

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

Ulrich T. Alfred,
Appellant

v.

G1-04-464

Boston Police Department
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 31, § 2 (b), the Appellant, Ulrich Alfred (“Appellant”), appealed the decision of the Boston Police Department (“Department” or “BPD”) to bypass him for original appointment as a Police Officer on November 12, 2004. The appeal was timely filed. A pre-hearing conference was held December 28, 2004. A hearing was held on February 28 and March 2, 2006, at the office of the Civil Service Commission (“Commission” or “CSC”). As no written notice was received from either party, the hearing was declared private. Two tapes were made of this hearing. Proposed Decisions were submitted by the parties as instructed by the hearing officer.

FINDINGS OF FACT:

Based upon the items entered into evidence (Joint Exhibits 1 - 12), the testimony of Edward Callahan, Assistant Chief of the Bureau of Administration and Technology; Detective James Moy; Sergeant Detective Catherine Doherty; Deputy Superintendent Marie S. Donahue, Assistant Chief of the Bureau of Internal Investigation; Officer Richard Leham and the Appellant, I make the following finds of fact:

- 1) The Appellant was hired on December 3rd, 2001 by the Boston Municipal Police Department, which is a separate police force from the Boston Police Department.
- 2) The Appellant applied for appointment to the position of Police Officer within the BPD on May 15, 2004. (Exhibit 6).

- 3) When asked about his previous employment at the Commission's Full Hearing, the Appellant was unable to do so without viewing his resume. (Testimony of Appellant).
- 4) The Appellant was honorably discharged from the United States Marine Corps in April 2005. (Testimony of Appellant).
- 5) On June 28th, 1994, the Appellant pleaded guilty to a charge of Assault and Battery for a domestic violence incident that occurred on June 3rd, 1994, involving his girlfriend at the time, (name redacted). (It appears from the Testimony of the Appellant and from the Exhibits that the Appellant and (name redacted) were married at some point; although the duration of their marriage is unclear.) The Court entered a Continuance without a Finding ("CWOFF") for nine (9) months with the conditions that the Appellant enter into and complete a Project RAP Domestic Violence program for batterers' treatment. (Exhibit 10).
- 6) (Name redacted) has filed complaints leading to the issuance of two restraining orders against the Appellant for two separate incidents. The first was filed on January 6th, 2000, and the second on October 2nd, 2003. Both restraining orders were later vacated. (Exhibits 11 & 12).

- 7) The Appellant has filed complaints leading to the issuance of two restraining orders against (name redacted) for two separate incidents. The first was filed on January 3, 2000, and the second on October 1st, 2003. Both restraining orders were later vacated. (Exhibit 12, Testimony of Appellant).

- 8) The Recruit Investigation Unit of the BPD compiled a background investigation of the Appellant, which included reviewing the Appellant's criminal history, court documents, speaking with (name redacted) and speaking with the Appellant. (Testimony of Edward Callahan, Sergeant Detective Catherine Doherty and Deputy Superintendent Marie S. Donahue).

- 9) On August 19, 2004, Detective James Moy conducted the Appellant's recruit investigation. Detective Moy began his investigation by running a Board of Probation check on the Appellant which revealed that the Appellant was prosecuted for an Assault and Battery charge in 1994. The Appellant was put on probation, which was extended because he failed to complete the court-ordered Batterers' Treatment Program and four (4) warrants had been issued. The Appellant eventually completed the court-ordered Batterers' Treatment Program in 1997. The District Court subsequently issued the Appellant a Probation Terminated Defendant Dismissed ("PTDD") on July 23, 2001. The Board of Probation check also revealed two (2) restraining orders that had been issued against the Appellant on January 6th, 2000, and October 1st, 2003. Detective Moy spoke with the Appellant and the victim regarding the domestic violence incidents

referred to in the restraining orders and compiled his findings into a report. (Exhibit 2; Testimony of Detective James Moy).

