

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108

MICHAEL D. GAILLIARD,
Appellant

v.

MASSACHUSETTS PAROLE BOARD,
Respondent

DOCKET NO. G1-08-226

Appellant:

Michael D. Gailliard, *pro se*

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Respondent's Attorney:

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Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Michael Gailliard (hereafter "Appellant" or "Guilliard"), seeks review of the Personnel Administrator's (hereafter "HRD") decision to accept the reasons of the Massachusetts Parole Board (hereafter "Respondent" or "Parole Board") for bypassing him for promotion to the position of Field Parole Officer A/B. The Appellant filed a timely appeal at the Civil Service Commission, (hereafter "Commission"). A full hearing was held on February 4, 2009, at the offices of the Civil Service Commission. The hearing was recorded and two, (2) audio tapes were made of the hearing.

FINDINGS OF FACT

A total of twenty-three (23) exhibits and a stipulation of facts were admitted into evidence at the hearing.¹ Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- George Valentgas, Chief of Field Services Unit (“Valentgas”)
- Darwin Bliss, Deputy Chief of Field Services Unit (“Bliss”)
- Rachel Thomas, Personnel (“Thomas”)

For the Appellant:

- Michael Gailliard, (“Appellant”)

I make the following findings of fact:

1. The protected eligibility list upon which the Appellant's name appeared (Certification # 2080584), was certified by HRD on June 20, 2008. This certification was for the promotional selection of 1 permanent, full-time Parole Officer A/B (Field) from the 3 highest candidates who signed willing to accept. (Exhibit 1).
2. Despite the certified eligibility list (Certification # 2080584) for only 1 selection the Board later obtained verbal permission from HRD to add another selection for a total of two (2) selections from that Certification. The Form 16-11 (HRD) “certification and report supplement”, listed six (6) named candidates, who signed willing to accept appointment. Joseph Raynor, a disabled veteran appeared in the first position and he was selected. The Appellant appeared in the third position

¹ All exhibits were agreed to except Exhibits 17, 21, 22, and 23. Appellant objected to Exhibit 17, and the Appointing Authority objected to Exhibits 21, 22, and 23 on grounds of relevancy and not being a proper exhibit.

and was not selected, thereby being bypassed. Lisa Armstrong appeared in the fourth position and was selected. (Exhibits 1 & 2, stipulation and testimony of Valentgas)

3. Joseph Raynor had a civil service exam score of 94 and appeared in the first position due to his status as a disabled veteran. The Appellant's civil service score was 84. The civil service score of the other candidate selected, Lisa Armstrong, was 97. (See Exhibit 1). The Appellant's name, however, appeared fourth on the protected list because he had veteran's status and Armstrong appeared below him as the sixth name. (Exhibit 1, testimony of Valentgas).
4. However, on the final eligibility list (Certification # 2080584), on which the eligible candidates signed indicating their willingness to accept appointment; the Appellant appeared in the third position and Armstrong appeared in the fourth position. The two names selected by the Board for promotion appeared on this final list. Six total names appeared on that list. (Exhibit 2, testimony of Valentgas).
5. The detailed duties, responsibilities and qualifications for the position of Parole Officer A/B were posted by the Board and HRD, prior to the exam. The position requires extensive contact with parolees, other professionals, community organizations and service providers. The position also requires extensive technical, sociological, psychological and communications understanding and skill. It is critical to expect the unexpected and to have quick, appropriate and accurate appraisal and reactive abilities for this position. Possessing an insufficiency in any of these areas could have serious negative consequences.

Parole Officers work alone most of the time and their clientele are expert at reading and quickly exploiting any indecision, confusion or other mental lapse. (Exhibit 3, testimony of Valentgas, Bliss and Thomas).

6. George Valentgas, Chief of Field Services Unit, Darwin Bliss, Deputy Chief of Field Services Unit, and Rachel Thomas, Personnel Officer comprised the Respondent's interview panel. The panel interviewed the Appellant for the position Field Parole Officer A/B on July 25, 2008, along with the other candidates. (Exhibits 4-15).
7. The interview panel asked the same series of eight (8) questions to each candidate. Each candidate received an identical explanation or overview of the interview-evaluation process, from Valentgas, at the beginning of the interview. The candidates were cautioned to be brief and concise in their answers. Each candidate was then given a numerical value or score (1 through 4) for a series of sub-categories by each of the panel members. It was a uniform process for all candidates. The panel members rotated to the panel's left to ask questions in numerical sequence. These interview categories/ sub-categories included, among other things: education/work experience, problem solving skills/judgment, interpersonal skills, initiative, communication skills, ability to deal with people and any awards received. The panel members made detailed notes in each category on an "interview evaluation form" for each candidate interviewed. (Exhibits 4-15, testimony of Valentgas, Bliss and Thomas).
8. Valentgas testified that the Appellant completely misunderstood the first interview question; Q. 1. Explain the role of a Field Parole Officer? His answer

was “totally off!” Valentgas testified that the panel does not normally interrupt a candidate’s answer. Yet, the Appellant finally realized after reading the panel’s facial expressions of perplexity, that he was answering the question incorrectly. Then the Appellant became even slower and less organized in his response.

