Powell
- BPD Director of Human Resources, Nancy Driscoll

Called by the Appellant:

- Jamaine Gaitor, Appellant

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 these facts:

1. The Appellant, Jamaine Gaitor, is a black American male who has resided in Dorchester for most of his life. He has held a position in street maintenance with the City of Boston for approximately the past ten years. He is a qualified veteran under Massachusetts civil service law.

(Testimony of Appellant; Pre-Hearing Stipulation)

2. Mr. Gaitor has sought to become a BPD Police Officer for approximately a decade.

(Testimony of Appellant)

3. In 2007, after testing positive for marijuana (1.6 pg/10 mg, i.e, 0.6pg above the established cut-off), Mr. Gaitor was bypassed and approved by the Massachusetts Human Resources Division (HRD) for removal for further consideration from the then effective eligible list (pursuant to PAR.09). He appealed that bypass to the Commission and later voluntarily withdrew that appeal. *(Testimony of Appellant; Administrative Notice [Gaitor v. Boston Police*

Dep't. CSC No. G1-09-034])

4. In June 2013, Mr. Gaitor took and passed the civil service examination for BPD Police Officer administered by HRD, scoring a 98. His name was placed on the new eligible list established by HRD on November 1, 2013. *(Exh. 8; Testimony of Appellant; Pre-Hearing*

Stipulation)

5. In February 2015, Mr. Gaitor was again bypassed for appointment as a BPD Police Officer based on his failed 2007 drug test and other reasons including alleged untruthfulness and other concerns found in his criminal and driving history. He did not appeal this bypass. (*Testimony of Appellant & Det. Brittle Powell; BPD Amended Motion [Aff't of Det. Brittle-Powell]*)

6. On April 27, 2015, HRD issued Certification No. 02742 from the November 2013 eligible list, for appointment of approximately 70 candidates as BPD Police Officers. (*Exh. 8; Pre-Hearing Stipulation*)

7. Mr. Gaitor duly signed Certification No. 02742 as willing to accept appointment, completed the standard BPD Recruit Application package and appeared for an initial interview on or about May 30, 2015. (*Testimony of Appellant & Det. Brittle-Powell*)

8. At the initial interview, Mr. Gaitor met with BPD Detective Brittle-Powell of the BPD Recruit Investigation Unit (RIU). (*Testimony of Appellant, Det. Brittle-Powell; BPD Amended Motion [Aff't of Det. Brittle-Powell]*)

9. Det. Brittle-Powell was assigned to conduct the background investigation of Mr. Gaitor's application in preparation for presentation to the BPD "Roundtable" for a decision on whether or not to make him a conditional offer of employment, subject to completion of medical screening and a Physical Abilities Test (PAT). (*Testimony of Appellant, Det. Brittle-Powell & Driscoll; BPD Amended Motion [Aff't of Det. Brittle-Powell]*)

10. At the initial interview, Mr. Gaitor's prior history of bypasses came up. Det. Brittle-Powell told Mr. Gaitor that he had an "uphill" battle to be appointed based on his bypass history and he should think about withdrawing his application. (*Testimony of Appellant & Det. Brittle-Powell*)

11. In mid-July, Det. Brittle Powell began to work on the background investigation of Mr. Gaitor's application. Her initial steps included reviewing Mr. Gaitor's 2015 application to the BPD and the supporting documentations previously obtained in connection with that application. Through this review, Det. Brittle-Powell confirmed further details about the reasons stated for the BPD's decision to bypass him in February 2015. (*Testimony of Appellant, Det. Brittle-Powell; BPD Amended Motion [Aff't of Det. Brittle-Powell]*)

12. Det. Brittle-Powell was assigned to perform the background investigations on approximately 24 to 30 application packets. She works on a "tight time frame", is expected to work on one application at a time and to complete approximately two investigations per week. (*Testimony of Det. Brittle-Powell*)

