

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

HENRY BOUNPHASAYSONH,
Appellant

v.

G1-17-024

TOWN OF WEBSTER,
Respondent

Appearance for Appellant:

James W. Simpson, Jr., Esq.
100 Concord Street: Suite 3B
Framingham, MA 01702

Appearance for Respondent:

Brian Maser, Esq.
K&P Law
101 Arch Street
Boston, MA 01702

Commissioner:

Christopher C. Bowman

DECISION

On January 30, 2017, the Appellant, Henry Bounphasaysonh (Mr. Bounphasaysonh) pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Webster (Town) to bypass him for original appointment to the position of permanent intermittent reserve police officer. On March 7, 2017, I held a pre-hearing conference at the offices of the Commission, which was followed by a full hearing at the same location on May 4, 2017.¹ The full hearing was digitally recorded and both parties received

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.

a CD of the proceeding.² On June 16, 2017, the parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT

Thirteen (13) Exhibits were entered into evidence at the hearing. Based on the documents submitted and the testimony of the following witnesses:

For the Town:

- James Hoover, Detective Sergeant;
- Michael Shaw, Police Lieutenant;
- Pamela LeDuc, former Acting Town Administrator;
- Timothy Bent, Chief of Police;
- Ruby Jones, DPW Administrative Assistant;

For Mr. Bounphasaysonh:

- Henry Bounphasaysonh, 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. Bounphasaysonh is twenty-six (26) years old. He has resided in the Town of Webster since he was twelve years old. He graduated from high school and received a BA in business administration in 2015. He is currently employed in underwriting support services for an insurance company. (Testimony of Mr. Bounphasaysonh)

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

Stipulated Facts

2. On April 25, 2015, Mr. Bounphasaysonh took the civil service examination for police officer and received a score of 96.
3. On November 1, 2015, the state's Human Resources Division (HRD) established an eligible list of candidates for Webster police officer.
4. On May 10th, June 1st and June 28th 2016, HRD, at the request of the Town, sent Certification No. 03783 to the Town, from which the Town ultimately appointed one (1) permanent intermittent reserve police officer.
5. Mr. Bounphasaysonh was ranked 2nd among those candidates willing to accept appointment as an intermittent reserve police officer on Certification No. 03783.
6. The candidate appointed was ranked below Mr. Bounphasaysonh.
7. On December 12, 2016, the Town notified Mr. Bounphasaysonh that they were bypassing him for appointment.

Reasons for Bypass

8. Mr. Bounphasaysonh was also bypassed for appointment by the Town in a prior hiring cycle, which shortly preceded the hiring cycle which is the subject of this appeal. Mr. Bounphasaysonh did not appeal that prior bypass to the Commission. Here, the Town relied on the same bypass reasons established in the prior hiring cycle.
9. The letter sent to Mr. Bounphasaysonh by the Town cites several reasons for bypass including: a) failing to taking advantage of promotional opportunities while employed at CVS and UPS; b) less than stellar reports regarding his work performance while employed at UPS as well as a seasonal employee for the Town; c) being untruthful by stating that he "resigned" from his seasonal employment with the Town via a phone call, when the Town

concluded that he “resigned” via a text message; d) being untruthful by stating that he personally completed the application for employment for both reserve police officer and seasonal worker, when the Town concluded that, based on the hand-writing, he did not complete the application for seasonal worker; and e) a “horrendous” interview that the Town concluded was the “worst interview ever”, including a poor answer to a scenario question related to “if he was being assaulted.” (Exhibit 1)

Findings Related to: a) failing to taking advantage of promotional opportunities while employed at CVS and UPS

10. While enrolled in college, Mr. Bounphasaysonh obtained part-time employment as a package handler at UPS. (Testimony of Mr. Bounphasaysonh and Exhibit 3)
11. The primary reason for obtaining this employment was to secure an income and access employer-sponsored health insurance while he was a student. (Testimony of Mr. Bounphasaysonh)
12. At or around the time that he obtained his bachelors degree, Mr. Bounphasaysonh accepted full-time employment at CVS. He worked there for six (6) months before accepting employment in the underwriting department of an insurance company where he has been employed ever since. (Testimony of Mr. Bounphasaysonh)

