

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

LOUIS DeBENEDICTIS,
Appellant

v.

D-17-252

BOSTON FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Louis DeBenedictis

Appearance for Respondent:

Jessica Dembro, Esq.
Barbara V.G. Parker, Esq.
Connie Wong, Esq.
One City Hall Square
Boston, Massachusetts 02201

Commissioner:

Cynthia A. Ittleman

DECISION

On December 14, 2017, the Appellant, Louis DeBenedictis (Appellant), pursuant to G.L. c. 31, § 42 (Procedural Appeal) and § 43 (Just Cause Appeal), filed an appeal with the Civil Service Commission (Commission) contesting the decision of the Boston Fire Department (BFD) to suspend him for thirty (30) days based on violations of Sections 18.4, 18.44(a), and 18.44(j) of the Rules and Regulations of the Fire Department of the City of Boston (BFD Rules) for allegedly failing to obey a supervisor; engaging in conduct unbecoming to a member, whether on or off duty, which tends to lower the service in the estimation of the public; and engaging in conduct prejudicial to good order.

A prehearing conference was held at the offices of the Commission on January 9, 2018. The full hearing was held at the same location on April 2, 2018.¹ The hearing was digitally recorded and both parties were provided with a CD of the proceeding.² Both parties submitted proposed decisions, the BFD on May 9, 2018 and the Appellant on May 11, 2018.

FINDINGS OF FACT

Twenty (20) exhibits were entered into evidence (BFD Exhibits 1-15 and APP Exhibits 1-5)

Based on these documents, the testimony of:

For the BFD:

- David Messina, Lieutenant, BFD
- Robert Kelly, Lieutenant, BFD
- Michael Ruggere, Deputy Chief of Division 1, Group 2, BFD
- Gerard Fontana, Chief of Operations for Field Services, BFD

For the Appellant:

- Louis DeBenedictis (Appellant)

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies and reasonable inferences drawn from the evidence; I make the following findings of fact:

1. At the time of the full hearing, the Appellant was a firefighter for the BFD and was employed in this position since August, 2014. (Stipulated Facts).
2. Lieutenant Kelly was the Appellant's direct supervisor during September, October and November, 2017 (Kelly, Tr. 165:22 and 131:15) at fire station Engine 8, Ladder 1 on Hanover Street in the North End in Boston, Engine 8, Ladder 1. (Kelly, Tr. 138:12)

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 Code Mass. Regs. §§ 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² The Commission subsequently had a transcript prepared which is the official record of the proceeding.

3. Engine 8, Ladder 1 is a high-visibility firehouse very close to the Freedom Trail. Firefighters there have multiple daily interactions with the public. (Kelly, Tr. 105:20-24).
4. Sometime in early fall 2017, Lieutenant Kelly witnessed a loud verbal altercation between the Appellant and another, more senior firefighter, regarding the Appellant's assignment to drive. The Appellant told Lieutenant Kelly that he would not drive that day despite being assigned to drive. (Kelly, Tr. 125:1) Lieutenant Kelly instructed some of the crew involved, including the Appellant, of the chain of command at the station (Kelly, Tr. 125:1-11) and did not discipline the Appellant for the interaction with other firefighters.
5. While driving a firetruck through the narrow alleys of the North End, during approximately September-October 2017, (Kelly, Tr. 132:8-24), the Appellant became upset at Lieutenant Kelly for giving him driving instructions on the narrow street. (Kelly, Tr. 133-134). The Appellant did not feel that Lieutenant Kelly should be instructing him because the Appellant has a commercial driver's license (Kelly, Tr. 133:24), had been driving those streets for months before Lieutenant Kelly came to the firehouse, (Appellant, Tr. 349:15) and because he believes that Kelly's instructions were "micromanagement". (Appellant, Tr. 354; 346:14). Lieutenant Kelly's response to the Appellant, in a private conversation later that day, was that the Appellant's statements were inappropriate. (Kelly, Tr. 135:7). No discipline arose from this interaction.
6. On October 12, 2017, (Kelly, Tr. 119:5 and Ex. 9, p.2), Lt. Kelly saw the Appellant instructing the driver of a vehicle to not park in a parking spot near the firehouse. Lieutenant Kelly told the Appellant he would be given an oral warning [Kelly, Tr.120-121]. Lieutenant Kelley ordered the Appellant "not to enforce parking regulations and... not to talk to people in the general public like that" (Kelly Tr. 121:2) and told the Appellant that he would be

disciplined if he did not follow those orders. (Kelly, Tr. 121:8). Lieutenant Kelly documented this incident on October 28, 2017. (Kelly, Tr. 121:12-13).

