

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**STEVENSON LOUIS,**  
*Appellant*

v.

**DEPARTMENT OF  
CORRECTION,**  
*Respondent*

**Case No.:** G1-13-18

**DECISION**

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

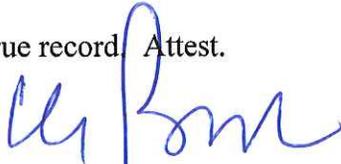
Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No written objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Department of Correction to bypass the Appellant for appointment is affirmed and the Appellant's appeal is *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on January 9, 2014.

A true record Attest.



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Christopher C. Bowman  
Chairman

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.

Notice to:

Stevenson Louis (Appellant)

Kerry A. Rice (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Civil Service Commission

Appeal of:

Stevenson Louis,  
Appellant

v.

Docket Nos. CS-13-182  
G1-13-18

Department of Correction,  
Appointing Authority

Appearance for Appellant:

Stevenson Louis

17 Summer Street  
Medford, MA 02155

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CIVIL SERVICE COMMISSION

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Appearance for Appointing Authority:

Kerry A. Rice  
Department of Correction  
P.O. Box 946  
Industries Drive  
Norfolk, MA 02056

Administrative Magistrate:

James P. Rooney, Esq.

**Summary of Decision**

Department of Correction's decision to bypass correction officer applicant affirmed based on a Department policy of bypassing candidates who have been arraigned on criminal charges in the time period relevant to the Department. The applicant had a history of dismissed criminal charges, including charges of assault and battery, charges for which he was arraigned, and restraining orders that had been issued to him.

**RECOMMENDED DECISION**

Stevenson Louis appeals, under the provisions of M.G.L. c. 31, § 2(b), a decision by the

Department of Correction to bypass him for appointment as a Correction Officer 1 based on his criminal history and the restraining orders issued to him. I heard the appeal on March 29, 2013 at the offices of the Division of Administrative Law Appeals (DALA). I recorded the hearing digitally.

The parties submitted a total of 17 documents into the record, nine from the Department and eight from Mr. Louis. James O’Gara, a personnel officer with the Department of Correction, testified for the Department; Mr. Louis testified for himself.

The parties did not submit briefs.

### **Findings of Fact**

Based on the testimony, the exhibits, a stipulation presented at the hearing, and reasonable inferences from them, I make the following findings of fact:

1. Stevenson Louis is a U.S. Army veteran. When he applied to be a corrections officer, he was 26 years old. (Louis testimony, Dept. Ex. 3, Stipulation.)
2. Mr. Louis took the civil service examination on March 24, 2012. His score of 78 reflected his veteran status. He was ranked 171 among those willing to accept employment with the Department of Correction. (Stipulation.) Like other eligible candidates, Mr. Louis had to fill out paperwork to allow the Department to run a background check, including any criminal history. (O’Gara Testimony; Dept. Exs. 3 and 4.)
3. The Department selected 146 candidates for appointment; 89 were ranked below Mr. Louis. (Stipulation.)
4. On August 10, 2012, the Division of Human Resources informed Mr. Louis that he would not be considered for appointment to the January 2013 Department of Correction academy

because his background investigation revealed an unsatisfactory criminal history, specifically, arrests for assault and battery on March 20, 2009, disorderly conduct on April 14, 2008, assault and battery with a dangerous weapon on March 24, 2008, assault and battery, intimidation, and threatening on April 15, 2004, as well as recent restraining orders issued to him under M.G.L. c. 209A. (Dept. Ex. 2.)

5. Mr. Louis was bypassed solely based on information the Department learned from the checks it ran on his background. He was not given an opportunity to explain the circumstances surrounding the items that appeared on his criminal history. Those whose background checks are deemed sufficient may be asked later in the process to explain incidents reflected in their criminal history. (O’Gara Testimony.)

6. Mr. Louis has never been convicted of a crime. A criminal conviction automatically disqualifies a candidate to become a correction officer under Department policy. (O’Gara Testimony; Dept. Ex. 5.)

7. All of the charges listed in Mr. Louis’s criminal history were either dismissed or not prosecuted. A dismissal of a criminal charge is considered by the Department. A dismissal does not, in its view, necessarily mean that the candidate did not commit the alleged criminal offense. It also does not want to hire candidates who have even been arraigned. One of its concerns is that correction officers not have criminal histories that might compromise their credibility if they ever had to testify in court. (O’Gara Testimony; Dept. Ex. 5.)