Findings Related to: b) less than stellar reports regarding his work performance while employed at UPS as well as a seasonal employee for the Town

13. When he was a teenager, Mr. Bounphasaysonh was employed by the Town over two (2) Summer seasons. The Town paid him \$8.00 per hour to collect payments at the Memorial Beach parking lot. (Testimony of Mr. Bounphasaysonh and Exhibits 3 & 4)
14. The background investigator did not speak with the person who supervised Mr. Bounphasaysonh while he was employed by the Town. (Testimony of Detective Sergeant Hoover)

15. The background investigator contacted Mr. Bounphasaysonh's former supervisor at UPS.

The supervisor stated that "... Mr. Bounphasaysonh was a quiet guy kind of a loaner (sic) and does a good job in his position ... [he] shows up every day on time and does what is expected of him but he went on to say that Mr. Bounphasaysonh is not a real go-getter."

(Exhibit 8)

Findings Related to: c) being untruthful by stating that he "resigned" from his seasonal employment with the Town via a phone call, when the Town concluded that he "resigned" via a text message

16. Mr. Bounphasaysonh never resigned from a position with the Town. Rather, he notified the Town – via a telephone call – that he did not wish to be employed by the Town for a third Summer as a gate collector at Memorial Beach. (Testimony Mr. Bounphasaysonh)

Findings Related to: d) being untruthful by stating that he personally completed the application for employment for both reserve police officer and seasonal worker, when the Town concluded that, based on the hand-writing, he did not complete the application for seasonal worker

17. As referenced above, Mr. Bounphasaysonh was employed by the Town as a gate collector over two (2) Summer Seasons in 2010 and 2011. (Testimony of Mr. Bounphasaysonh)

18. The Town submitted portions of Mr. Bounphasaysonh's application for seasonal employment that were completed in 2011 and 2012. The 2012 application was completed prior to Mr. Bounphasaysonh notifying the Town that he did not wish to return for a third Summer season. (Exhibits 4 & 9)

19. The 2011 application for seasonal employment with the Town was filled out by Mr. Bounphasaysonh's girlfriend and was signed by Mr. Bounphasaysonh. (Testimony of Mr. Bounphasaysonh and Exhibit 4)

20. The 2012 application for seasonal employment with the Town was filled out by Mr. Bounphasaysonh and was signed by Mr. Bounphasaysonh. (Testimony of Mr. Bounphasaysonh and Exhibit 9)

21. The background investigator participated in the interview of Mr. Bounphasaysonh. At some point during the interview, the background investigator, who was one or two table lengths away from Mr. Bounphasaysonh, held up the first page of an application for seasonal employment with the Town. (Testimony of Sgt. Detective Hoover)
22. The background investigator's recollection is that the document he held up was the 2011 application, which was filled out by Mr. Bounphasaysonh's girlfriend and signed by Mr. Bounphasaysonh. (Testimony of Sgt. Detective Hoover)
23. The Police Chief, who attended the interview, believes that it is possible that the document that was held up was the 2012 application, which was filled out and signed by Mr. Bounphasaysonh. (Testimony of Chief Bent)
24. The former Acting Town Administrator, who also attended the interview, could not see what document the background investigator held up. (Testimony of Ms. Leduc)
25. Mr. Bounphasaysonh was never handed the document or allowed to review it at the interview. At the time, he could not tell which application the background investigator was holding in his hand, but he believed at the time that it must have been his most recent (2012) application for seasonal employment with the Town. (Testimony of Mr. Bounphasaysonh)
26. The background investigator, referring to the document in his hand, asked Mr. Bounphasaysonh if he filled out the application and Mr. Bounphasaysonh said "yes". (Testimony of Sgt. Detective Hoover, Mr. Bounphasaysonh, Chief Bent and Ms. Leduc)
27. Chief Bent, who had been shown the 2011 seasonal application by the background investigator prior to the interview, then cautioned Mr. Bounphasaysonh to "be careful" and asked Mr. Bounphasaysonh to confirm that he filled out the document, referring to the application in the background investigator's hand. Mr. Bounphasaysonh confirmed that he

filled out the application. (Testimony of Sgt. Detective Hoover, Mr. Bounphasaysonh, Chief Bent and Ms. Leduc)

28. Upon hearing Mr. Bounphasaysonh's response, both the Police Chief and the background investigator concluded that Mr. Bounphasaysonh was lying. The background investigator took notes during the interview and wrote "lied" at the end of his notes. (Testimony of Sgt. Detective Hoover)

Findings Related to: e) a "horrendous" interview that the Town concluded was the "worst interview ever", including a poor answer to a scenario question related to "if he was being assaulted."

