

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ALAN WINE,
Appellant

v.

G1-17-022

CITY OF HOLYOKE,
Respondent

Appearance for Appellant:

Jane E. DePalma, Esq.¹
P.O. Box 4094
Dedham, MA 02027

Appearance for Respondent:

Amber M. Gould, Esq.²
City of Holyoke
20 Korean Veterans Plaza
Room 204
Holyoke, MA 01040

Commissioner:

Christopher C. Bowman

DECISION

On January 27, 2017, Alan Wine (Mr. Wine), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Holyoke (City) to bypass him for original appointment to the position of reserve police officer in the City's Police Department. On February 8, 2017, I held a pre-hearing conference at the Springfield State Building in Springfield, MA, which was followed by a full hearing at the same

¹ Mr. Wine represented himself at the pre-hearing and full hearing. Subsequent to the full hearing, Attorney DePalma submitted a Notice of Appearance and filed a proposed decision on behalf of Mr. Wine.

² Attorney Sara Carroll represented the City at the pre-hearing and full hearing and submitted the City's proposed decision. Attorney Carroll submitted a notice of withdrawal of counsel along with a notice of appearance for Attorney Gould.

location on March 8, 2017.³ The full hearing was digitally recorded and both parties received a CD of the proceeding.⁴ On April 4th (Respondent) and April 10th (Appellant) 2017, the parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT

Nine (9) exhibits were entered into evidence at the hearing. After the close of the hearing, City provided the complete background investigative file to supplement Exhibit 2, and the motor vehicle driving history of selected applicants, which I have marked as Exhibit 10. Based on the documents submitted and the testimony of the following witnesses:

For the City:

- Manuel Reyes, Lieutenant, Holyoke Police Department;
- James Neiswanger, Police Chief, Holyoke Police Department;

For Mr. Wine:

- Alan Wine, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. Mr. Wine is thirty-four (34) years old and has been a resident of Holyoke, Massachusetts for approximately 2-3 years. He received an Associate's degree in criminal justice from Holyoke Community College and has completed additional courses at Westfield State University. He is currently employed as an active duty army National Guard recruiter in the Holyoke,

³ 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.

⁴ 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. If such an appeal is filed, this CD should be used to transcribe the hearing.

Massachusetts area. Wine was deployed overseas while in the Army National Guard three (3) times. He was deployed to Bosnia from 2003-2004 where he worked with anti-corruption and security forces. He was deployed in 2009-2010 to Iraq where he assisted military police in training Iraqi police officers. He was deployed in 2011-2012 where he worked in security for provincial reconstruction. (Testimony of Mr. Wine and Exhibit 2)

2. While serving in Iraq, Mr. Wine completed over one hundred (100) combat missions. (Exhibit 2)
3. Mr. Wine's former military company commander, who is now a Major in the Massachusetts State Police, describes Mr. Wine as: "... a mature, intelligent and thoughtful person ..." who "... is an ideal candidate for the position of Police Officer ...". (Exhibit 2)
4. Mr. Wine's current Platoon Sergeant describes him as "... the most dependable team leader in my platoon. His maturity, leadership, technical and tactical knowledge make him an asset to any organization. His real world experience from combat deployments to state activations in response to a disaster make him an extremely solid candidate for any police department." (Exhibit 2)
5. A fellow member of the National Guard who deployed with Mr. Wine, stated that he would "put my life in Alan's hands". Other Guardsmen described him as "one of the best leaders I have ever met"; "compassionate and level-headed"; a "genuinely good person"; and "hard working, trustworthy, intelligent". (Exhibit 2)

Stipulated Facts

6. On April 25, 2015, Mr. Wine took the civil service examination for police officer and received a score of 93.

7. On November 1, 2015, the state's Human Resources Division (HRD) established an eligible list of candidates for Holyoke police officer.
8. On December 24, 2015 and January 25, 2016, HRD, at the request of the City, sent Certification No. 03394 to the City, from which the City ultimately appointed sixteen (16) reserve police officers.
9. Mr. Wine was ranked 1st among those candidates willing to accept appointment as a reserve police officer on Certification No. 03394.
10. Of the sixteen (16) candidates appointed by the City as reserve police officers, all sixteen (16) were ranked below Mr. Wine.