13. After reviewing Mr. Gaitor's 2015 application, Det. Brittle-Powell took no further steps to complete a background investigation on Mr. Gaitor. She contacted Mr. Gaitor by telephone and met with him again in mid-July 2015. She informed Mr. Gaitor that, based on her review, it seemed "nothing had changed" since his last bypass and suggested he would be better off to wait another year or two before applying again. She encouraged him to withdraw his application rather than continue further with the hiring process. (*Testimony of Appellant, Det. Brittle-Powell; BPD Amended Motion [Aff't of Det. Brittle-Powell]*)

14. Mr. Gaitor declined to withdraw and stated he wanted to continue in the process and have his application considered by the "Roundtable". He told Det. Brittle-Powell that he was approaching the maximum age for appointment as a BPD Officer (forty) and this would probably be his last chance to be appointed. Mr. Gaitor left his meeting with Det. Brittle-Powell having made it clear to her that he would not voluntarily withdraw his application. (*Testimony of Appellant*)

15. Det. Brittle-Powell, however, did not accept Mr. Gaitor's decision as final. She made several attempts to contact Mr. Gaitor about his withdrawal decision. She left voice-mail messages and, when Mr. Gaitor did not return her calls, she sent him an e-mail on July 22, 2015, stating that "I need for you to contact me or I will have to send you a 'Failure to Complete' notification." (*Exh. 1; Testimony of Det. Brittle Powell; BPD Amended Motion [Exh. B]*)

16. On July 23, 2015, Det. Brittle-Powell mailed a "Failure to Complete the Process" form to Mr. Gaitor. The form stated:

"As of 7/23/15 we have not received the following required materials for your application. You are required to submit them by 7/31/15 (~~5 business days~~) Failure to submit this required material will remove you from consideration for this hiring process. You will be categorized as Failure to Complete the Process."

~~The following items are required to be delivered to the Recruit Investigator assigned to your case by the above date.~~

- _____
- _____
- _____
- _____

**I need to speak with you in reference to your background investigation. I have been unable to reach you by Phone and you have failed to answer my email. Please contact me by Friday 7/31/15 or I will no longer Process your application and you will be Categorized as a "Failure to Complete"*

(*Exh. 2; BPD Amended Motion [Exh. B]*)

17. On August 11, 2015, having received no response from Mr. Gaitor, Det. Brittle-Powell submitted a report of her background investigation on Mr. Gaitor to her supervisor, RIU Sgt. Det. Riley and the BPD HR Director, to memorialize her actions. (*Exh. 3*)

18. Mr. Gaitor acknowledged that he received Det. Brittle-Powell's July 2015 email and letter. He did not respond because he had submitted all the necessary paperwork needed to process his application and the notices did not indicate otherwise. He assumed (correctly) that the reason Det. Brittle-Powell wanted to speak to him was solely to get him to change his mind about withdrawing his application. (*Testimony of Appellant*)

19. On or about October 31, 2015, approximately 70 candidates were selected to be given conditional offers of employment, including candidates whose names were ranked above Mr. Gaitor, who was not one of the successful candidates selected. Mr. Gaitor was not informed of his non-selection at that time. (*Exh. 8; Pre-Hearing Stipulation*)

20. In July 2016, following an investigation initiated by the Commission into the unusually low number of bypass appeals received by the Commission following the BPD's 2015 appointment process, the Commission issued "Findings & Orders" that ordered certain corrective actions by the BPD. These corrective actions concerned, among other things, the group of sixty (60) candidates ranked above those selected in the 2015 hiring process, all of whom signed Certification No. 02742 as willing to accept appointment and subsequently "failed to appear for or complete a part of the process (i.e., orientation, meeting with a detective, medical and or the Physical Abilities Test" but who received no notice of their non-selection because the BPD claimed that these candidates' non-selection "does not constitute a bypass." (*Exh. 8; BPD Amended Motion [Exh. F]*)

21. In particular, the Commission's July 2015 "Findings & Orders" required that BPD provide each of the sixty (60) higher ranked candidates deemed by the BPD as having failed to complete the process with written notification of their non-selection and their right to file an appeal with the Commission. (*Exh. 8; BPD Amended Motion [Exh. F]*)