29. The interview panel consisted of the Police Department's command staff, including the Police Chief, the lieutenants and sergeants (including the background investigator). The Town Administrator was also present. (Testimony of Sgt. Detective Hoover)

30. The interview was not audio or video recorded. (Testimony of Sgt. Detective Hoover)

31. The Town did not submit any notes and/or rating sheets that may have been completed by the interview panelists.

32. Exhibit 10, submitted by the Town, is a two-page document that contains sixteen (16) questions, some with multiple parts. There is no question on this document related to a hypothetical scenario regarding the applicant "being assaulted" or "ISIS". (Exhibit 10)

33. Four percipient witnesses for the Town who were present at the interview offered varying accounts of the scenario question referenced in the bypass letter that was posed to Mr. Bounphasaysonh.

34. The background investigator recalls Mr. Bounphasaysonh being asked what he would do if ISIS had a *knife to your throat* and was ready to *kill* you. (Testimony of Sgt. Detective Hoover)

35. The Lieutenant who participated in the interview panel remembers Mr. Bounphasaysonh being asked if ISIS was *trying to hurt you*, what would you do? (Testimony of Lt. Shaw)
36. The Town Administrator remembers that Mr. Bounphasaysonh was asked if someone had a gun or knife to *someone's* head, what would you do? (Testimony of Ms. Leduc)
37. The Police Chief remembered that Mr. Bounphasaysonh was asked what he would do if *he* was *being assaulted*. (Testimony of Chief Bent)
38. Mr. Bounphasaysonh recalled two (2) scenario questions that were asked of him including:
1) what he would do if the Police Chief told him to shoot the Town Administrator; and 2) if ISIS had a knife to his throat, what would he do? (Testimony of Mr. Bounphasaysonh)
39. In regard to the question in which ISIS was referenced, Mr. Bounphasaysonh assumed that he was an unarmed civilian and that he would try to reason with them. (Testimony of Mr. Bounphasaysonh)
40. The background investigator, who recalled a “real-life” scenario that he was personally involved in, concluded that an appropriate answer would reference the “fight or flight” concept. (Testimony of Sgt. Detective Hoover)
41. The lieutenant present at the interview concluded that an appropriate answer should have referenced responding with deadly force. (Testimony of Lt. Shaw)
42. The Acting Town Administrator concluded that Mr. Bounphasaysonh’s response was more appropriate for someone seeking to be a social worker as opposed to a police officer. (Testimony of Ms. Leduc)
43. The Police Chief concluded that an appropriate answer would reference using physical force and the need to be above that of the assailant. (Testimony of Chief Bent)

44. Members of the interview panel concluded that Mr. Bounphasaysonh arrived on time for the interview and was dressed appropriately. (Testimony of Sgt. Detective Hoover, Mr. Bounphasaysonh, Chief Bent and Ms. Leduc)
45. Members of the interview panel concluded that Mr. Bounphasaysonh's interview was the "worst ever", citing his alleged untruthful answers, his reference to applying a "business model" in response to questions; and his lack of knowledge / awareness of issues related to the position of police officer. (Testimony of Sgt. Detective Hoover, Mr. Bounphasaysonh, Chief Bent and Ms. Leduc)
46. As part of the current hiring cycle, the Town opted not to conduct another background investigation of Mr. Bounphasaysonh and not to conduct another formal interview. Rather, the background investigator met with Mr. Bounphasaysonh, informed him that he would be bypassed for the same reasons as the prior hiring cycle, but that the Town would consider sponsoring Mr. Bounphasaysonh for the reserve police academy, should he wish to attend. (Testimony of Sgt. Detective Hoover). Mr. Bounphasaysonh chose not to attend the academy because of the two-month time commitment and because he would need to pay for the academy himself. (Testimony of Mr. Bounphasaysonh)
47. As part of the current hiring cycle, the candidate ranked below Mr. Bounphasaysonh who was selected for appointment, underwent an interview and background investigation. The appointed candidate: is a lieutenant in the United States Army where he has served as a platoon leader; received a bachelor's degree in criminal justice; and, during his interview "answered scenario questions as well as the panelists have ever heard" and one of the panelists concluded that it was "the best interview he had ever witnessed." (Exhibit 1)