10) The Appellant testified at the Commission that in 1994 in Lynn, he was residing with (name redacted) whom he was living with and had a child of one year. (Testimony of Appellant).

11) The Appellant testified that on June 3, 1994, police responded to a call from the Appellant's residence resulting in the Appellant leaving in custody of the police. (Testimony of Appellant).

12) The Appellant testified that this incident resulted when (name redacted) started throwing and breaking all of his possessions. (Name redacted) attempted to physically push the Appellant out of the apartment and he tried to push her off of him and "in defense, she fell on some piece of furniture." (Testimony of Appellant).

13) The Appellant testified that (name redacted) did not want the officers to arrest the Appellant. (Testimony of Appellant).

14) The Appellant testified that (name redacted) arrived at the police station the next day, willing to dismiss any charge brought against him. At the time, both of them were "naïve to what domestic violence was." (Testimony of Appellant).

- 15) Appellant had been dating (name redacted) since he was fifteen (15) years old and she was fourteen (14) years old. (Testimony of Appellant).
- 16) The Appellant disputed that there was a physical dispute between himself and (name redacted) on June 3, 1994. (Testimony of the Appellant).
- 17) Upon reviewing the Police Report filed from the June 1994 incident, the Appellant conceded that “pushing each other” is a physical altercation. (Testimony of the Appellant; Exhibit 7-A).
- 18) The Appellant testified that the Batterers’ Treatment program, to which he was referred by the Court in regard to the 1994 Assault and Battery involving (name redacted), was like a “boot camp” where you needed to pay fifty (50) dollars up front per session. Furthermore, each time he would be unable to pay for the program or if he was late for the program, a warrant would be issued. (Testimony of Appellant).
- 19) The Appellant testified that he was undergoing financial troubles relating to the Batterers’ Treatment Program and continued to live with (name redacted) during this time. (Testimony of Appellant).

- 20) The Appellant testified that the warrants were issued because the Appellant did not have the \$50 necessary for admission to four (4) Batterers' Treatment sessions. (Testimony of Appellant).
- 21) The Appellant testified that on each meeting for the court-ordered Batterers' Treatment program, he presented himself at the program site and advised the monitors of his inability to pay the admission fee. (Testimony of Appellant).
- 22) The Appellant testified that he notified his probation officer the next day for all four (4) occasions he failed to bring the money. (Testimony of Appellant).
- 23) The Appellant testified that all four (4) warrants were recalled and the matter was continued without a finding because the Appellant successfully completed the program, despite the financial circumstances he was enduring. (Testimony of Appellant; Exhibit 1).
- 24) In October 1999, the Appellant separated from (name redacted). At this time, the Appellant now had two children with (name redacted). (Testimony of Appellant).
- 25) On January 2, 2000, the Appellant was dining with a female friend, which was considered a date. (Name redacted) Godmother, who had not been aware that Appellant and (name redacted) had separated, approached the Appellant during this date. (Testimony of Appellant).

- 26) The Appellant testified that immediately after he left the restaurant, he saw (name redacted) Godmother calling (name redacted) from a pay phone. From this conversation, the Appellant feared that his “date” would be subject to imminent harm from (name redacted). It was at this point that the Appellant concluded that it was necessary for him to obtain an order against (name redacted). (Testimony of Appellant).
- 27) The Appellant applied for a restraining order the next day, January 3, 2000. (Testimony of Appellant).
- 28) Subsequently, (name redacted) applied for a restraining order against the Appellant on January 6th, 2000. (Testimony of Appellant; Exhibit 1; Exhibit 11).
- 29) The cross-orders in 2000 between the Appellant and (name redacted) were vacated at the request of both parties on January 12, 2000. (Exhibit 1; Exhibit 11).
- 30) On October 1, 2003, (name redacted) approached the Appellant in Boston City Hall, where he was employed as a Municipal Police Officer. (Exhibit 1).
- 31) At this time, (name redacted) confronted the Appellant over his non-appearance at Suffolk Probate Court hearing related to their relationship, resulting in (name redacted) initiating a 209A Restraining Order against the Appellant. (Exhibit 1).

