

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

SCOTT DUBRULE,
Appellant

v.

G2-16-062

TOWN OF ATHOL,
Respondent

Appearance for Appellant:

John J. Greene, Esq.
15 Foster Street
Quincy, MA 02169

Appearance for Respondent:

Joseph Fair, Esq.
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
Executive Office of Health and

Commissioner:

Cynthia A. Ittleman

DECISION

On April 1, 2016, Scott Dubrule (Appellant), pursuant to G.L. c. 31, § 2(b), filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Athol (Respondent) to bypass him for promotion to the position of Sergeant in the Athol Police Department (APD). A pre-hearing conference was held on May 9, 2016 and a full hearing was held on June 27, 2016, both at the offices of the Commission.¹ Witnesses, except the Appellant, were sequestered. The hearing was digitally recorded and both parties were provided with a

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.

CD of the hearing². The parties submitted post-hearing briefs. The appeal is denied for the reasons stated herein.

FINDINGS OF FACT:

Twenty-four (24) exhibits were entered into evidence, twenty-three (23) at the hearing and one (1) after the hearing pursuant to my request. Based on these exhibits, the testimony of the following witnesses:

Called by the Respondent:

- Timothy Anderson, then-Police Chief, APD
- Shaun Suhoski, Athol Town Administrator

Called by the Appellant:

- Scott Dubrule, Appellant

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

1. The Appellant was appointed as a reserve police officer in the APD in 1997. In 1999, he was appointed a full-time police officer. The Appellant has been a watch commander during the day shift for an hour or so every week for a while. Watch commanders are compensated at the hourly rate of Sergeants. He has been union President since 2007, during which time the Appellant has worked with Chief Anderson regarding a few grievances involving other officers and regarding three (3) or four (4) contract negotiations. Prior to his union Presidency, the Appellant was involved in the union negotiating committee. For approximately eight (8) years, the Appellant has volunteered

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

at a community hockey association (hockey association) for children and adults, putting in at least twenty (20) hours per week. He has served on the board of the hockey association and as President. The Appellant is a long-term resident of Athol; his commute to the APD is ten (10) to twenty (20) minutes. He is divorced and has two (2) children who spend half the week with him and half the week with his ex-wife. His children participate in the hockey association, although his daughter was ill for a while, requiring medical attention. The Appellant is the only person in the APD who has a master's degree (which is in criminal justice).³ The Appellant is one (1) of fourteen (14) officers who took the Sergeant promotional exam on October 17, 2015. On March 1, 2016, in response to the APD's request, the state's Human Resources Division (HRD) issued the Respondent certification #02735, containing the rankings of the three (3) candidates who passed the exam: the Appellant was ranked first, Officer M was ranked second and Officer S was ranked third. The three officers began employment at APD at or about the same time. The certification authorized the Respondent to appoint three (3) sergeants. (Testimony of Appellant; HRD Packet)

2. The APD, at its full complement, has twenty-three (23) officers. However, at the time of the Commission hearing, the APD had seventeen (17) officers, including one (1) Lieutenant and three (3) sergeants. There are three (3) shifts at the APD; shifts are assigned by seniority. In or about 2013, Officer M was assigned to an office of the Worcester county District Attorney's office as a narcotics officer. In July 2015, the APD's three (3) sergeants retired and Officers M and S were appointed Detectives. (Testimony of Anderson)

³ Educational credits are reflected in the exam score for education and experience.