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 Mass. 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

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 not employing individuals who do 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 (2005) (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 (2003) (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.)

Here, the Town leaves no doubt that Mr. Bounphasaysonh's alleged untruthfulness was a primary factor in the decision to bypass him for appointment, with Chief Bent's bypass letter stating in part:

"After the most recent civil service list became certified and Bounphasaysonh dropped off another application. (sic) There was discussion as to whether he would be given another opportunity to interview. His dishonesty and outright lying to the panel during the previous interview was of great concern. Now, more than ever, police officers are being criticized for their actions. A police officer's integrity must be beyond question. After a unanimous vote of the panel [to] not hire Bounphasaysonh previously, coupled with his horrendous performance on the previous interview, along with directly lying to the panel, as well as his lack of work and life experience, it was decided not to interview him for a permanent intermittent position again. The fact that he had been deceptive to the interview panel in the past was an issue that cannot be erased from memory. This fact is quite significant. I am aware of police officers that have lost their full-time jobs over matters such as this."

The Town has not shown, however, by a preponderance of the evidence, that Mr. Bounphasaysonh was untruthful during the hiring process. Rather, the Town's conclusions regarding alleged untruthfulness appear to be based on false premises, unreliable hearsay, miscommunication and sloppiness.

The allegation of untruthfulness regarding whether Mr. Bounphasaysonh "resigned" from his position as a seasonal worker for the Town *via text message* began with the false premise by the background investigator that it would be unprofessional for Mr. Bounphasaysonh to do so. However, the Administrative Assistant for the DPW, who was responsible for coordinating the appointment of seasonal workers, paints a different picture. She testified before the Commission that *she* initiates a "mass text" in December or January of each year to all previous seasonal workers to see if they are interested in *seeking employment* for the next summer season. She expects that the recipients will respond one way or the other *via text* regarding whether the text

message recipient wishes to seek re-employment with the Town. Thus, the background investigator's premise that responding via text would be unprofessional was simply wrong -- and the *Town's* statement (memorialized in the bypass letter) that Mr. Bounphasaysonh "resigned" from his position was false.

That turns to the question of whether Mr. Bounphasaysonh, now 26, lied to the background investigator and the rest of the interview panel when he stated that he *called* (as opposed to texting) the DPW's Administrative Assistant five (5) years ago to let her know that he would not seek re-employment with the Town during the upcoming Summer season. In this regard, the Town made *another* false statement in the bypass letter stating:

"He actually resigned that position via text message, which was contrary to what he had told us in the interview on January 12, 2016. The administrative assistant had actually kept a written record of the text. When confronted with this information during the January 12, 2016 interview, Bounphasaysonh denied the text, claiming he had resigned via telephone call. This was disturbing to the interview panelists, as we immediately felt Mr. Bounphasaysonh was not being truthful. The panel had a written copy of the text message." (emphasis added)

The Town now acknowledges that the interview panel did not have a copy of a 2012 text message from Mr. Bounphasaysonh. Rather, the DPW's Administrative Assistant testified before the Commission that she long ago deleted any reply text messages that she received to her "mass text" in 2012.