22. On August 4, 2016, following the BPD's request for reconsideration of the July 2015 "Findings & Orders", the Commission further clarified, among other things, the required notice to "failure to complete" candidates. The Commission's clarification states, in relevant part:

"To ensure clarity, neither of [the July 21, 2015 orders] requires the BPD to: disturb the 2015 appointment of recruits to the Police Academy; appoint the candidates in question; and/or provide them with a future opportunity for appointment. Rather, the Commission's

orders are limited to ensuring that these candidates made an informed decision after being advised of their appeal rights.”

“In order for these candidates to have their appeal heard by the Commission, he/she would need to first complete the following appellate steps:

- a. File an appeal with the Commission following the normal appeals process;
- b. Show that their non-selection constituted a bypass.

“If those criteria are met, there would be a full evidentiary hearing before the Commission, at which point it would be determined if the BPD had reasonable justification to bypass the candidate. . . .”

“In regard to those candidates who reportedly failed to attend the orientation session or failed to attend the required meeting with an investigator, this warrants clarification. If the BPD can provide the Commission with documentation that unequivocally shows that a candidate was provided with proper notice regarding the need to attend the orientation or investigatory meeting, and then failed to do so for reasons other than active military duty or medical reasons, notification of appellate rights may not be required.”

“To the extent that the BPD may be concerned that, going forward, all candidates who withdraw from the process must be deemed as bypassed candidates, some clarification may be warranted. To the extent that the BPD, on a going forward basis, can unequivocally show that a candidate was aware of his/her right to file an appeal with the Commission and that failure to sign the [withdrawal] form would NOT impact his/her future hiring prospects, we concur with the BPD that those candidates are no longer “willing to accept employment” and should not be considered bypassed candidates. . . .”

(Exh. 9; BPD Amended Motion [Exh. F])

23. By letter dated August 24, 2016, acting pursuant to the Commission’s July 21, 2016

“Findings & Orders”, the BPD’s HR Director issued notice to Mr. Gaitor which stated that:

”A review of the Department records relating to the hiring of entry level police officers in 2015 indicates that you failed to complete the hiring process. Specifically, you failed to:

- Attend orientation
- x Attend/complete your background interview/investigation
- Attend/complete medical
- Complete the PAT”

“Had you elected to move forward in the hiring process and the Department deemed you ineligible for appointment as a Boston police officer, you would have had the right to file an appeal with the Civil Service Commission”

“If you chose, you may [now] file a bypass appeal . . . within sixty calendar days of receipt of this notice. . . .”

“Upon receipt of an appeal in response to this notification, the Commission will determine, on a case by case basis, whether a bypass occurred and, if so, whether there was reasonable justification for the bypass.”

(Exh. 4; BPD Amended Motion [Exh. F]; Testimony of Driscoll)

24. After the BPD's August 24, 2016 letter was returned twice as undeliverable, the BPD's HR Director contacted Mr. Gaitor by e-mail and made arrangements for him to receive the letter and to personally deliver an acknowledgement of receipt to the BPD, which he did on October 3, 2016. (Exhs. 5 through 7; *BPD Amended Motion [Exhs. G through I]; Testimony of Appellant & Driscoll*)

25. This appeal duly ensued on October 25, 2016. (*Claim of Appeal*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31 for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L.c.31, §1. The mechanism for ensuring adherence to basic merit principles in hiring and promotion is the provision for regular competitive qualifying examinations, open to all qualified applicants, from which eligible lists of successful applicants are established, ranking them according to their scores on the qualifying examination, along with certain statutory credits and preferences, which then may be used by appointing authorities to make civil service appointments based on a "certification" of candidates according to their standing on the applicable eligible list. G.L.c. 31, §§6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the "2n+1" formula. G.L.c.31,§27; PAR.09.