3. Chief Anderson began working at the APD in 1982, received subsequent promotions and was promoted to Chief approximately fifteen (15) years ago. He has been involved in making approximately five (5) promotions as Chief and/or Acting Chief. At the time of the Commission hearing, Chief Anderson was expected to retire within a couple of weeks and had recently had a retirement party to which all officers were invited. Officer M and others attended the party; Officer S did not attend. At the party, the Athol Police Association gave Chief Anderson a gun and a shadow box with his awards. Officer M handed the Association gift to Chief Anderson at the party. The Association is a nonprofit group of Athol officers that support the officers, provides scholarships and supports officers who are ill. (Testimony of Anderson)
4. Chief Anderson was aware when the Appellant was going through a divorce during one period and that one of his children was quite ill at another period of time. (Testimony of Anderson)
5. Chief Anderson is authorized to issue discipline in the APD up to a five (5)-day suspension; any higher discipline must be issued by Town Administrator Shaun Suhoski, who is the appointing authority. In addressing questions of discipline, Chief Anderson may ask a sergeant or the Lieutenant to conduct an investigation. Chief Anderson had not referred disciplinary matters involving more than a five (5)-day suspension to the Town Administrator until he issued one against the Appellant, which discipline was not decided at the time of the Commission hearing. The incident for which the Department sought to discipline the Appellant with a suspension of more than five (5) days that involved the Appellant's appearing approximately twenty (20) minutes late at a deadly

fire at housing for the elderly on October 15, 2015, shortly before the promotional exam was to be given. (Testimony of Anderson; Ex. 20)

6. The Appellant, as a union representative, and Chief Anderson were able to work together on a number of matters. (Testimony of Appellant and Anderson)
7. At the time of the Commission hearing, Mr. Suhoski had been the Athol Town Administrator for approximately two (2) years. As the Appointing Authority, Mr. Suhoski makes hiring and promotional decisions with input from Chief Anderson. Mr. Suhoski has been a town manager in other municipalities prior to Athol but this is the first time he has been a town administrator in a civil service community. (Testimony of Suhoski)
8. To decide whom to promote to sergeant after the sergeant's exam in 2015, Chief Anderson reviewed the civil service rankings and the candidates' personnel records, disciplinary records, awards they had received, any voluntary training they have received⁴, their volunteer activities, and the APD databases to see, for example, how many arrests they have made and parking tickets they have issued. In addition, Chief Anderson discussed all three (3) candidates for Sergeant with several superior officers at the Department. Chief Anderson did not interview the sergeant candidates. He does not typically prepare a written report about the information he considers about the candidates and he did not do so during the sergeants' promotion following the 2015 sergeants' exam. However, Chief Anderson prepared several summaries comparing information concerning the three (3) candidates. The APD is a small department and promotions occur infrequently. The last time promotions were made at APD was 2007; at that time,

⁴ Members of the APD who want to take voluntary training are required to pay for it themselves or find a source to pay for it since the APD budget does not include paying for voluntary training. (Testimony of Anderson)

promotion candidates were interviewed. (Testimony of Anderson; Exhibits 4, 18 and 19)

9. All three (3) candidates for promotion participated in various community volunteer activities. (Testimony of Anderson)
10. The Appellant has taken eleven (11) voluntary training courses, Officer M has taken forty-two (42), and Officer S has taken eleven (11). (Ex. 14) The most recent voluntary training for the Appellant and Officer S was in 2006. (Exs. 15 and 17) The most recent voluntary training for Officer M was in 2015. (Ex. 16)
11. The candidates had the following “Awards & Recognition”:

	Commendations	Letters of Appreciation	Outside Agency Recognition	Public Recognition
Appellant	2	1	2	11
Officer M	6	17	1	16
Officer S	1	3	3*	6

(Ex. 4)(* “Includes Mass State Police Metal of Valor”)

12. The candidates’ “Proactive Enforcement Comparison 2006 to 2016” indicates that they had issued the following various citations and/or warnings and made arrests as follows⁵:

	<u>Motor Vehicle Citations:</u>				Total
	Civil	Warning	Arrest	Criminal	
Appellant	12	145	24	26	207
Officer M	101	168	49	38	356
Officer S	34	179	11	26	250

	<u>Parking Tickets</u>
Appellant	20
Officer M	33
Officer S	20

⁵ There is no indication whether the civil or criminal matters were appealed. (Administrative Notice)

	<u>Arrests</u> ⁶
Appellant	417
Officer M	653
Officer S	406

(Ex. 18)