The Town, seeking to salvage its finding that Mr. Bounphasaysonh was untruthful about making a phone call (as opposed to a text in 2012) offered the testimony of the DPW Administrative Assistant. Her testimony relied on a hand-written note (in her hand-writing) at the top of Mr. Bounphasaysonh's 2012 employment application, which was apparently submitted by Mr. Bounphasaysonh before he opted not to seek employment with the Town for a third season. The hand-written note states: "not returning texted me on 3-7-12." (emphasis added) Standing alone, that seemed peculiar to me as the employment application is stamped as having

been received by the Town only two (2) days earlier, on “3-5-12”. Further, it is contrary to the background investigator’s own report which states: “I was further told that Mr. Bounphasaysonh informed the town that he would not be returning to work for the town via a text message on March 20, 2012 rather than in person or by writing.” (emphasis added)

Based on the Town’s own false statements in this regard and the unreliable and contradictory evidence presented, the Town has not proven that Mr. Bounphasaysonh was untruthful regarding his recollection that he placed a call, in 2012, to the DPW’s Administrative Assistant to inform her that he would not be seeking re-employment with the Town during the Summer 2012 season, as opposed to sending a text message.

The second prong of the Town’s allegation that Mr. Bounphasaysonh was untruthful was built on an equally shaky foundation. As referenced above, Mr. Bounphasaysonh worked for the Town as a beach gate collector during the Summer 2010 and Summer 2011 season. He was required to submit an application for employment for each season and he also submitted an application for the Summer 2012 season, prior to deciding not to work for the Town for a third summer. Mr. Bounphasaysonh acknowledges that his girlfriend filled out the 2011 application, which he signed and submitted to the Town. There is no dispute that Mr. Bounphasaysonh *filled out and signed the 2012 application.*

Five years later, during an interview for permanent intermittent reserve police officer, the background investigator, located one or two table lengths away from Mr. Bounphasaysonh, held up the first page of a seasonal employment application for the Town of Webster, and asked Mr. Bounphasaysonh if he had filled out the application. Remarkably, Mr. Bounphasaysonh was never even given the application to examine. Believing that the background investigator was holding the most recent seasonal application that he had completed (in 2012), which has an

identical format, Mr. Bounphasaysonh replied that he had indeed completed the application. Prior to the interview, the Police Chief and the background investigator had met and reviewed the handwriting from the 2011 application and concluded that the handwriting was different from the handwriting on the application for permanent intermittent reserve police officer. The Police Chief, believing that the background investigator was holding up the first page of the 2011 application, cautioned Mr. Bounphasaysonh to “be careful” and to confirm that he had indeed filled out the application, referencing the document in the background investigator’s hand. Mr. Bounphasaysonh, believing that the background investigator must be holding his most recent (2012) application, confirmed that he had indeed filled it out. Both the Police Chief and the background investigator immediately concluded that Mr. Bounphasaysonh was being untruthful.

During his testimony before the Commission, however, the Police Chief, who was sitting on the same side of the table as the background investigator, could not say with certainty what document the background investigator had in his hand on the day of the interview, when Mr. Bounphasaysonh was sitting one or two table lengths away from the background investigator. Pressed during his testimony before the Commission, the Police Chief testified that the background investigator could possibly have been holding the 2012 application in his hand that day. The Acting Town Administrator, based on where she was sitting, could not see, one way or the other, what document, the background investigator had in his hand.

After the Police Chief’s testimony, the Town called the background investigator back to testify. The background investigator testified that it must have been the 2011 application in his hand that day as, according to the background investigator, he didn’t obtain the 2012 application until *after* the interview, when he returned to obtain additional information about Mr. Bounphasaysonh from the DPW’s Administrative Assistant. This testimony is not convincing

for multiple reasons. First, the point here is this: if it was impossible for the Police Chief or the Acting Town Administrator to know what document that the background investigator was holding in his hand during the interview, how could Mr. Bounphasaysonh be expected to know that it was the 2011 application that the background investigator had in his hand, assuming that to be the case, as opposed to the 2012 application, which has an identical format? Second, the background investigator, in addition to stating during his rebuttal testimony that he did not obtain the 2012 application until after the interview, added that he also obtained, as part of his post-interview meeting with the DPW's Administrative Assistant, a copy of the 2012 text message that Mr. Bounphasaysonh purportedly sent. As discussed above, the Town, as part of this hiring cycle, never actually obtained a copy of such a text message, calling into question whether the background investigator is mistaken about the sequence of events here.

When applying the preponderance of the evidence standard that is required here, the Town has not shown that Mr. Bounphasaysonh was untruthful in response to the background investigator's question (or the Police Chief's) follow-up question in regard to whether he filled out a seasonal application for employment with the Town.

