

Decision mailed: 9/11/09
Civil Service Commission *CB*

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

SCOTT FROST,
Appellant

v.

G2-07- 347

DANVERS POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Pro Se
Scott Frost

[REDACTED]
[REDACTED]

Respondent's Representative:

Jessica Ritter
Murphy, Hesse, Tooney & Lehane, LLP
300 Crown Colony Drive, Suite 410
P.O. Box 9126
Quincy, MA 02169 – 9126

Commissioner:

John E. Taylor¹

DECISION

Pursuant to the provisions of G.L. c. 31, s. 2(b), the Appellant, Scott Frost (hereinafter "Appellant" or "Officer Frost") seeks review of the Personnel Administrator's (HRD) decision to accept the reasons of the Town of Danvers

¹ The Commission acknowledges the assistance of Legal Intern Heather Coons in the preparation of this Decision.

(Hereinafter "Appointing Authority"), bypassing him for promotional appointment to the position of sergeant in the Danvers Police Department (hereinafter "Department"). A prehearing was held on January 24, 2008 and a full hearing was held on May 7, 2008 at the offices of the Civil Service Commission (hereinafter "Commission"). One (1) tape was made of the hearing.

FINDINGS OF FACT:

Seven (7) exhibits were entered into evidence at the hearing. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- Wayne Marquis, Town Manager, Town of Danvers;²

For the Appellant:

- Scott Frost, Appellant;

I make the following findings of fact:

1. The Town of Danvers has a population of 26,000 and a police department consisting of 47 uniformed officers and 8 sergeants. (Testimony of Marquis)
2. Wayne Marquis (hereinafter "Mr. Marquis") is the Town Manager of Danvers and oversees the promotional process for the department. In choosing a new sergeant, Mr. Marquis reviews the file of each candidate; he conducts an interview with each one and discusses their strengths and weaknesses with the Chief of Police.

(Testimony of Marquis)
3. No notes or audio or video recordings of the interview process were taken.

(Testimony)

² Wayne Marquis is no relation to Commissioner Donald Marquis

4. In spring of 2007, the Town sought to promote one (1) uniformed police officer to sergeant, who would serve as detective on the night shifts. The Town thus requested the certification list for promotional candidates for this position from HRD.

(Testimony of Marquis)

5. The top three (3) candidates on the HRD certification list in the following order were Officer Frost, James Lovell (hereinafter, "Officer Lovell") and William Cassidy (hereinafter, "Officer Cassidy"). No Civil Service examination scores were presented to the Commission. Each was put through the selection process described above by

Mr. Marquis. (Testimony of Marquis, Exhibits)

6. Officer Frost has been with the Town of Danvers Police Department since January 6, 2003, Officer Lovell has been employed with the Town of Danvers since October 19, 1998, and Officer Cassidy has been employed with Danvers since May 31, 1987.

(Exhibit 2)

7. Each candidate presented well in his interview, however, Officer Lovell's answers "were more thoughtful and comprehensive." (Exhibit 1)

8. Although, all of the candidates have degrees in Criminal Justice, Officer Frost was the only one with a Master's Degree. Officer Lovell anticipated receiving his Masters in the spring of 2008. (Exhibit 1)

9. Although all the candidates had good attendance, Officer Lovell has had perfect attendance for the last four years. Officer Frost took some sick days but did not abuse sick time. (Exhibit 1, Testimony)

11. The Town cited Officer Lovell's many extracurricular activities for the benefit of the Danvers Police Department that have give him superior leadership, communication and critical incident skills that would make him a more effective sergeant than the other candidates. (Exhibit 1)
12. Officer Frost testified that, outside of his regular duties, he:
 - a. Completed the Federal Law Enforcement Training Center's Criminal Investigator Training Program (CITP – 931) on September 22, 1999. (Exhibit 5)
 - b. Completed a course on The Reid Technique of Interviewing and Interrogation October 12 – 14, 1999. (Exhibit 7)
 - c. Participated in the Citizens Police Academy. (Exhibit 1)
13. All of the activities that these two officers participated in were available to all other police officers as well. (Exhibit 1)
14. By letter dated August 6, 2007, Mr. Marquis notified HRD that the Town of Danvers requested the promotion of Officer Lovell to the rank of sergeant. Mr. Marquis explained his decision citing the fact that Officer Lovell is "the most qualified candidate for the Sergeant's position because he more nearly epitomizes the goals, ideals and visions of the Department and the Town." Also, Mr. Marquis stated that Officer Lovell had the necessary knowledge, experience and demonstrated skills for him to be an effective sergeant as these are necessary for the many challenges that sergeants face. (Exhibit 1)
15. HRD approved the reasons for bypass.
16. Officer Lovell was then promoted from Police Officer to Sergeant. (Testimony of Marquis)

CONCLUSION

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Serv. v. Mun. Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Serv. Comm'n, 31 Mass. App. Ct. 315 (1991).

Appointing Authorities may select, in the exercise of a sound discretion, among persons eligible for promotion or may decline to make any appointment. Commissioner of the Metropolitan Dist. Comms. V. Director of Civil Serv. 348 Mass. 184,187-193 (1964). 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, 334 (1983). See

Commissioners of Civ. Serv. v. Mun. Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, 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, 43 Mass. App. Ct. at 304.

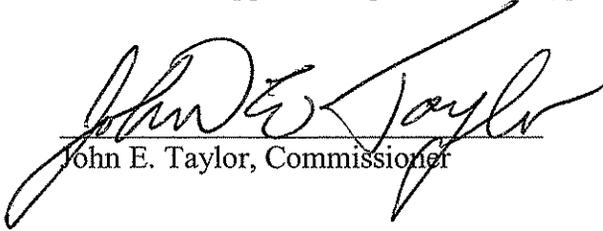
In the instant case, Officer Frost, Officer Lovell and Officer Cassidy all serve in very demanding positions and their work is invaluable to the Danvers Police Department. Their dedication to the Department is exemplary and should be applauded.

Officer Cassidy is the most senior officer, as he has worked for Department for the most number of years. Officer Frost, at the time of hearing, has completed his Masters Degree while Officer Lovell anticipates receiving his Masters Degree. Officer Lovell has had perfect attendance for the last four years. While Officer Frost took some sick days, he did not abuse sick time. Officer Frost attended various classes and seminars to hone his skills. Officer Lovell has participated in numerous Department initiatives as well is serving in the Criminal Investigation Division, as a Field Training Officer and as Assistant Court Prosecutor. Each of these various jobs have helped to further refine Officer Lovell's policing, investigative and management skills.

The Appointing Authority found Officer Lovell to be the most well qualified candidate and therefore promoted him to Sergeant. The Commission determines that Danvers has reasonable justification for its choice to bypass the Officer Frost.

The Commission recognizes that the Appellant is an outstanding, productive and motivated Police Officer who would make fine Sergeant in the future.

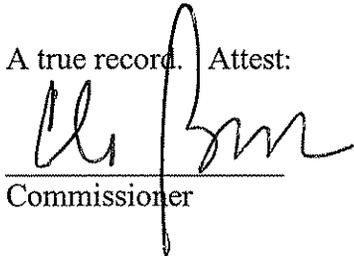
For the above reasons, the Appellant's Appeal under Docket No. G2- 07 - 347, in which Frost appeals the promotional bypass to Sergeant, is hereby *denied*.



John E. Taylor, Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman, Henderson, Marquis, Stein and Taylor, Commissioners) on September 10, 2009.

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. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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:

Scott Frost (Appellant)
Jessica Ritter (Respondent's Counsel)
John Marra, Esq. (HRD)