Valentgas testified that at that point in the interview, the Appellant admitted “I misunderstood the question”. At this point in Valentgas’ testimony the Appellant interrupted the testimony and claimed that the witness, Valentgas, “misspoke”. At that point in this hearing, this hearing officer admonished the Appellant for the interruption and reminded him that he would have an opportunity to later cross-examine Valentgas and also to testify in his own behalf. Valentgas continued his testimony. He testified that at that juncture in the interview, the Appellant became very nervous and began sweating profusely, despite the comfortable temperature in the air conditioned room. Valentgas’ interview notes corroborate his testimony in this regard. (Exhibits 4-15, testimony of Valentgas)

9. At the conclusion of the interviews, the interview panel arrived at a median numerical score for each candidate in each category or sub-category. The panel members would each determine a score (1-4) and if the score determined by each panel member was identical, that number would be placed in that sub-category and if the number from two of the panel members were different e.g. 2 and 3, Valentgas would decide which number was closest to his own number score, e.g. a 3, then 3 would be the score for that sub-category. The individual sub-category scores were then totaled for each candidate. The Appellant, a black male, scored the lowest of all candidates interviewed. He received an overall score of 37. Lisa

Armstrong, a black female, the candidate selected over the Appellant received an overall score of 49. (Exhibits 4-15, testimony of Valentgas)

10. As a result of the interview process, the Board notified HRD by letter dated August 12, 2008, that it bypassed the Appellant and another individual (Armstrong) was selected for appointment whose name appeared below the Appellant's on the eligibility list. The Respondent gave the following reasons for bypassing the Appellant:

“Candidate Gailliard did not have the problem solving skills/judgment nor the interpersonal skills that the selected candidate had. Candidate Gailliard responded inappropriately to the scenario question which dealt with officer safety as well as the safety of a potential victim. Specifically, Candidate Gailliard indicated that he would issue commands to the parolee and try to take parolee into custody and then, later in his response, he said, if he had a radio or phone, he would call local police for help. The appropriate response involved radioing for backup first. Candidate Gailliard also had difficulty articulating his responses to several questions and misheard the first question, but did catch himself afterward. With respect to the interpersonal skills category, Candidate Gailliard received average scores. He appeared very nervous during the interview. Candidate Gailliard also did not effectively demonstrate a desire to have a career as a Parole Officer. Candidate Gailliard had an overall rating evaluation of 37 as compared to the selected candidate's score of 49.” (Exhibit 17, testimony of Valentgas)

11. On or about September 4, 2008, the Human Resources Division's ("HRD") Civil Service Unit sent a letter to the Appellant stating that the Respondent had appointed a candidate whose name appeared below the Appellant's and that HRD had determined that the respondent's stated reasons for bypassing the Appellant were acceptable. (testimony of Valentgas and Appellant)
12. At this hearing, Valentgas testified that the interview panel evaluated not only each candidate's response to the questions, but also how quickly and concisely they responded, and their demeanor and composure. He noted that this was important because Field Parole Officers are often required to respond quickly to highly stressful and dangerous situations. Valentgas, Bliss and Thomas all testified that the candidate on the PAR 10 list who bypassed the Appellant, Candidate Lisa Armstrong, had far better overall job experience than the Appellant, as evidenced on their job applications, as well as better academic credentials. The Appellant received an Associates Degree in Criminal Justice from Mt. Wachusett Community College in 1989. Armstrong received a B.S. in Sociology from Suffolk University in 1996. They also testified that Armstrong formulated appropriate responses and ideas quickly, easily and naturally during the interview. (Testimony of Valentgas, Bliss and Thomas Exhibits 18 and 19),
13. All three members of the interview panel testified that candidate Armstrong gave a far superior interview, and appeared much more prepared and composed for her interview. Conversely, the Appellant displayed unpreparedness, and no energy or enthusiasm during his interview. Bliss testified that the Appellant appeared noticeably unprepared for the interview, and he related a story of when he himself

was interviewing for a parole officer position many years ago and the steps which he took to prepare himself. Ironically, Bliss, like the Appellant, was also employed by the Department of Correction before coming to the Parole Board. Valentgas, Bliss and Thomas all testified that they harbored no bias against the Appellant nor did they harbor any bias in favor of any other candidates. The Appellant appeared nervous during his interview, with difficulty formulating and articulating answers. He appeared slow, deliberate and sometimes confused in his responses. (Exhibits 4-15, testimony of Valentgas, Bliss and Thomas)

