

NOTIFY

JUL 02 2008

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 06-5331-C

NOTICE SENT
07-01-08
G.+C.
T.F.

T.L.C.

MASS. A.G.

D.H.

P.R.L.+E.

L.M.B.

BOSTON POLICE DEPARTMENT

v.

KERRI CAWLEY and the
MASSACHUSETTS CIVIL SERVICE COMMISSION

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

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MEMORANDUM OF DECISION AND ORDER
ON (1) PLAINTIFF'S MOTION FOR JUDGMENT
ON THE PLEADINGS, AND (2) DEFENDANT'S
CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS

The Plaintiff, Boston Police Department ("BPD"), has appealed from a decision of the Civil Service Commission ("the Commission") ordering that BPD reconsider the defendant, Kerri Cawley ("Cawley"), for employment as a Boston police officer after she was bypassed for the position. After a psychiatrist under contract with BPD opined that Cawley was not psychologically fit to become a police officer, BPD rescinded a conditional offer that it had made to her offer. Cawley appealed her bypass to the Commission. Following a hearing, the Commission concluded that the bypass was not reasonably justified because the psychiatrist that evaluated Cawley had a personal bias against her. For the following reasons, Plaintiff's Motion for Judgment on the Pleadings is denied, and Defendant's Cross-Motion for Judgment on the Pleadings is allowed.

BACKGROUND

After serving as a cadet in the BPD for several years, Cawley received a conditional offer of employment as a police officer. Successfully completing a psychological screening process was one of the conditions of the offer. In the fall of 2005, Cawley was bypassed after Dr. Julia M. Reade ("Dr. Reade"), a psychiatrist under contract with BPD, concluded that Cawley was not psychologically fit to become a police officer.

In January, 2006, Cawley received another offer of employment from the BPD. Dr. Marcia Scott ("Dr. Scott"), another psychiatrist under contract with BPD, concluded that Cawley was psychologically fit to become a police officer. Cawley, however, was once again bypassed based on an adverse recommendation by Dr. Reade, Dr. Scott's supervisor. Although admitting that Cawley did not suffer from any mental disorder, Dr. Reade stated that Cawley was overly defensive throughout the screening process.

Cawley appealed the BPD's determination to the Commission. Testifying on behalf of Cawley at the Commission hearing, Dr. Mark Schaeffer ("Dr. Schaeffer") opined that Cawley was fit for duty as a police officer. Thus, the BPD's own psychiatrist, Dr. Scott, as well as Dr. Schaeffer, a clinical psychologist, concluded that Cawley was psychologically fit to become a police officer.

The Commission ordered that Cawley's bypass be vacated and that she be

reconsidered for employment as a Boston police officer. In its decision, the Commission concluded that Dr. Reade harbored a personal bias towards Cawley. Specifically, the Commissioner concluded that "Dr. Reade unwittingly established an unattainable bar for [Cawley] that appears to be tinged with personal bias." Accordingly, the Commission reasoned, the BPD did not have a reasonable justification in bypassing Cawley because the psychological screening process was tainted by Dr. Reade's bias against Cawley.

The Commission ordered BPD to reinstate Cawley as a candidate for employment as a police officer. It further ordered that any future psychological screening of Cawley be conducted by a psychiatrist other than Dr. Reade or Dr. Scott. The BPD has appealed from the Commission's decision pursuant to G.L. c. 30A, § 14.

DISCUSSION

Pursuant to G.L. c. 30A, § 14(7), this court may reverse, remand, or modify an agency decision if that decision is based on an error of law or on unlawful procedure, is arbitrary and capricious, or if there is a lack of substantial evidence to support the decision. The party appealing an administrative decision bears the burden of demonstrating its invalidity. *Merisme v. Bd. of App. of Motor Vehicle Liab. Policies & Bonds*, 27 Mass. App. Ct. 470, 474 (1989). The agency is the sole judge of credibility and weight of the evidence at an administrative proceeding. *Greater Media, Inc. v.*

Dep't. of Pub. Utilities, 415 Mass. 409, 417 (1993).

The Commission is responsible for determining “whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303 (1997). An action is justified when it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and the correct rules of law.” *Id.* at 304 (internal quotations omitted). “In making that analysis, the commission must focus on the fundamental purposes of the civil service system—to guard against political considerations, favoritism, and bias in governmental employment decisions, including, of course, promotions, and to protect efficient public employees from political control.” *Id.*

The BPD claims “that the Commission’s decision was in excess of its statutory authority, unsupported by substantial evidence, based upon an error of law, unwarranted by facts found on the record, arbitrary and capricious, an abuse of discretion, and otherwise not in accordance of law.” The BPD’s position boils down to two main contentions: (1) that the Commission abused its discretion by improperly substituting its judgment for that of the BPD and (2) the Commission’s remedy was outside the scope of its statutory authority.