Background Investigation and Bypass Reasons

11. Manuel Reyes is currently employed by the Holyoke Police Department as a Lieutenant assigned to the Professional Standards Division. Lt. Reyes has been employed with the department for approximately eighteen (18) years. (Testimony of Lt. Reyes)
12. In his role in the Professional Standards Division, Lt. Reyes conducts background investigations for applicants to the position of reserve police officer. Specifically, a background investigation includes a criminal history check, a review of motor vehicle history and verification of education and residency. In his tenure, Lt. Reyes has conducted approximately sixty (60) background investigations on various individuals. (Testimony of Lt. Reyes)
13. When reviewing an applicant's motor vehicle history, Lt. Reyes obtains a "KQ" from CJIS, the Criminal Justice Information System. This document includes any changes in status to an individual's license, whether marked by a court, the registry of motor vehicles, or a local police department. Lt. Reyes consulted with the Clerk of Courts at Holyoke District Court to

assist in interpreting the “KQ.” Additionally, Lt. Reyes performs a cross-agency check of an applicant’s motor vehicle history through the department’s IMC system. The cross-agency check allows Lt. Reyes to view reports from other police departments and jurisdictions.

(Testimony of Lt. Reyes, Exhibit 3)

14. Lt. Reyes completed the background investigation of Mr. Wine and compiled a background investigative report, which was provided to the Mayor prior to Mr. Wine’s interview. Under the section titled “Perceived Disqualifiers” in this report, Lt. Reyes wrote “misstatements / omissions in question 80 & 82, Extensive M/V violation history (5 suspensions, 5 cts of speeding)...” (Testimony of Reyes, Exhibit 2)

15. In a letter to the state’s Human Resources Division (HRD) dated August 15, 2016, the City stated that the reasons for bypassing Mr. Wine were: a) “ ... a pattern of conduct which indicates unsuitability for public safety work, marked by a history of motor vehicle infractions and license suspensions ...”; and b) “Mr. Wine’s background investigation revealed that he was untruthful on his Personal History Application in response to questions regarding his driving history ...”. (Exhibit 4)

Findings Related to Motor Vehicle Infractions and License Suspensions

16. Mr. Wine’s background investigation revealed that over fourteen (14) years ago, on December 4, 2002, Mr. Wine was arraigned in Palmer District Court on the charges of minor in possession of alcohol and violation of the open container law. (Testimony of Lt. Reyes; Exhibit 2)

17. Mr. Wine’s motor vehicle history record contains the following entries relative to the December 4, 2002 Palmer District Court matter:

- “WARRANT PALMER DISTRICT COURT” entered February 24, 2003

- “SUSPENSION WARRANT INDEFINITE” entered on February 24, 2003.
- “EXPIRATION WARRANT RLS” entered on March 4, 2003. (Exhibit 3)

18. On February 28, 2003, Mr. Wine was issued a warning citation for speeding by the Chicopee Police Department. Generally, citation warnings do not appear on an individual’s motor vehicle history and are not subject to an appeal process. The warning does not appear on Mr. Wine’s CJIS motor vehicle history report. (Testimony of Lt. Reyes; Exhibit 2)

19. Mr. Wine’s background investigation revealed that twelve (12) years ago, on April 10, 2004, Mr. Wine was issued a citation for a lane violation, traffic safety violation, and speeding in Warren, Massachusetts, but was later found not responsible for all infractions. (Testimony of Lt. Reyes; Exhibit 3)

20. Mr. Wine’s background investigation revealed that twelve (12) years ago, on January 9, 2005, Mr. Wine was issued a citation for no inspection sticker and speeding in Wareham, Massachusetts, and was found responsible on all infractions. (Testimony of Lt. Reyes; Exhibit 3)

21. A number of the findings that follow reference entries on the RMV’s KQ report stating: “SUSPENSION PAYMENT DEFAULT INDEFINITE”. Lt. Reyes, after consulting with a court employee, concluded that this entry shows that the motorist’s driver’s license was actually suspended. The City has not provided sufficient evidence to support this conclusion, and it appears that this entry does not necessarily mean that a motorist’s license was suspended.⁵

⁵ As part of the hearing process, I discussed with the parties that this appears to be a common misperception that the Commission has encountered in the past. For that reason, members of the Commission attended an RMV training session years ago. Based on that training, I concluded that this entry does not necessarily mean that a motorist’s license was actually suspended, but, rather, that it could also mean that a license or registration may be in jeopardy of being suspended in the future if certain conditions are not met (i.e. – payment of fee or fine, etc.).