14. Armstrong, during her interview, projected and conveyed strong confidence and enthusiasm. She presented herself as well prepared, knowledgeable, experienced and she provided prompt, articulate responses. (Exhibits 4-15, testimony of Valentgas, Bliss and Thomas)
15. The Appellant is a black male who was dressed in a suit and a tie. His attire and visual presentation is that of a professional. However, his verbal and formal interpersonal skills are mediocre at best. The Appellant's performance at this Commission hearing only further reinforced the interview panel's conclusions and evaluations. At this hearing, the Appellant was disorganized if not confused at times. He had difficulty formulating and articulating questions and appeared unprepared and unfamiliar with the purposes of cross-examination. At times, this hearing officer, out of frustration had to articulate the question the Appellant was attempting to propose. The Appellant thereupon, thanked this hearing officer for his assistance. The witnesses he was cross-examining also responded to his confusing questions by rephrasing his questions in understandable language.

However, the Appellant, while cross-examining, continually cut-off or interrupted a witness before an answer was completed. He seemed to have difficulty locating the right document he wished to reference in cross-examination. This hearing officer had to repeatedly admonish the Appellant for this practice. The Appellant loudly interrupted Valentgas (no objection), during direct examination, to protest the witness's reference to the August 12, 2008 bypass letter from the Board to HRD (Exhibit 17). The Appellant vehemently protested the letter claiming he had never seen the letter before. Finally after comparing the letter, (Exhibit 17) to his own copy of the letter, the Appellant finally admitted that it was the same letter and he had indeed a copy of it. The Appellant also offered a series of trite or speculative arguments while in the process of cross-examining a witness. He appeared flustered at times, and did not maintain the composure and attention due in a formal hearing. He acted at times during the hearing, as if he were in a train of thought experience and entitled to articulate a defense or retort as he thought of it. He appeared unprepared, slow and unable to focus throughout the hearing. A continuous and repetitive noise emanated from the Appellant's direction, during the hearing. This hearing officer believing that the noise was caused by the Appellant's continual flicking of a pen asked him to stop making the noise. It was discovered at that point, that the annoying sound was from the Appellant's chewing or sucking loudly on candy during the other witnesses' testimony. The Appellant was then admonished to cease the noise making. His cell phone also rang during the hearing. I find the Appellant's testimony lacks accuracy or reliability. He mostly asserted his personal belief or view base on his self-interest.

However, he presented no direct substantive evidence to support it. He lacks basic or general awareness, sound judgment and the ability to think critically and clearly in a serious situation. (Exhibits, testimony and demeanor, reasonable inferences).

16. The three witnesses who participated on the interview panel also appeared and testified at this hearing on behalf of the Parole Board. George Valentgas, Chief of Field Services Unit, Darwin Bliss, Deputy Chief of Field Services Unit and Rachel Thomas, of the Board's Personnel Department. All three witnesses were direct, responsive and straight-forward in their testimony. All were professional and neat in their demeanor and attire. I found no indication of bias, favoritism or any political influence, in their testimony here or their interview evaluations. Valentgas had been employed at the Board for 25 years at the time of his testimony. He is scrupulous in his word choice, adjectives especially, so as not to misconvey an impression. Bliss is a soft spoken, sound professional with a conscientious and responsible manner. He has had nearly 30 years employment with public safety agencies. Thomas is a professional, neat and attractive Black or Hispanic woman with an easy pleasant manner. Although she has been only recently employed at the Board's personnel office, she has vast experience in private sector human resources. She appears to know and understand people well. Thomas testified that Armstrong appeared at the interview professionally dressed and projected herself in a "calm, collected, poised and confident" manner. She also appeared "interested and enthusiastic" about the job. Armstrong was described as "direct and unhesitant" in her answers. Thomas summed up

Armstrong's interview performance as follows: "She had done her homework" and "She really wants to be a FPO". I find all three of the Board witnesses' testimony to have high credibility and reliability. (Exhibits, testimony and demeanor of witnesses)

17. The Appellant presented no reliable direct evidence of any personal interest, bias, political influence or other impermissible factor involved in the Respondent's decision to bypass the Appellant for appointment to the position of Parole Officer A/B. (Exhibits, testimony and demeanor of witnesses)

18. The three Parole Board witnesses did significantly and substantially corroborate each other's testimony and their observations during the panel's interview/evaluation process. Their respective observations and testimony relating to the relative performances of the competing candidates, (Armstrong and the Appellant) were similar in thrust and emphasis yet remarkably individual in description and phraseology. Their answers rang true, as accurate individual memories. They each scored the Appellant's interview answers and general performance as remarkably below that of the selected candidate, Armstrong. I credit their testimony and their candidate evaluations as honest and accurate. (Exhibits, testimony and demeanor of witnesses)

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." City of Cambridge v. Civil Service Commission, 43 Mass.