13. The candidates had the following “Discipline” records:

	<u>Documented Warnings</u>	<u>Written Reprimands</u>	<u>Suspensions</u>
Appellant	17	4	6
Officer M	0	1	0
Officer S	0	0	0

(Ex. 19)

14. The written reprimand issued to Officer M was when issued when he was a dispatcher, not an officer. This reprimand related to a vacation request. (Testimony of Anderson)

15. Officer M has filed two (2) grievances.⁷ He was also a member of the union negotiating committee on a couple of occasions. (Testimony of Anderson)

16. The APD Performance of Duty Rule 4, effective February 28, 1989 provides, with regarding to reporting for duty,

1.1 A member shall promptly report for duty at the time and place required by assignment or orders, but in the event of inability to perform or to begin punctually, he/she shall notify a superior officer before the designated time for commencement of the tour of duty.

(Ex. 24)

17. Chief Anderson assumes that some officers call in to have someone cover them until they arrive because people are human and officers support each other. (Testimony of Anderson)

⁶ Given the “Arrest” category under the heading “Motor Vehicle Citations”, it would appear that the reference to “Arrests” in the second chart refers to non-motor vehicle related citation arrests.

⁷ No information was provided regarding the two (2) grievances that Officer M filed.

18. Chief Anderson was aware when the Appellant was going through a divorce and when one of his children was very ill. (Testimony of Anderson)

Appellant's Discipline Record

19. In 2001, then Police Chief Sandra Dines issued the Appellant a written reprimand stating that he reported to duty one day with an odor of alcoholic beverage on his breath. (Ex. 21)

20. In 2009, Lt. Heath issued a letter of reprimand to the Appellant for being tardy on the day of daylight savings time change, he did not call the APD prior to his shift and he did not report that he was late when he arrived approximately one-half hour late. (Ex. 21)

21. In 2011, Chief Anderson issued a letter of reprimand to the Appellant for being late one day in March 2011 and one day in April 2011. This letter added, "We have discussed the issue of reporting late for duty on several occasions ... After meeting with you on April 18, 2011 I acknowledge that there are some extenuating circumstances in your personal life and that you have committed to taking steps to see that you arrive to work on time ... you are advised that further violations will be met with harsher discipline, up to and including termination." (Ex. 21)

22. In 2015, Chief Anderson issued a letter of reprimand to the Appellant for reporting to his shift five (5) minutes late without the necessary equipment. ... Continued failure to report for duty on time and properly prepared will result in more and increasing corrective action up to and including termination. (Ex. 21)

23. In 2007, Lt. Heath issued a letter of counseling to the Appellant when he failed to appear for a detail that he signed up for, resulting in the dispatcher trying to find another officer to cover it and leaving the detail site unattended for nearly an hour. The letter added,

“Any further instances of tardiness for failing to report for duty may result in further disciplinary action. ...”(Ex. 22)

24. An APD memo dated July 7, 2008 and written by Sgt. Casella, but not addressed to anyone, states that the Appellant arrived 3 minutes prior to roll call but he was not in roll call and “geared up” on time. The memo does not indicate that the Appellant was disciplined therefor. (Ex. 22)
25. An APD memo dated July 8, 2008, but not addressed to anyone, states that the Appellant was seven (7) minutes late after being stuck in construction traffic of which he was aware and informed that it was being documented and he was counselled to leave his home earlier. (Ex. 22)
26. An APD memo dated January 2, 2009 and written by Sgt. Casella, but not addressed to anyone, states that the Appellant was ten (10) minutes late, although he had called the person he was supposed to relieve, who agreed to wait til he (the Appellant) arrived since he had overslept. Sgt. Casella told the Appellant that this was the “final verbal warning for being late to work. The next step of discipline is formal letter of counseling.” (Ex. 22)
27. An APD memo to the Appellant from Sgt. Casella, dated January 9, 2009, states that on the 7th the Appellant was late, “ ... arriving at the station after roll call had begun”.... and was given the memo as a letter of counseling to be placed in his personnel folder. It states, further, “ [t]here will be further ramifications if you continue to be late for work” (Ex. 22)
28. In 2010, Lt. Heath sent a memo to Sgt. Casella stating that the Appellant had arrived 5 minutes late, he had called the APD to indicate that he would be late, he had to clean up

garbage when a garbage bag broke and that Sgt. Casella counseled the Appellant. Sgt. Casella added, “[a]t this point, I am not recommending a suspension. In light of his improvement over a period of more than a year without being late, I am asking that this be added to his file” (Ex. 22)