22. Twelve (12) years ago, on February 24, 2005, an entry appears on Mr. Wine's KQ which states "SUSPENSION PAYMENT DEFAULT INDEFINITE" which Lt. Reyes concluded meant that Mr. Wine's license had been suspended on that date. (Testimony of Lt. Reyes; Exhibit 3)
23. Mr. Wine's background investigation revealed that over eleven (11) years ago, on July 15, 2005, Mr. Wine was issued a citation in New Salem for a minor traffic violation, seat belt violation, no inspection sticker, no liability policy, driving under a suspended license, and revoked or suspended registration. Mr. Wine was arraigned in Orange District Court on August 19, 2005 on the charges of operating after a suspended license, operating after a suspended registration, and compulsory insurance violation. On February 24, 2006, the charge of operating a motor vehicle after a suspended registration, and compulsory insurance violation were dismissed, and he received a suspended sentence for the charge of operating after a suspended license, which was dismissed on March 24, 2006. Although unclear of the specific timing of the suspension, Mr. Wine thought that his license was not suspended until the time he was pulled over and his vehicle was towed. (Testimony of Lt. Reyes; Exhibit 1, 3; Testimony of Mr. Wine)
24. Mr. Wine's background investigation revealed that over ten (10) years ago, on May 29, 2006, Mr. Wine was issued a citation for a seat belt violation in Chicopee, and was found responsible for the infraction. (Testimony of Lt. Reyes; Exhibit 3)
25. On July 5, 2006, an entry Mr. Wine's motor vehicle history report states: "SUSPENSION PAYMENT DEFAULT INDEFINITE". Lt. Reyes concluded that this entry meant that Mr. Wine's license was suspended on that date. (Testimony of Lt. Reyes; Testimony of Mr. Wine; Exhibit 3)

26. Appellant's background investigation revealed that over eight (8) years ago, on September 25, 2008, Mr. Wine was issued a citation for operating a motor vehicle under an expired license, speeding, and a seat belt violation in South Hadley. Mr. Wine was found responsible for all infractions. (Testimony of Lt. Reyes; Exhibit 3)
27. On October 10, 2012, Mr. Wine was involved in a surchargeable accident in Northampton, Massachusetts, where he was marked as following too closely and driving too fast for the conditions. (Testimony of Lt. Reyes, Exhibit 2 (Supplemental Record))
28. On July 3, 2013, Mr. Wine was issued a citation for speeding and a state highway traffic violation in Deerfield, Massachusetts. Mr. Wine was given a citation with a \$20 fine for failure to follow posted sign (speed limit). The charge for speeding was dismissed nolo prosequi; however, Mr. Wine was found responsible for the traffic violation. Mr. Wine paid the ticket, but does not recall if he paid it late. (Testimony of Lt. Reyes, Exhibit 3; Testimony of Mr. Wine)
29. On August 8, 2013, an entry appears on Mr. Wine's motor vehicle driving history which states "SUSPENSION PAYMENT DEFAULT INDEFINITE." Lt. Reyes concluded that this entry meant that Mr. Wine's license was suspended on that date (Testimony of Lt. Reyes; Exhibit 3)
30. On April 8, 2014, Mr. Wine was cited for no inspection sticker in Holyoke, but was found not responsible. Mr. Wine explained that he purchased a vehicle for his brother, but registered it under his name. His brother was issued a citation for no inspection sticker. Once he was notified of the citation, Mr. Wine appealed the citation and he was found not responsible. (Testimony of Lt. Reyes; Exhibit 3; Testimony of Mr. Wine)

31. On May 14, 2014, Mr. Wine received written notice from the Registry of Motor Vehicles that they intended to suspend his license on August 12, 2014 for having three (3) surchargeable events occur within a three (3) year period. Mr. Wine attended a hearing at Holyoke District Court on August 20, 2014 to appeal the April 8, 2014 citation. Mr. Wine was found not responsible for the April 8, 2014 citation for no inspection sticker, and thus the intent to suspend his license was rescinded. (Testimony of Mr. Wine; Exhibit 3)

32. Lt. Reyes concluded that Mr. Wine's license was suspended seven (7) times, as noted by the motor vehicle history's entries. Lt. Reyes also testified that often times, a driver may not be aware or is not notified from the Massachusetts Registry of Motor Vehicles that a license has been suspended. Lt. Reyes did not believe Mr. Wine was personally aware of all of the suspensions, and therefore did not report suspensions which he felt Mr. Wine may not have been aware of. As a result, Lt. Reyes reported five (5) license suspensions to the Chief of Police in his background investigation. (Testimony of Lt. Reyes)