32) The Appellant testified that (name redacted) behavior at City Hall was “elevated” and that he remained silent. The Appellant stated that he called out to Officer Richard Leham to assist him. Once Officer Leham arrived he told (name redacted) to calm down and took her outside. Officer Leham advised the Appellant to obtain a restraining order against (name redacted). (Testimony of Appellant).

33) Officer Richard Leham testified that on October 1, 2003, the Appellant physically approached him in the main entrance of City Hall Plaza to request his assistance in defusing the situation with (name redacted). (Testimony of Officer Richard Leham).

34) Officer Richard Leham did not see the entire incident between Appellant and (name redacted) on October 1, 2003. Since Officer Leham did not witness the whole incident between the Appellant and (name redacted), he could not testify as to whether Appellant threatened (name redacted), as alleged by (name redacted) in her filing of her request for a restraining order against the Appellant. (Testimony of Officer Richard Leham).

35) In her affidavit, submitted in support of her request for a restraining order, dated October 1, 2003, (name redacted) asserted that the Appellant had threatened her

on other occasions when his appearance in Probate Court was required or when he was required to pay child support. (Exhibit 1; Exhibit 12).

36) A hearing before Judge Gould took place regarding this matter on November 19, 2003. Both parties appeared pro se and the cross-restraining orders were vacated. (Testimony of Appellant; Exhibit 1; Exhibit 12).

37) On the order, Judge Gould wrote in parenthesis, “and expunge reference thereto from his file, if possible” (underline added). (Exhibit 12).

38) Sergeant Detective Catherine Doherty reviewed Detective Moy’s investigation of the Appellant and identified the Appellant to be the subject of a discretionary hearing. (Testimony of Sergeant Detective Catherine Doherty).

39) Sergeant Detective Catherine Doherty testified at the Commission’s Full Hearing that a discretionary hearing is an interview conducted in the discretion of the Department in order to clarify any questions or concerns identified by the Recruit Investigations Unit relating to a job applicant. (Testimony of Sergeant Detective Catherine Doherty).

40) The Appellant testified at the CSC hearing that he gave Detective Moy and Sergeant Detective Doherty a full explanation regarding the “Lynn warrants” during the course of the discretionary hearing but they had not followed up with

the Appellant's probation officer or the people who ran the Batterers' Treatment Program. (Testimony of Appellant).

41) Sergeant Detective Catherine Doherty testified that she asked the Appellant to talk about the Assault and Battery, Default Warrants and 209A Abuse Prevention Orders and to offer his version of the events at the discretionary hearing. (Testimony of Sergeant Detective Catherine Doherty).

42) In the Appellant's statement to the Discretionary Board Members concerning his relationship to (name redacted), the Appellant stated that, "Unfortunately, some women abuse the domestic violence laws to have things go their way and I must say it works." (Exhibit 7-A).

43) During his Commission testimony, the Appellant conceded that he made this statement to the Discretionary Board Members. (Testimony of Appellant).

44) Sergeant Detective Catherine Doherty testified that she was impressed by the Appellant's demeanor and personality but could not ignore the CWOFF for Domestic Assault and Battery, failure to complete a court-ordered Batterers' Treatment program and two 209A Abuse Prevention Orders issued by the Court. (Testimony of Sergeant Detective Catherine Doherty).