29. An APD memo from March 2011 from Sgt. Casella to Chief Anderson stated that the Appellant had been five (5) minutes late one (1) day that month because he had child care issues. (Ex. 22)
30. An APD memo from April 2011 from Sgt. Casella to Chief Anderson states that the Appellant was five (5) minutes late one day that month and that when he sked the Appellant where he had been the Appellant asked if he should go home sick. (Ex. 22)
31. Later in April, 2011, Sgt. Casella wrote a memo not addressed to anyone stating that he had counseled the Appellant about his poor job performance, including mistakes in certain paperwork, service of a harassment prevention order late at night, and his lack of “proactive patrol”, and that these matters would be documented and followed by further discipline if there was no improvement. (Ex. 22)
32. Still later in April 2011, Sgt. Casella wrote a memo to Chief Anderson stating that the Appellant entered roll call one day three (3) or four (4) minutes late. (Ex. 22)
33. In 2012, Sgt. Aucoin sent the Appellant a memo stating that he was four (4) minutes late one day. The Appellant was spoken to about the importance of arriving on time and advised that another incident of tardiness will result in increased disciplinary action. (Ex. 22)
34. In January 2013, Sgt. Casella wrote to Sgt. Aucoin stating that the Appellant had been five (5) minutes late on January 29. He added, “I spoke with Chief Anderson about how

best to handle this. Chief Anderson advised me to report the matter to you inasmuch as you are his supervisor and currently hold the case file regarding Ofc. Dubrule being late for work. Therefore, I am including this memo for you to include in the file you have on Ofc. Dubrule and his being late for work.” (Ex. 22)(emphasis added)

35. In March 2013, Chief Anderson wrote to the Appellant stating that Sgt. Casella gave him a report stating that the Appellant was late for work on March 5, 2013⁸ and before he (Chief Anderson) made any decisions in that regard, he would like to meet with the Chief to discuss. (Ex. 22)
36. An APD memo dated September 25, 2013 to the Appellant from Sgt. Aucoin states that the Appellant was five (5) minutes late on September 25, 2013, that he was also late on September 19, 2013⁹ for which he was given a written warning, he was late on January 29, 2013, he received a written warning for being late on November 16, 2012. Sgt. Aucoin added, “... It is my recommendation that you be suspended for 3 days. I will forward a copy of this memo along with my records to Lt. Health.” (Ex. 22)
37. In April, 2014, Sgt. Aucoin wrote a memo to the Appellant stating that the Appellant was four (4) minutes late for his shift and that the memo documents that Sgt. Aucoin has spoken to the Appellant about it. (Ex. 22)
38. In November 2014, Sgt. Aucoin wrote to the Appellant stating that on November 19, 2014, the Appellant called the dispatcher to ask to be placed on a sick day because his doors were frozen when five (5) other officers on the Appellant’s shift reported to work on time. Sgt. Aucoin added, “... I have been hesitating to report every time that you arrive 3-4 minutes late ... It has become an embarrassment during roll call that the off

⁸ There is no other document in the record of the Appellant’s tardiness on March 5, 2013.