App. Ct. 300, 304 (1997); 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). 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 Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). General Laws chapter 32, § 2(b) requires that such 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 Service Commission, 31 Mass.App.Ct. 315 (1991); G.L. c. 31, § 43.

Appointing Authorities are charged with the responsibility of exercising sound discretion and good faith when choosing individuals from a certified list of eligible candidates on a civil service list. "On a further issue we may now usefully state our views. The appointing authority, in circumstances such as those before us, may not be required to appoint any person to a vacant post. He may select, in the exercise of a sound discretion, among persons eligible for promotion or may decline to make any appointment. See the line of cases cited in Goldblatt vs. Corporation Counsel of Boston, 360 Mass 660, 666, (1971): Commissioner of the Metropolitan Dist. Commn. v. Director of Civil Serv. 348 Mass. 184, 187-193 (1964). See also Corliss v. Civil Serv. Commrs. 242 Mass. 61, 65; (1922) Seskevich v. City Clerk of Worcester, 353 Mass. 354, 356 (1967); Starr v. Board of Health of Clinton, 356 Mass. 426, 430-431 (1969). Cf. Younie v.

Director of Div. of Unemployment Compensation, 306 Mass. 567, 571-572 (1940). A judicial judgment should "not be substituted for that of . . . [a] public officer" who acts in good faith in the performance of a duty. See M. Doyle & Co. Inc. v. Commissioner of Pub. Works of Boston, 328 Mass. 269, 271-272."

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 [C]ommission, there was reasonable justification for the action taken by the [A]ppointing [A]uthority in the circumstances found by the [C]ommission to have existed when the [A]ppointing [A]uthority made its decision."

Watertown v. Aria, 16 Mass.App.Ct. 331, 334 (1983). See also Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975). Nevertheless, personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied to public policy represent appropriate occasions for the Civil Service Commission to act. City of Cambridge, 43 Mass.App.Ct. at 304.

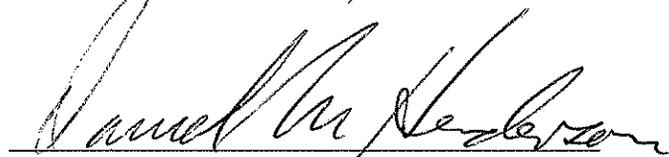
In this case, the Appellant presumably makes the argument that he was improperly bypassed by the Board, in favor of the appointment of another person who was lesser qualified on the basis of their relative ability, knowledge and skills. G.L. Chapter 31 § 1 defines "basic merit principles" in relevant part as follows: "Basic merit principles", shall mean (a) recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; (b) providing of equitable and adequate compensation for all employees; (c) providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees;..."

Given the overwhelming evidence presented, both in the form of the exhibits and stipulation presented, and the testimony of both the Appellant and the three individuals who made up the Respondent's interview panel, the Commission finds that the Respondent has met its burden.

In this case, the Commission finds that the testimony of the Respondent's witnesses was substantial, credible and reliable. Based on the evidence and the testimony of the Respondent's witnesses, it has demonstrated by a preponderance of the evidence that it had sound and sufficient reasons to bypass the Appellant for the position of Field Parole Officer. The selection process was fair and impartial and the candidate who was selected for hire over the Appellant had significantly better overall education, job experience and relevant job related skills, knowledge and abilities. She also performed significantly better in her interview which was designed to measure and to test those relevant factors. The interview process was uniform and consistent regarding the treatment of each candidate. The interview panel members were fair minded, professional and conscientious in carrying out their evaluation duties. The Commission finds that the Appellant's testimony to the contrary was not accurate or reliable, and that his overall performance at the February 4, 2009, hearing only reinforced the promotional hiring decision made by the Appointing Authority.

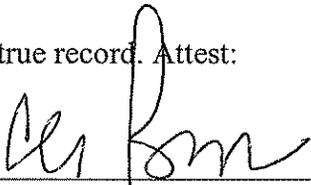
For all of the above stated reasons, the appeal under Docket No. G1-08-226 is hereby ***DISMISSED.***

Civil Service Commission,


Daniel M. Henderson,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein, and Taylor, Commissioners on September 24, 2009)

A true record. Attest:



Commissioner

A motion for reconsideration may be filed by either Party 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 M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

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:
Michael Gailliard
Timothy Dooling, Atty. Mass. Parole Board
John Marra, Atty. HRD