- 45) Sergeant Detective Catherine Doherty testified at the Commission's Full Hearing that she could not recommend the Appellant for appointment to the BPD based on his history of domestic violence and disrespect for the court system. (Testimony of Sergeant Detective Catherine Doherty).
- 46) Sergeant Detective Catherine Doherty explained that the subsequent documentation from the victim, in which the victim minimized the violence, could have been the result of fear and/or for monetary reasons. (Testimony of Sergeant Detective Catherine Doherty).
- 47) Sergeant Detective Catherine Doherty also testified that in her experience victims of domestic violence almost always recant or minimize the abuse. (Testimony of Sergeant Detective Catherine Doherty).
- 48) The Department scrutinizes candidates who have incidents of domestic violence in their history because police officers often respond to calls for domestic violence and it would be irresponsible of the Department to hire individuals who are perpetrators of such violence. (Testimony of Deputy Superintendent Marie S. Donahue).
- 49) Deputy Superintendent Marie S. Donahue testified at the Commission's Full Hearing that the Department treats accusations of domestic violence very seriously. If the court issues a 209A Abuse Prevention Order against a

Department employee, an internal affairs investigation is commenced and the officer must turn in his firearm. (Testimony of Deputy Superintendent Marie S. Donahue).

50) Deputy Superintendent Marie S. Donahue testified that to her knowledge and experience the Department has never hired someone with a CWOFF for Domestic Assault and Battery. (Testimony of Deputy Superintendent Marie S. Donahue).

51) Deputy Superintendent Marie S. Donahue testified that to her knowledge and experience the Department has never hired someone who has been ordered by the Court to complete a Batterers' Treatment Program. (Testimony of Deputy Superintendent Marie S. Donahue).

52) Deputy Superintendent Marie S. Donahue testified that to her knowledge and experience the Department has never hired any individual with such a pattern and history of domestic violence as exhibited by the Appellant. (Testimony of Deputy Superintendent Marie S. Donahue).

53) When asked whether the Appellant's history of domestic violence and disregard for the legal system rendered him unsuitable for appointment to the BPD at the Commission's Full Hearing, Ed Callahan, Sergeant Detective Catherine Doherty, Deputy Superintendent Marie S. Donahue responded in the affirmative.

- 54) The Appellant testified that he believes that women lie and manipulate the domestic violence laws of the Commonwealth. (Testimony of Appellant).
- 55) On August 23, 2004, the Department requested the Human Resources Division (“HRD”) to approve the Appellant’s bypass. (Exhibit 1).
- 56) Mr. Edward Callahan, of the BPD, requested that HRD bypass the Appellant based upon the Domestic Assault and Battery upon (name redacted), his failure to complete a Court-ordered Batterers’ Treatment Program following which the court issued four (4) separate default warrants to compel the Appellant to complete the program and two (2) separate 209A Abuse Prevention Orders issued by the court ordering the Appellant to refrain from abusing (name redacted). (Exhibit 1; Testimony of Edward Callahan, Sergeant Detective Catherine Doherty and Deputy Superintendent Marie S. Donahue).
- 57) The Appellant contends that the BPD failed to thoroughly investigate and reasonably assess the record of the Appellant. (Appellant’s Proposed Decision).
- 58) The Appellant contends that the BPD’s letter to HRD contained mischaracterizations, purposeful omissions and actual errors. The Appellant contends that the record establishes that the BPD did not assess the material before it concerning the Appellant thoroughly, properly, or in good faith. (Appellant’s Proposed Decision).

59) I do not find the Appellant to be a credible witness in a number of instances. In one major instance, for example, the Appellant made an assertion which he was unable to support with particulars. The Appellant asserted that while he was defending himself from (name redacted) attempting to push him out the door, he pushed her and she tripped and injured herself on “some piece of furniture.”

60) Edward Callahan, Detective James Moy, Sergeant Detective Catherine Doherty, Deputy Superintendent Marie S. Donahue, and Officer Richard Leham all testified credibly regarding their participation in these matters. The documentary record corroborated their testimony, they were specific with facts and dates and each demonstrated cooperative demeanors on the witness stand. Each was knowledgeable of the subject matter and comported him or herself professionally.