⁹ There is no other document in the record of the Appellant’s tardiness on September 19, 2013.

going officers have to wait for you to arrive before they can leave. YOU MUST make every effort to get to work on time as scheduled.” (Ex. 22)(emphasis in original)

39. In June 2015, Sgt. Aucoin wrote to Chief Anderson stating that the Appellant was six (6) minutes late on June 24 and that he (Sgt. Aucoin) counseled the Appellant. (Ex. 22)

40. By letter dated April 23, 2010 from Chief Anderson to the Appellant, the Appellant was suspended for four (4) hours because on April 20 the Appellant failed to report for duty as assigned and his tardiness has been a “recurring and frequent problem that has been previously addressed” with Appellant and informing him that within forty-eight (48) hours, the Appellant could request a hearing before the Town Manager. (Ex. 23)

41. By letter dated November 10, 2010, Chief Anderson informed the Appellant that he was suspended for one (1) day for being tardy on October 23, 2010¹⁰ and informing him that within forty-eight (48) hours, the Appellant could request a hearing before the Town Manager. (Ex. 23)

42. By letter dated May 18, 2011, Chief Anderson informed the Appellant that he was suspended for two (2) days for being tardy on April 22, May 3, May 9 and May 18, 2011¹¹ and informing the Appellant that he could request a hearing before the Town Manager. (Ex. 23)

43. By letter dated January 13, 2012, Chief Anderson informed the Appellant that he was suspended for one (1) day for tardiness on December 26, 2011¹². (Ex. 23)

44. By letter dated October 15, 2013, Chief Anderson informed the Appellant that he was suspended for three (3) days for being tardy on September 19¹³. (Ex. 23)

¹⁰ There is no other document in the record of the Appellant’s tardiness on October 23, 2010.

¹¹ There is no other document in the record of the Appellant’s tardiness on May 3, 9 and 18, 2011.

¹² There is no other document in the record of the Appellant’s tardiness on December 26, 2011.

¹³ There is no other document in the record of the Appellant’s tardiness on September 19, 2013.

45. By letter dated October 15, 2015, Chief Anderson informed the Appellant that he was suspended for five (5) days because he was twenty (20) minutes late for an overtime assignment he accepted that was to begin at 11 p.m. on October 3 and end at 3 a.m. on October 4 regarding a fire at an elderly residential complex in which a fatality occurred. The Chief added, “Your continued practice for reporting late for duty is unacceptable and has gone beyond inconvenient to being a possible threat to the safety of the public as well as your fellow officers....” (Ex. 23). At the time of the instant appeal, the Town Manager had not taken action on this suspension. (Testimony of Suhoski)
46. The Appellant does not deny his tardiness. He did not appeal his suspensions to the Commission. (Testimony of Appellant and Anderson) The Appellant believes he may have appealed one (1) disciplinary action to the Town Manager but that the matter ended there. The Appellant now believes that he should have appealed his discipline. (Testimony of Appellant)
47. Supervisors must lead by example. (Testimony of Anderson)
48. Prior to the Sergeant promotions involved herein, Chief Anderson did not have social contact with Officers M and S outside of the office. (Testimony of Anderson)

The Bypass

49. After reviewing the information he had compiled, Chief Anderson recommended that Mr. Suhoski promote only two (2) Officers (M and S), not the Appellant, even though the certification permitted promotion of three (3) officers. Chief Anderson worked with Mr. Suhoski to draft a bypass letter for the two (2) of them to sign and send to the Appellant. (Testimony of Anderson; HRD Packet)
50. The bypass letter sent to the Appellant, dated March 16, 2016, states, in pertinent part,

... The reasons for your non-selection, and the selection reasons associated with those candidates appointed who were below your name on the certification are stated below.

1. Officer [M] has been selected because of his superior work experience serving as a detective since ... 2015, the department's narcotics officer ... 2006, and as a member of the Northwestern District Attorney's Anti-Crime Task force since ... 2013.
2. Both Officer [M] and Officer [S] have been selected in part due to the number of departmental awards, public recognition, and awards from other agencies that they have received for exemplary performance.
3. Officer [M] was selected for his superior level of specialized training beyond that training mandated by the department.
4. Department records indicate that Officer [M] shows outstanding initiative when conducting officer initiated tasks, based in part on arrests, motor vehicle citations, and parking ticket statistics.
5. Both Officer [M] and Officer [S] were selected in part due to their exemplary work/disciplinary records.
6. You were by-passed (sic) for selection in great part due to your extensive disciplinary record which includes six (6) suspensions, five (5) letters of reprimand, and sixteen (16) warnings, as well as a pending disciplinary action.