7. On October 28, 2017, Lieutenant Kelly heard a disturbance outside of the firehouse and went outside to investigate (Kelly, Tr. 139:13). He saw that the Appellant and a member of the public were engaged in a verbal altercation across the street from the fire station. (Kelly, Tr. 100:12). He noted that the Appellant and the member of the public were “hostile toward each other” (Kelly, Tr. 104:5) and were disputing parking on Hanover Street. (Kelly, Tr. 103:20). Their voices were raised and it took a while for Lieutenant Kelly to separate them (Kelly, Tr. 103- 12-24 and 104). The private citizen told Lieutenant Kelly that the Appellant instructed a customer coming into her shop to not park in a space reserved for the fire station. (Kelly, Tr. 103-104).
8. Lieutenant Kelly discussed this incident later that day in his office in the firehouse with the Appellant and others.³ The Appellant had union representation during this meeting. (Kelly, Tr. 109:6-9). Lieutenant Kelly told the Appellant that he was recommending an oral warning as discipline. (Kelly, Tr. 109). At the time of writing up the “5-A,” or record of discipline to be further reviewed, Lieutenant Kelly did not know of any prior discipline imposed on the Appellant. (Kelly, Tr. 117:16).⁴
9. Department procedure for Rules violations are to interview the members involved, and make recommendations considering the facts, the member’s past performance, equal treatment and past practices, and if in-house discipline has been imposed. The first officer making the

³ There were four firefighters in the office, Lieutenant Kelly, the Appellant, Firefighter Considine and the shop steward Firefighter Ross. (Kelly, Tr. 107-108). Included in the record is the memorandum that Firefighter Considine submitted to the personnel department. (Ex. Resp. 6).

⁴ Lieutenant Kelly examined the Appellant’s file at the fire station and found no history of discipline. (Kelly, Tr. 116:20).

- recommendation forwards Form 5A to the Personnel Officer through the chain of command. (Ex. Resp. 15). All “5-A” reports are ultimately be reviewed by Deputy Fire Chief Ruggere (Ruggere, Tr. 227:21) after being reviewed by other BFD senior members. (Ex. Resp. 15).
10. Upon review, Deputy Fire Chief Ruggere did not approve Lieutenant Kelly’s recommendation (Ruggere, Tr. 112:19) because he knew of discipline imposed on the Appellant in the past. (Ruggerre, Tr. 223-225 and 277:3; Ex. Resp. 3, 4).
 11. The usual course of action after a “disproval” is to interview those involved. (Ruggere, Tr. 210:15). The third incident for similar conduct would warrant a hearing and a suspension longer than 5 days. (Ruggere, Tr. 212:14-16).
 12. Deputy Fire Chief Ruggere interviewed Lieutenant Kelly on October 31, 2017 and requested that Kelly write a fuller, more complete “5-A” report (Ruggerre, Tr. 232:4).
 13. Deputy Fire Chief Ruggere interviewed the Appellant on November 5, 2017 (Tr. 249:23; Ex. Resp. 12). The Appellant was concerned that the interview during this investigation lasted only approximately ten (10) minutes (Appellant, Tr. 251- 252).
 14. Deputy Fire Chief Ruggere wrote his own “5-A” form, in effect canceling Lieutenant Kelly’s recommendation. (Ruggere Tr. 243:1; Ex. Resp. 15). No verbal warning was given for the Oct. 28, 2017 incident because the Appellant was already engaged in progressive discipline and it was the third time he had engaged in this type of conduct. (Ruggere. Tr. 243:3; Ex. Resp. 13).
 15. On November 16, 2017, the Department notified the Appellant that there would be a local appointing authority hearing on December 1, 2017 regarding these charges. (Ex. Resp. 11)
 16. A BFD hearing was held on Dec. 1, 2017. The Appellant testified. (Ex. App. 5). The BFD found that the facts supported findings of violations of the following: failing to obey a

supervisor; engaging in conduct unbecoming to a member, whether on or off duty, which tends to lower the service in the estimation of the public; and engaging in conduct prejudicial to good order.

17. The Appellant was notified of the 30-day suspension on December 8, 2017. (Stip. Facts).

18. The Appellant received notice of the hearing within the regulatory timeline. (Appellant Tr. 54: 1-20).

Prior Discipline

19. On September 21, 2015, the Appellant engaged in argumentative conduct during an emergency that resulted in a two-week suspension (Ex. Resp. 3).