CONCLUSION:

The Commission must decide, on the basis of the evidence, whether the appointing authority was justified in taking the actions that it did. See Town of Watertown v. Arria. 16 Mass. App. Ct. 331 (1983). McIsaac v. Civil Service Commission. 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins. 48 Mass. App. Ct. 411 (2000). City of Leominster v. Stratton. 58 Mass. App. Ct. 726, 728 (2003). In a review of a bypass for original appointment under c. 31 s. 2(b), the Commission must determine whether a preponderance of the evidence demonstrates

that the reasons for the bypass “were, more probably than not, sound and sufficient”. Mayor of Revere v. Civil Service Commission. 31 Mass. App. Ct. 315, 320-321 (1991). Bypasses are not justified “when there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy”. City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). The Commission may not overturn an appointing authority’s valid exercise of discretion based upon merit principles or policy concerns. *Id.* at 304. Police Commissioner of Boston v. Civil Service Commission. 39 Mass. App. Ct. 594, 600 (1996). Town of Falmouth v. Civil Service Commission. 61 Mass. App. Ct. 796, 801 (2000).

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.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). “When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards of neutrally applied public policy, then the occasion is appropriate for intervention by the commission.” *Id.* In the present appeal there is no evidence of political consideration, favoritism and bias in this decision. The Department has never hired anyone with such a pattern of domestic violence, nor should it.

The BPD’s decision to bypass the Appellant was reasonably justified. The BPD presented, by a preponderance of the evidence, that the Appellant had pleaded to sufficient facts for a guilty finding for Domestic Assault and Battery, for which he was ordered to attend a Batterers’ Treatment Program. The case was then continued without a

finding. The Department also presented, by a preponderance of evidence, that the Appellant failed to attend the court-ordered Batterers' Program on certain occasions, resulting in the four (4) subsequent warrants issued to make him comply. In addition, the Department presented credible evidence of two (2) separate 209A Abuse Prevention Orders issued by the court against the Appellant.

The Civil Service Commission traditionally affords an Appointing Authority a considerable degree of latitude in making selection decisions. "The Appointing Authority.... may select in the exercise of broad discretion, among persons eligible...." Goldblatt v. Corporate Counsel of Boston, 360 Mass. 660, 666 (1971), citing Commissioner of the Metropolitan District Commission v. Director of Civil Service, 348 Mass. 184, 187-193 (1964). In Brooks v. Boston Police Department, 12 MCSR 19 (1999), the Commission determined that, "We do not view our role as one of substituting our judgment for that of the appointing authority. If an Appointing Authority is able to establish that there are sound and sufficient reasons for declining to select a particular appellant, we will normally defer to the appointing authority."

Regardless of the Appellant's contention that (name redacted) embellished her claims and recanted her story, the BPD was justified in its decision to bypass the Appellant based upon the information provided in multiple sworn affidavits submitted by (name redacted) to the court contemporaneously with the application for the two (2) separate 209A Abuse Prevention Orders issued by the court against the Appellant. As Sergeant Detective Catherine Doherty noted, victims may recant out of fear or for monetary concerns. Additionally, the BPD was justified in its decision to bypass the Appellant despite information provided by the Appellant as to why he failed to complete

the Batterers' Treatment Program as required and his assertion that the four (4) warrants were subsequently recalled. It should be noted that (name redacted) did not appear and testify on behalf of the Appellant in the BPD Discretionary Hearing or the Commission Hearing.

The Department's decision to bypass the Appellant was a valid exercise of discretion based on a policy to not hire persons with a history and pattern of perpetrating domestic violence and was well supported by a preponderance of the evidence. Officers of the BPD are often called to domestic violence situations and they must be capable of responding appropriately to such highly sensitive and dangerous calls. The BPD was justified in considering the Appellant's past as a reason to bypass him. Therefore, the appeal on docket number G1-04-464 is *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By a vote of the Civil Service Commission (Bowman, Guerin, Marquis and Taylor, Commissioners) on April 26, 2007.

A True Record. Attest:

Commissioner

Either Party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with MGL c. 30A S. 14(1) for the purpose of tolling the time for appeal.

Under the provisions of MGL c 31 S 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice to:

Joseph DeLorey, Esq.
Office of the Legal Advisor, BPD