8. The Department is most concerned with an applicant’s criminal history during the five years prior to the application to become a Correction Officer. It will consider older information to determine whether an applicant exhibits a pattern of behavior. (O’Gara Testimony.)

9. The background check revealed the following criminal history information that the Department considered in bypassing Mr. Louis:

a. In 2004, he was charged with assault and battery, intimidating a witness, and threatening to commit a crime, for which he was arraigned on April 15, 2004. The charges were dismissed in 2005 and 2006, but not before a bench warrant issued when he failed to appear in court. (O’Gara testimony, Dept. Ex.5, p. 3.)

b. On March 24, 2008, he was arraigned on a charge of assault and battery with a dangerous weapon (a beer bottle). The charge was the subject of a nolle prosequi on December 9, 2008. (*Id.*)

c. On April 14, 2008, he was arraigned on a charge of disorderly conduct. The charge was dismissed the next day. (*Id.*)

d. On March 20, 2009, he was arraigned on a charge of assault and battery. The charge was ultimately dismissed on August 11, 2009.<sup>1</sup> (O’Gara testimony, Dept. Ex.5, pp. 2-3.)

10. The background check also revealed the following information about restraining orders that it considered in bypassing Mr. Louis:

a. In 2003, a plaintiff whose initials were ST obtained a restraining order that was in effect from September 8, 2003 to September 22, 2004. It ordered Mr. Louis to, among

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<sup>1</sup> The Department did not consider charges of malicious destruction of property and assault and battery, for which Mr. Louis was arraigned on April 4, 2012. The charges were the subject of a nolle prosequi on August 23, 2012 following a jury trial. As a matter of policy, the Department does not consider charges that result in a nolle prosequi after a jury trial. (O’Gara testimony, Dept. Ex.5, pp. 2-3.)

other things, refrain from abusing her, stay away from her residence, have no contact with her, stay at least 100 yards from her, have no contact with a certain named child, and to pick up his personal belongings from her possession only under the supervision of the local police department. (O’Gara testimony, Dept. Ex.5, p. 2.)

b. In 2009, a plaintiff whose initials were KF obtained a restraining order for one year, from March 20, 2009 to March 19, 2010. The restraining order ordered Mr. Louis to, among other things, refrain from abusing her, stay away from her residence and workplace, have no contact with her, and stay at least 100 yards from her. (O’Gara testimony, Dept. Ex.5, p. 1.)

c. In 2012, a plaintiff whose initials were VA obtained a restraining order for one week, from March 5, 2012 to March 13, 2012. It ordered Mr. Louis to, among other things, refrain from abusing her, stay away from her residence and workplace, have no contact with her, and stay at least 100 yards from her. (O’Gara testimony, Dept. Ex.5, p. 1.)

11. James O’Gara brought Mr. Louis’s criminal history and restraining order history to the attention of his supervisor and recommended that the Department reject Mr. Louis’s application to be a correction officer. He noted the restraining orders obtained by three different women, the assault and battery charges, and the multiple arraignments. His supervisor accepted his recommendation. (O’Gara testimony.)

12. Had Mr. Louis been given an opportunity to do so, he would have offered the following explanation of his history: The 2003 restraining order was taken out by his adoptive mother, who kicked him out after a party at her house, leaving him homeless. The 2004 assault

and battery arose out of a fight he had at high school with another student. That charge was dismissed when the student failed to appear. The bench warrant issued him in that case was a direct result of his homelessness, which left him unable to receive notice of his court date. He lived on the streets and later enlisted in the Army, where he served for eighteen months, from 2010 to 2011, before he was honorably discharged. (Louis Testimony; Louis Ex. 7.) Two of his friends from Melrose High School, who later became a Melrose Police officer and a member of the State Police, respectively, submitted statements vouching for his character. (Louis Exs. 7 and 8.)

The 2008 disorderly conduct charge arose after the police broke up a house party he was attending when he was 21. He acknowledges that he ran from the police and that he acted immaturely. (Louis Testimony.)

The 2008 assault and battery charge came about as the result of an incident at another party. A fight broke out and someone was hit in the head with a fire extinguisher. The victim told the police he had been struck by a black male between 5'10" and 6'. Mr. Louis, who had dropped his wallet during the fight, was arrested. The charge was not prosecuted because of insufficient evidence. Mr. Louis is 5'7". (Louis Testimony; Louis Ex. 1.)

In 2009, he was living with KF. He packed to leave; she did not want him to leave. They argued and the neighbors called the police. He took something that did not belong to him and she responded by telling the police he had pushed her down. He was arrested for assault and battery and a restraining order was issued against him. KF had the restraining order removed on April 7, 2009. (Louis Testimony; Louis Ex. 4 and 5.)