20. The BFD imposed discipline on the Appellant in June, 2016 that consisted of a two-tour suspension. (Stipulated Facts). The reason for this discipline was that the Appellant had argued with a colleague about medical care for a patient in front of the patient and in a public place, after which he disobeyed a direct order by a superior. (Ruggerre Tr. 222-224)

21. The BFD also imposed discipline on the Appellant that consisted of a two-week suspension in November of 2017. (Stipulated Facts).

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The Commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300 (1997), rev. den., 426 Mass. 1102 (1997). "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary

and capricious actions.” G.L. c. 31, § 1. It is a basic tenet of “merit principles” which govern civil service law that discipline must be remedial, not punitive, designed to “correct inadequate performance.” *Id.* Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Commission to act. Cambridge at 304.

A person aggrieved by a decision of an appointing authority may appeal to the Commission under G.L. c.31, s. 43. Under section 43, the Commission conducts a de novo review “for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n., 447 Mass. 814, 823 (2006). The role of the 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 at 304, See also City of Leominster v. Stratton, 58 Mass.App. Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003); Police Dep’t. of Boston v. Collins, 48 Mass. App.Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n., 38 Mass. App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, *rev. den.*, 390 Mass. 1102 (1983). The Appointing Authority’s burden of proof by a preponderance of the evidence is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there”. Tucker v. Pearlstein, 334 Mass. 33, 35-36 (2006) and cases cited.

An action is justified if it is “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.” Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971); Cambridge at 304, Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482

(1928). The Commission determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” School Comm. v. Civil Service Comm’n, 43 Mass.App.Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. City of Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 189, 190-191 (2010), citing Falmouth at 824-826 (2006). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly, citing Cambridge at 305, and cases cited.

Analysis

This appeal was filed under both G.L. c. 31, § 43, contesting whether there was just cause to suspend the Appellant and G.L. c. 31, § 42, contesting whether the BFD properly followed procedural requirements.

The BFD has shown by a preponderance of the evidence that the Appellant engaged in substantial misconduct which adversely affected the public interest. The Appellant inappropriately engaged with the public in front of the fire station on two occasions in October 2017.

On October 12, 2017, the Appellant was given clear instructions to not enforce parking regulations. Nonetheless, about two weeks later, he and a member of the public were arguing about parking for all those present in the vicinity to hear and see. The Appellant’s conduct in

this regard is unacceptable. Specifically, his conduct was hostile, raising his voice and directly disobeying orders from his supervisor not to be involved in enforcement of parking regulations. Notwithstanding having been warned not to engage with the public in that manner, he testified at hearing that he was never told to not engage with the public. (Appellant, Tr. 340:13). I find this testimony to be less credible than that of Lieutenant Kelly. There is just cause for the thirty-day suspension imposed for his conduct. The Appellant engaged in misconduct on October 28, 2017 even after being issued a warning about not confronting the public about parking on October 12, 2017. A prior disciplinary incident in June 2016 stemmed from the Appellant's argumentative behavior with a colleague in a public space during an emergency and not following orders. There was just cause, given the Appellant's previous discipline and actions on October 28, 2017, for a 30-day suspension.

Procedurally, the Appellant was provided with written notice of the contemplated suspension in a timely manner, he was given a hearing by the BFD; he was notified of the decision to impose a 30-day suspension in a timely manner and he was informed of his ability to appeal the BFD's decision to the Commission.

Having determined that the Appellant engaged in misconduct, the Commission must determine wither the level of discipline was warranted. Falmouth at 823-825.

“Unless the commission’s findings of fact differ significantly from those reported... or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty. The commission is not free to modify the penalty... on the basis of essentially similar fact finding without adequate explanation.”

My findings do not substantially diverge from the facts found by the BFD during the December 2017 hearing. The Appellant had received a two-tour suspension in June 2016 and a two-week suspension in November 2017. The Appellant's interactions with the public, once in

June 2016 and twice in October 2017, constituted a disturbance and could cause a breach in public confidence in the BFD. The BFD was justified in its charges and subsequent findings of violations of failing to obey a supervisor, engaging in conduct unbecoming to a member, whether on or off duty, which tends to lower the service in the estimation of the public and engaging in conduct prejudicial to good order.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. D-17-252 is hereby ***denied.***

Civil Service Commission

/s/ Cynthia Ittleman
Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 25, 2021.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:
Louis DeBenedictis (Appellant)
Jessica Dembro, Esq. (for Respondent)
Barbara Parker, Esq. (for Respondent)
Connie Wong, Esq. (for Respondent)