In *Cambridge v. Civil Serv. Comm’n*, the Appeals Court held that the

Commission may not overrule a discretionary hiring decision unless that decision lacks reasonable justification. "It is not within the authority of the commission, . . . to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority." *Cambridge*, 43 Mass. App. Ct. at 304.

The court recognizes what is at stake when reviewing the hiring process of the BPD, or any other police department. "Nowhere is the danger of the Commission reaching beyond its proper role more acute than in matters such as these." *Boston Police Dep't v. Munroe*, Civil No. 01-725 (Suffolk Super. Ct., March 19, 2002) (Gants, J.), 2002 WL 445086. In *Munroe*, the Superior Court reversed the Commission's decision based on both a lack of jurisdiction and because it had acted outside of its statutory authority by reinstating a candidate who had been bypassed after failing a psychological screening. *Id.* The Commission in *Munroe* made its own "de novo determination that, by a preponderance of the evidence, Munroe was psychologically fit to perform the duties of a police officer." *Id.* The court reasoned that the Commission had "substituted its judgment about a valid exercise of discretion" – exactly what it was instructed not to do in *Cambridge v. Civil Serv. Comm'n.*

Here, however, the Commission has not gone so far as to conclude that Cawley is psychologically fit to become a police officer. Instead, the Commission has concluded that Cawley has been deprived of an opportunity to participate in a hiring

process that is free from personal bias. This is well within the authority and discretion of the Commission. See *Cambridge*, 43 Mass. App. Ct. at 303. See also *Boston Police Department v. Collins*, 48 Mass. App. Ct. 408, 412 (2000) (holding that the Commission's decision to vacate the police department's five-day suspension of an officer was improper and noting that this was not a case where the Commission found that there was any bias behind the disciplinary decision).

The BPD contends that the record does not support the Commission's conclusion that Dr. Reade had a personal bias against Cawley. The record, however, shows that Dr. Reade was frustrated with Cawley because Cawley was not open with her about Cawley's troubled family life in her first evaluation with Dr. Reade. Dr. Reade stated that she was "disappointed" with Cawley and considered her initial omissions to be lies.

The Commissioner also noted that "[t]he somewhat harsh and personal nature of Dr. Reade's comments involving Ms. Cawley stood out when compared against her testimony involving the two other Appellants with an appeal before the Commission." Dr. Reade presented little evidence to support her conclusion that Cawley was unfit to become a police officer. She also acknowledged that Cawley could not be diagnosed with any mental disorder. Further, Dr. Reade's opinion was contradicted by both Cawley's expert and another BPD psychiatrist, Dr. Scott. Thus, the lack of evidence supporting Dr. Reade's decision, coupled with her unusually

harsh words towards Cawley, provided a basis from which the Commissioner could reasonably conclude that Dr. Reade was biased against Cawley. Moreover, credibility determinations, including conclusions of bias, are the exclusive province of the administrative hearing officer. See *Greater Media, Inc.*, 415 Mass. at 417.

Finally, without citing to any supporting authority, the BPD asserts that the Commission's remedy exceeded the scope of its statutory authority. Specifically, the BPD argues that the Commission's remedy unjustifiably impedes upon its hiring process. The court disagrees and concludes that the Commission's remedy was appropriate. If the Commission did not exclude Dr. Reade from Cawley's next psychological evaluation, the Commission's reversal of the BPD's decision would be a nullity. Cawley would presumably be considered again for a position as a police officer and would be bypassed, once again, by Dr. Reade.

The BPD also takes umbrage with the Commission's remedy because it states that "the Commission orders the psychological examination of [Cawley] by a *psychologist and psychiatrist, other* than Dr. Reade and Dr. Scott." (italics supplied). The BPD argues that their procedure for psychological evaluations includes an analysis by one *psychiatrist* and, if necessary, a second *psychiatrist*. Thus, the BPD contends, the Commission has infringed upon the BPD's procedure because it is ordering that a *psychologist* participate in the evaluation. The court concludes that the BPD has read too much into the Commission's order. However, for the sake of

clarity, the court will modify the Commission's order to reflect its presumed intent.

Accordingly, the Commission acted within the bounds of its statutory authority and its decision must be affirmed.

ORDER

For the foregoing reasons, Plaintiff's Motion for Judgment on the Pleadings is DENIED, and Defendant's Cross-Motion for Judgment on the Pleadings is ALLOWED. The Order of the Commission is hereby modified and the second paragraph of the decision shall be replaced with the following:

"At the next vacancy, the BPD shall conduct a psychological examination of Kerri Cawley in accordance with BPD's standard procedures, provided that Cawley shall not be evaluated by Dr. Julia M. Reade or Dr. Marcia Scott."


Peter M. Lauriat
Justice of the Superior Court

Dated: June 30, 2008