In 2012, he was arguing with VA. A glass door broke when it was slammed. This incident led to both the issuance of a restraining order and charges of malicious destruction of property and assault and battery. (Louis Testimony.) In a notarized affidavit, VA stated that she:

attest[s] to Mr. Louis' innocence in the matter of all charges brought against him. My lack of sobriety on March 4, 2012 was the sole reason for my providing a police statement and a restraining order that both contained false information . . . ; Mr. Louis did not cause any bodily harm or injury to me nor was I in fear for my safety at any time. I made an attempt to drop all charges within two weeks of filing and was successful in removing the restraining order.

(Louis Ex. 6.)

### **Discussion**

When an applicant for a civil service position challenges the decision of an appointing authority to bypass him for the position, the appointing authority must show a “reasonable justification” for the bypass. *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 682 N.E.2d 923, 925 (1997). In this context, justification means “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” 682 N.E.2d at 926, quoting *Selectmen of Wakefield v. Judge of First Dist. Court of Eastern Middlesex*, 262 Mass. 477, 482, 160 N.E. 427 (1928). Appointing authorities are given broad discretion in “the task of selecting public employees of skill and integrity” and the Civil Service Commission (or DALA) cannot “substitute its judgment about a valid exercise of discretion based on merit or policy considerations by the appointing authority.” *City of Cambridge*, 43 Mass. App. Ct. at 304-305, 682 N.E.2d at 926. In order to prevail in a bypass case, an applicant must demonstrate that the

reasons offered by the appointing authority were untrue, apply equally to the selected candidate and the bypassed candidate, are incapable of substantiation, or are a pretext for other, impermissible reasons. *Borelli v. MBTA*, 1 MCSR 6 (1988).

For purposes of civil service selection, a candidate's arrest history has been previously held to provide a reasonable basis for a bypass even when no conviction results. *Campbell v. Boston Fire Dept.*, 22 MCSR 489, 493 (2009). This is especially true when an appointing authority is evaluating candidates for a public safety position. *Id.* (applicant to be firefighter was legitimately bypassed when he had been arraigned on six separate criminal charges, all of which were dismissed) and *Thames v Boston Police Dept.*, 17 MCSR 125, 127 (2004) (police officer applicant bypassed because of multiple dismissed criminal charges).

The Department of Correction takes this approach, bypassing some candidates based on their criminal records, even if they were not convicted. My role, and the Civil Service Commission's role, is not to decide whether the Department's practice regarding criminal histories is proper or whether the Department should have hired Mr. Louis despite his criminal history. As the Appeals Court declared in *Town of Falmouth v. Civil Serv. Comm'n.*, 61 Mass. App. Ct. 796, 800, 814 N.E.2d 735, 738-739 (2004), "[t]he 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. . . ." (citations and internal quotation marks omitted).

Mr. Louis's criminal record that the Department found relevant shows that he has been arrested three times for assault and battery and once for disorderly conduct, and was arraigned on three of those charges. His record also shows three restraining orders taken out against him by

three different women in eight years. Mr. Louis offered explanations for each of these elements of his record, which, if true, make that record appear far less serious than at first blush it would appear. Nonetheless, the Department has a policy of rejecting candidates if their background check alone presents negative features, including arraignments, and that it does so because correction officers may have to appear in court and such a record may be used to impugn the officer's credibility during a court appearance. It is not unreasonable for the Department to believe that a criminal history that requires a lengthy explanation is a legitimate reason to disqualify a candidate. Moreover, Mr. Louis has not shown that the reasons offered by the Department were untrue, apply equally to any of the candidates selected, or were a pretext for other, impermissible reasons.<sup>2</sup>

I therefore conclude that the Department of Correction has demonstrated that it was justified in bypassing Stevenson Louis for the position of correction officer, based on his criminal history of arraignments and the restraining orders against him. I recommend that the Civil Service Commission affirm the Department of Correction's decision to bypass Mr. Louis for the position of correction officer.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*James P. Rooney*

James P. Rooney  
First Administrative Magistrate

Dated: **NOV 19 2013**

<sup>2</sup> I note that the Department did not assert that Mr. Louis's record would necessarily be a permanent bar to his being considered for appointment as a correction officer. Because the Department looks primarily at the last five years of a criminal history, and the last arrest it considered in its evaluation of Mr. Louis was in March 2009, he may, in the near future, have a better opportunity to be considered for a position as a correction officer.