You have a right to appeal this determination by filing your appeal, in writing within sixty (60) calendar days of receipt of this notice, with the Civil Service Commission

(Ex. 3)

51. The Appellant timely filed the instant appeal. (Administrative Notice)

Applicable Law

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 304 (1997). "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, § 1.

The role of the Civil Service Commission is to determine “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge at 304. Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions (City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 824-826 (2006)) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. Beverly. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Such deference is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police officers appropriately are held, appointing authorities are given significant latitude in screening candidates. Beverly citing Cambridge at 305 (*see cases cited*).

Analysis

The Respondent has established, by a preponderance of the evidence, that it had reasonable justification to bypass the Appellant for promotion. There is little question that the Respondent had reasonable justification to bypass the Appellant to promote Officer M. Officer M had been the most productive, by far, of the three (3) candidates with respect to warnings, arrests and related data as well as the number of voluntary training sessions in which he had participated and commendations he had received. In addition, Officer M had been a detective

and assigned to the District Attorney's Narcotics Unit. Officer M's discipline record, like the record of Officer S, was far superior to the Appellant's discipline record.

Except for discipline records, the Appellant and Officer S were similarly situated. They had similar records regarding voluntary training, productivity and commendations (with the exception of the State Police commendation issued to Officer S). The Appellant avers that his discipline record was the result of prohibited bias against him for his position as union President and for his involvement in collective bargaining and negotiations involving the discipline of other officers. First, I note that both the Appellant and Chief Anderson testified that they were able to work together when the Appellant was representing the union in collective bargaining negotiations and when addressing the discipline of other officers. Further, Officer M was a member of the union negotiating committee on a couple of occasions and yet he was promoted. Moreover, the Appellant does not deny that he was tardy as evidenced by the many disciplinary actions taken against him. However, the Appellant contends that the APD repeatedly disciplined him for being minutes late for his shift and/or assignments while not disciplining other officers for similar conduct. Chief Anderson acknowledged that other officers, on occasion, have been tardy but apparently made appropriate arrangements in that regard. The APD has a rule pertaining to occasions when officers will be late reporting for duty, indicating that they are required to contact their superiors prior to the start of their shift. There is no indication that other officers violated that rule, that the Appellant adhered to it, or that the other officers were tardy as many times as the Appellant. I note further that the APD also created many notes to the file regarding the Appellant which apparently were not given to the Appellant and were not placed in the Appellant's personnel file. This process must cease forthwith. Nonetheless, it is clear that the Appellant has been tardy off and on for years preceding the sergeants promotion exam, even

though his commute is only ten (10) to twenty (20) minutes long, and that he did not fully pursue grievances or appeals to the Commission. Chief Anderson testified that supervisors must lead by example. The Appellant's discipline record did not set a good example.

The Appellant also asserts that the Chief Anderson favored Officer M generally because he gave him various opportunities not afforded to the Appellant. Had the Appellant's discipline record been different, he may also have had other opportunities. The Appellant also alleged that Chief Anderson socialized with Officer M. However, Chief Anderson testified credibly that he did not socialize with Officer M prior to the promotion and that occasions when the Appellant observed Chief Anderson meeting with Officer M were brief meetings related to his duties at the office of the District Attorney. Under the circumstances, I find no bias on the part of Chief Anderson and the Respondent had reasonable justification to bypass the Appellant in favor of Officer S.

Conclusion

Accordingly, for the above stated reasons, Scott Dubrule's appeal, filed under Docket No. G2-16-062, is hereby denied.

Civil Service Commission

 /s/Cynthia A. Ittleman
Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 9, 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:

John J. Greene, Esq. (for Appellant)

Joseph Fair, Esq. (for Respondent)

John Marra, Esq. (for HRD)