In order to deviate from the rank order of preferred hiring, and appoint a person "other than the qualified person whose name appears highest", an appointing authority must provide written

reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L.c.31,§1,§27; PAR.08. Pursuant to the Personnel Administration Rules (PAR) promulgated by the Massachusetts Human Resources Division (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)

A person who is bypassed may appeal that decision under G.L.c.31,§2(b) for de novo review by the Commission. 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 bypass decision was made after an “impartial and reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and that there was “reasonable justification” for the decision. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012) citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban , 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 241 (2006) and cases cited; Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003). See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (appointing authority must prove, 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). It is not necessary, however, for the Commission 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). 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.” 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). 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

The BPD makes the initial argument that the Commission lacks jurisdiction to consider Mr. Gaitor’s appeal because his non-selection for “failure to complete” the application process does not constitute a “bypass” within the meaning of G.L.c.31, §27, for which an appeal to the Commission may be taken pursuant to G.L.c.31,§2(b). I disagree.

The BPD correctly asserts that Mr. Gaitor bears the burden to establish that he has been bypassed for selection. In order to establish that he was bypassed, Mr. Gaitor must show that: (1) he signed Certification No. 02742 as “willing to accept” appointment as a BPD Police Officer; (2) he qualified for appointment by meeting the minimum requirements for placement on the applicable eligible list; and (3) candidates ranked below him on Certification No. 02742 were appointed. There is no dispute that Mr. Gaitor met each of these statutory requirements.

The BPD argues that Mr. Gaitor forfeited the right to challenge his non-selection in favor of other lower ranked candidates because his failure reaffirm his decision not to withdraw his name from consideration is tantamount to a “failure to complete” a required component of the hiring process and, therefore, is essentially equivalent to a “voluntary withdrawal” from the process from which an appeal to the Commission would not lie.

The Commission has acknowledged, most recently in its “Findings & Orders” related to the investigation of the same 2015 hiring process involved in this appeal, that proof of a candidate’s “unequivocal” failure to provide documentation or other information requested by the BPD and necessary to reach a decision on the candidate’s suitability for appointment or, after receiving a conditional offer of employment, a candidate’s failure to provide the necessary medical

documentation, to appear for a required medical or psychological screening or to take the required PAT, may constitute a “failure to complete” the hiring process and, the removal of such a candidate from consideration, would not trigger a right to appeal that action as a “bypass.”

In Mr. Gaitor’s situation, however, his non-compliance was neither “unequivocal” nor did it constrain the BPD’s ability to continue to evaluate any aspect of his suitability for appointment.

To the contrary, Mr. Gaitor’s actions were NOT equivalent to ignoring an “unequivocal” request for information relevant to his background or declining to appear at any known orientation or other event that was essential to the decision to extend an offer or appointment. Indeed, his actions are patently consistent with his stated intention NOT to withdraw from the hiring process. While Mr. Gaitor may have the burden before the Commission to show that he was bypassed, the BPD would have the Commission go ever further and put an additional burden on Mr. Gaitor during the hiring process, as a condition to preserving his civil service bypass appeal rights, namely, that he *continue* to “unequivocally” reaffirm his refusal to withdraw his “willing to accept” appointment, under pain of forfeiture of those civil service rights.

The Commission will not let the “failure to complete” exception so thoroughly swallow the general rule that an appointing authority may not unilaterally and summarily disqualify a candidate from consideration, or appoint a lower ranked candidate in his or her place, without having provided the candidate with written “reasonable justification” based on sound and sufficient reasons, after a “reasonably thorough review”, and affording the candidate an opportunity for de novo review of those reasons by the Commission, all as explicitly required by civil service law and rules. In sum, under the circumstances of this case, Mr. Gaitor’s appeal is fairly couched as a bypass over which the Commission may take appropriate jurisdiction.

That said, the question remains whether or not Mr. Gaitor's non-responsiveness to Det. Brittle-Powell's efforts to reach him to confirm whether or not he was going to withdraw, alone, constitutes "reasonable justification" to bypass him for appointment. As noted above, the only reasons that may be asserted to support a bypass on appeal to the Commission are the reasons stated in the notice provided to the candidate. In this case, those reasons are a failure to: "Attend/complete your background interview/investigation." (*Exh.4*) BPD failed to prove by a preponderance of the evidence that this alleged reason provides reasonable justification to bypass Mr. Gaitor.