33. Lt. Reyes concluded that the five (5) suspensions he believed were deliberately omitted by Mr. Wine were the following:

- "SUSPENSION PAYMENT DEFAULT INDEFINITE" entered on February 24, 2003.
- "SUSPENSION PAYMENT DEFAULT INDEFINITE" entered on February 14, 2005.
- "SUSPENSION PAYMENT DEFAULT INDEFINITE" entered on July 5, 2006.
- "SUSPENSION PAYMENT DEFAULT INDEFINITE" entered on August 8, 2013.
- "SUSPENSION 3 SURCHARGE EVENTS INDEFINITE" entered on May 14, 2014.

(Testimony of Lt. Reyes)

34. It was established that Mr. Wine's failure to list the February 24, 2003 suspension was not a deliberate omission and Lt. Reyes gives Mr. Wine "the benefit of the doubt" because he

disclosed on this application that a warrant was issued for failure to pay a past due ticket for no inspection sticker, thereby leaving only four (4) entries in question with regard to Mr.

Wine's bypass. (Testimony of Lt. Reyes)

Untruthfulness on Application

35. Question 80 of Mr. Wine's Personal History Statement asks "Has your driver's license ever been suspended or revoked?" Mr. Wine responded indicating "Yes," and explained "as part of the incident listed in 62B, it says my license was suspended, but it was not. Charges were dismissed upon showing judge that I had my affairs in order." In response to 62B, Mr. Wine references that in August of 2005, he was stopped and detained by the New Salem Police Department for "operating after suspended license, registration/compulsory insurance violation" and that the matter resulted in a "non-conviction / dismissed." (Testimony of Lt. Reyes; Exhibit 1)

36. The instructions to the Personal History Application explain to applicants that "deliberate misstatement or omissions can and often will result in your application being rejected, regardless of the nature or reason for the misstatements/omissions." In his response Mr. Wine referenced one (1) time upon which his license was suspended or revoked. Mr. Wine did not disclose any of the five (5) entries on his motor vehicle history record that were entered on February 24, 2003, February 14, 2005, July 5, 2006, August 8, 2013, and May 14, 2014 that were determined to be a concern for Lt. Reyes. As previously stated, Lt. Reyes conceded that he would give Mr. Wine the "benefit of the doubt" with regard to the February 24, 2003 entry because he disclosed on his application that a warrant was issued for failure to pay a past due ticket for no inspection sticker. (Testimony of Reyes; Exhibit 1)

37. Question 82 on Mr. Wine's Personal History Statement asks individuals to "List all traffic citations, excluding parking citations, you have received within the past seven years." In response to this question, Mr. Wine listed one (1) citation, writing "Failure to follow posted speed limit, July 2013 on Interstate 91, North Whately, MA." (Testimony of Lt. Reyes, Exhibit 1)
38. On January 6, 2014, Mr. Wine was issued a written warning citation for failure to stop for a stop sign in Holyoke and he failed to disclose this in response to Question 82 and acknowledges that it was "an oversight" on his part. (Testimony of Mr. Wine, Testimony of Lt. Reyes, Exhibit 3)
39. During the background investigation, Lt. Reyes reviewed IMC records and found that Mr. Wine was issued a motor vehicle citation for no inspection sticker on April 8, 2014, which was not disclosed on Mr. Wine's Personal History Statement. (Testimony of Lt. Reyes; Exhibit 1). This citation was actually issued to Mr. Wine's brother while he was operating a vehicle registered to Mr. Wine. Mr. Wine was later found Not Responsible. (Testimony of Mr. Wine; Exhibit 1, Exhibit 3)
40. Lt. Reyes conceded that the five (5) citations he believed were deliberately omitted by Mr. Wine and were referenced in the August 16, 2016 letter from the Mayor, when looking only at the past seven (7) years was more likely two citations and one (1) warning. (Testimony of Lt. Reyes, Exhibit 3, Exhibit 4)
41. During the background investigation process, Lt. Reyes has contacted candidates in the past to ask about discrepancies in their application. Specifically, he testified that he did inquire of a candidate who had an undisclosed license suspension. He testified that he believed the applicant was not aware that his or her license had been suspended. Lt. Reyes did not reach

out to Mr. Wine because he believed that Mr. Wine had seven (7) license suspensions and perceived this to be a deliberate omission. (Testimony of Lt. Reyes)