Although the Town has listed other reasons for bypassing Mr. Bounphasaysonh, I infer that even the Town would acknowledge that their conclusion that Mr. Bounphasaysonh was untruthful permeated the entire decision-making process here. The fact that this false conclusion tainted the review process; and the fact that a law enforcement agency's conclusion that a job applicant has been untruthful can potentially put an end to that candidate's desire to pursue a career in law enforcement, standing alone, show that Mr. Bounphasaysonh is an aggrieved person under G.L. c. 31, § 2(b) for whom relief should be granted in the form of one additional consideration for appointment.

That notwithstanding, I have carefully reviewed the other reasons for bypass proffered by the Town. First, the Town faults Mr. Bounphasaysonh for not pursing advancement while employed at UPS or CVS. Put in the proper context, it is difficult to take this conclusion by the Town seriously. Mr. Bounphasaysonh obtained part-time employment at UPS to work his way through college and to access employer-sponsored health insurance. Shortly after receiving his bachelor's degree, he obtained brief full-time employment at CVS and then obtained employment in the underwriting department of an insurance company, where he was still employed as of the date of the hearing before the Commission. In short, the Town has somehow converted these reasonable, and, arguably, commendable, decisions by Mr. Bounphasaysonh into a narrative to describe Mr. Bounphasaysonh as someone who lacks intiative or a desire for personal growth.

Second, the Town, citing the same part-time UPS employment, as well as Mr. Bounphasaysonh's seasonal, \$8.00 per hour employment as a gate collector with the Town as a teenager, paints Mr. Bounphasaysonh as lacking initiative. However, the background investigator never spoke with anyone with the Town who actually supervised Mr. Bounphasaysonh in 2010 or 2011, but relied on statements by the Administrative Assistant, who never observed Mr. Bounphasaysonh perform his duties as a gate collector at Memorial Beach. Further, the feedback from the supervisor at UPS is largely positive, with any negative inferences by his supervisor appearing to be influenced by Mr. Bounphasaysonh's decision not to pursue career advancement at a part-time job that he obtained to work his way through college, previously discussed above.

Third, the Town describes Mr. Bounphasaysonh's interview as one of the "worst ever" and the selected candidate's interview as one of the "best ever." The Town failed to prove this claim

by a preponderance of the evidence for the following reasons. First, although not required, there is no audio or video recording of either the horrendous or remarkable interview. Second, the Town failed to submit any notes, rating sheets or other such documents typically entered as exhibits in such cases before the Commission. Third, one of the primary “scenario questions” for which the Town had trouble with Mr. Bounphasaysonh’s answer, was not even included on the list of interview questions that the Town submitted to the Commission. Fourth, all four (4) of the interview panelists who testified before the Commission had a somewhat different recollection of how this scenario question was asked. Fifth, the “acceptable” answer that the panelists were looking for seemed to depend on the perspective of each individual panelist, with one panelist visualizing a “real life” scenario that he had faced as a police officer. The lack of any written or audio record of the interviews, coupled with the conflicting testimony among those who were present, makes it impossible for me to assess whether the Town’s assessment of the candidates’ interview performance is supported by a preponderance of the evidence.

Conclusion

For all of the above reasons, Mr. Bounphasaysonh’s appeal under Docket No. G1-17-024 is hereby ***allowed***.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the state’s Human Resources Division and/or the Town of Webster in its delegated capacity to take the following actions:

1. Place the name of Henry Bounphasaysonh at the top of the next Certification issued to the Town of Webster for position of permanent intermittent police officer until such time as he is appointed or bypassed;

2. If Mr. Bouphasaysonh is appointed, he shall receive the same civil service seniority date as those candidates appointed from Certification No. 03783.

This retroactive civil service seniority date is related solely to civil service seniority and is not intended to provide the Appellant with any additional compensation or benefits, including creditable time towards retirement.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman and Tivnan, Commissioners [Stein – Absent]) on February 1, 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:

James Simpson, Esq. (for Appellant)
Brian Maser, Esq. (for Respondent)
Patrick Butler, Esq. (HRD)