First, interpreting the language according to its ordinary meaning, nothing that Mr. Gaitor did or neglected to do can fairly be considered a failure to "attend" or "complete" either his "background interview" or the "background investigation." He dutifully completed and submitted his application and was duly interviewed twice by Det. Brittle-Powell. He supplied all information and documents that were requested of him. Det. Brittle-Powell's choice to close her investigation of Mr. Gaitor's application rather than devote further time to continue her investigation on its merits, was her decision. Indeed, the "final" notice Mr. Gaitor received from Det. Brittle-Powell, on or about July 23, 2015, confirms that she was not then seeking any missing documentation or information that she needed to complete her background investigation.

Second, I have no doubt that, Det. Brittle Powell would have known from her prior meetings with Mr. Gaitor that he was not going to withdraw. To be sure, Mr. Gaitor admits that he could have responded to the further inquiries he received from Det. Brittle-Powell, but such inattention, if any, to additional requests that he reaffirm, yet again, an intent he had already clearly expressed more than once does not equate to a "failure to complete" the hiring process and does not, standing alone, establish reasonable justification to bypass him.

Third, a candidate's application packet may well appear, on its face, to have information that would justify a bypass, but it remains the candidate's prerogative to have an up-or-down decision be made on the merits that can be challenged by de novo review upon appeal to the Commission. Had Det. Brittle-Powell simply submitted a recommendation to bypass Mr. Gaitor for the reasons she had already concluded were sufficient to raise concerns about his suitability, and he was bypassed, his right of appeal to challenge those reasons could not have been questioned. Det. Brittle-Powell's persistence in seeking Mr. Gaitor's agreement to withdraw instead was likely influenced, in part, by the "tight deadlines" under which Det. Brittle-Powell was required to work which allowed her to spend only limited time on any given application, especially when she had already concluded Mr. Gaitor had little, if any, chance of being considered favorably. While that motivation may be understandable, the administrative imperatives imposed on RIU investigators cannot become the tail that wags the dog. The BPD's use of a "failure to complete" as "reasonable justification" for a bypass cannot be used as mere pretext for what actually was a decision on the merits of the candidate's suitability, so that the underlying substantive reasons for the bypass are, in effect, insulated from scrutiny by appeal to the Commission.³

Accordingly, Mr. Gaitor's bypass has not been reasonably justified and he is entitled to at least one further consideration for appointment as a BPD Police Officer.

CONCLUSION

In sum, for the reasons stated herein, the appeal of the Appellant, Jamaine Gaitor, under Docket No. G1-16-178, is ***allowed***. Pursuant to the powers of relief inherent in Chapter 310 of

³ Although the problematic issues underlying Mr. Gaitor's application are not before the Commission, and the Commission does not assess them on the merits as to whether or not they form reasonable justification for any future bypass, I note that there was no evidence that those issues necessarily required disqualification under any BPD "hard and fast rule." (*See Testimony of Driscoll*)

the Acts of 1993, the Commission ORDERS that the Massachusetts Human Resources Division and/or the BPD in its delegated capacity take the following action:

- Place the name of Jamaine Gaitor at the top of any current or future Certification for the position of BPD Police Officer until he is appointed or bypassed after consideration consistent with this Decision.
- If Mr. Gaitor is appointed as a BPD Police Officer, he shall receive a retroactive civil service seniority date which is the same date as the first candidate ranked below Mr. Gaitor who was appointed from Certification No. 02742 This retroactive civil service seniority date is not intended to provide Mr. Gaitor with any additional pay or benefits including, without limitation, creditable service toward retirement.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on May 11, 2017.

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:

Jamaine Gaitor (Appellant)

Jaclyn R. Zawada, Esq. (for Respondent)

John Marra, Esq. (HRD)