Driving record issues of candidates ranked below Mr. Wine who were appointed

42. The KQ reports for candidates ranked below Mr. Wine who were appointed indicate the following:

1. Candidate Identifier *KQ01721121
 - a. "LICENSE SUSPEND HOLYOKE CD" entered on 4/8/15
 - b. "REINSTATED PAYMENT DEFAULT FEE PAID" entered on 3/27/15
 - c. "SUSP PEND REIN FEE PAYMENT DEFAULT" entered on 3/27/15
 - d. "EXPIRATION PAYMENT DEFAULT RLS CHICOPEE" entered on 3/27/15
 - e. "SUSPENSION PAYMENT DEFAULT INDEFINITE" entered on 12/28/14
 - f. "ST HWAY TRAFFIC VIOL CHICOPEE R" entered on 11/18/14
 - g. "SURCHARGEABLE ACCID HOLYOKE" entered on 10/13/14
2. Candidate Identifier *KQ82876329
 - a. "SURCHARGEABLE ACCID WESTFIELD" entered on 12/5/14
 - b. "EXPIRATION BAD CHECK COR" entered on 12/17/13
 - c. "EXPIRATION BAD CHECK RLS" entered on 12/17/13
 - d. "BLOCKING BAD CHECK INDEFINITE" entered on 12/5/13
 - e. "REVOCATION BAD CHECK INDEFINITE" entered on 12/5/13
 - f. "BAD CHECK BLOCKED" entered on 12/5/13
 - g. "BAD CHECK" entered on 12/5/13

- h. "IMPROPER EQUIPMENT HOLYOKE" entered on 12/4/13
3. Candidate Identifier *KQ82876329
- a. "SURCHARGE.ABLE ACCID HOLYOKE" entered on 11/25/14
 - b. "REINSTATED PAYMENT DEFAULT FEE PAID" entered on 4/10/12
 - c. "SUSP PEND REIN FEE PAYMENT DEFAULT" entered on 4/10/12
 - d. "EXPIRATION PAYMENT DEFAULT RLS HOLYOKE" entered on 4/10/12
 - e. "HEARING PAYMENT DEFAULT EXP PEND FEE" entered on 4/10/12
 - f. "SUSPENSION PAYMENT DEFAULT INDEFINITE" entered on 9/20/11
 - g. "SPEEDING HOLYOKE R" entered on 4/6/11
 - h. "TRAFFIC/ SAFETY VIOL CHARLTON R" entered on 10/7/08
 - i. "SURCHARGEABLE ACCID STURBRIDGE" entered on 10/6/08
4. Candidate Identifier *KQ84138797
- a. "NON RENEW NONRENEW INDEFINITE" entered on 3/29/12
 - b. "NONRENEW HOLYOKE" entered on 3/29/12
 - c. "NO INSPECTION STICKER HOLYOKE R" entered on 2/3/10
 - d. "NO INSPECTION STICKER SPRINGFIELD R" entered on 11/21/08
 - e. "FAILURE TO STOP HOLYOKE R" entered on 7/16/07
5. Candidate Identifier *KQ95835658
- a. "SURCHARGEABLE ACCIDENT HOLYOKE" entered on 5/17/10

- b. "FAILURE TO STOP CHICOPEE R" entered on 7/7/09
 - c. "SURCHARGEABLE ACCIDENT HOLYOKE" entered on 4/27/09
 - d. "SEAT BELT VIOLATION HOLYOKE R" entered on 3/24/08
6. Candidate Identifier *KQ90909540
- a. "SURCHARGEABLE ACCIDENT HOLYOKE" entered on 7/9/15
 - b. "NON RENEW NONRENEW INDEFINITE" entered on 1/8/15
 - c. "NONRENEW HOLYOKE" entered on 1/8/15
 - d. "NO INSPECTION STICKER SPRINGFIELD R" entered on 12/9/14
 - e. "IMPROPER EQUIPMENT HOLYOKE R" entered on 12/23/12
 - f. "NO INSPECTION STICKER SPRINGFIELD R" entered on 5/15/12

(Exhibit 10)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 256 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300 (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, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington, 60 Mass.App.Ct. 914, 915 (2004).

Analysis

The City bypassed Mr. Wine based on a poor driving history and for being untruthful about that poor driving history. It appears that both of those conclusions were likely based on a possible mis-reading of RMV records that resulted in the City erroneously believing that Mr. Wine’s license was suspended at least five (5) times. That does not appear to be the case. Therefore, the City should obtain clarification from the RMV and, as part of the next hiring cycle, reconsider Mr. Wine’s application.

The City is not limited to any specific look-back period regarding a candidate's driving history. However, it appears through the questions on their application and the Police Chief's testimony that they give more weight to a candidate's driving history within the past five (5) to seven (7) years, a reasonable timeframe that happens to be in line with provisions of the state's automobile insurance law related to safe driver credits and surcharges.

Even looking back seven (7) years from when Mr. Wine's name first appeared on the Certification (2015), his driving record during this time period shows:

1. A citation for speeding, seat belt violation, and operating a vehicle without a license on September 25, 2008. This incident resulted in the Appellant being found responsible for the speeding and seatbelt violations. The operating without a license charge was dismissed;
2. A surchargeable accident on October 10, 2012 for which it appears that Mr. Wine was responsible;
3. A citation for speeding on a state high way on July 3, 2013 which was dismissed nolo prosci; and
4. A citation for no inspection sticker on April 8, 2014 for which Mr. Wine was found Not Responsible.

When looking only at those events for which Mr. Wine was actually found responsible, we are left with a charge of speeding and a seatbelt violation in 2008 and a surchargeable accident in 2012. As noted in the findings, candidates ranked below Mr. Wine with similar or worse driving histories during this time period were appointed. Thus, I conclude that, standing alone, the City would not have deemed this record to be a reason for bypassing Mr. Wine.

That turns to the issue of alleged untruthfulness. Honesty is a required trait of any person holding the position of police officer -- or seeking to become a police officer. The criminal justice system relies on police officers to be truthful at all times and an appointing authority is justified in bypassing a candidate who does not meet this standard. See, e.g., LaChance v. Erickson, 522 U.S. 262 (1998) (lying in a disciplinary investigation alone is grounds for termination); Meaney v. Woburn, 18 MCSR 129, 133-35 (discharge upheld for police officer based, in part, on officer's consistent dishonesty and "selective memory" during departmental investigation of officer's misconduct); Pearson v. Whitman, 16 MCSR 46 (appointing authority's discharge of police officer who had a problem telling the truth upheld); Rizzo v. Town of Lexington, 21 MCSR 634 (2008) (discharge upheld based partially on officer's dishonesty regarding a use of force incident); and Desharnias v. City of Westfield, 23 MCSR 418 (2009) (discharge upheld based primarily on officer's dishonesty about a relatively minor infraction that occurred on his shift).

The corollary to the serious consequences that flow from a finding that a police officer or applicant has violated the duty of truthfulness requires that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings. (See Morley v. Boston Police Department, 29 MCSR 456 (2016) (Based on unreliable hearsay and false assumptions, the Boston Police Department erroneously concluded that the Appellant, a federal police officer and a disabled veteran who had been deployed on active duty overseas on four occasions, was untruthful.)

In that context, I am concerned that the likely mis-reading of RMV records by the City was the primary reason that Mr. Wine was deemed to be untruthful, without any attempt by the investigator or the interviewing team to question Mr. Wine about these alleged discrepancies. In

short, prior to reaching a potentially career-ending conclusion of untruthfulness, an appointing authority, as part of a reasonably thorough review, should at least afford the applicant with the opportunity to address the underlying issues, either with the background investigator or the interview panel. That didn't occur here and I believe both parties (Mr. Wine and the City) would benefit from a reconsideration of his candidacy to sort these issues out. Finally, I don't believe that failing to remember a citation or warning issued several years ago, standing alone, is sufficient to establish that a candidate has been untruthful.

Conclusion

For all the above reasons, Mr. Wine's appeal under Docket No. G1-17-022 is hereby **allowed**. Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

1. The state's Human Resources Division (HRD) shall place the name of Alan Wine at the top of the next Certification issued to the City of Holyoke for reserve police officer until such time as he has been appointed or bypassed.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan, Commissioners [Camuso – Absent]) on January 3, 2018.

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:

Jane DePalma, Esq. (for Appellant)

Amber M. Gould, Esq. (for Respondent)

Patrick Butler, Esq. (HRD)