Massachusetts
Civil Service Commission
Calendar Year-To-Date Statistics
As of Month-Ending June 30, 2010

Highlights

- The Commission received 17 new discipline, bypass and layoff appeals in June 2010 and closed out 17.
- Year-to-date, the Commission has received 99 such appeals and closed out 124.
- The total case inventory as of June 30, 2010 is 195, the same as last month and 166 less than one year ago.
- 97 open discipline, bypass or layoff appeals have been pending before the Commission for more than 12 months.

Total Appeals Pending (2006 – 2010)

June 30, 2006	June 30, 2007	June 30, 2008	June 30, 2009	June 30, 2010
846	**623**	**312**	**361**	**195**

Massachusetts Civil Service Commission
Open Discipline, Layoff and Bypass Cases: Month-End Report

	June 09	July 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09	Jan 10	Feb 10	March 10	April 10	May 10	**June 10**
OPEN DISCIPLINE AND LAYOFF CASES	**251**	246	249	245	229	136	129	122	120	119	119	122	**121**
OPEN BYPASS CASES	**110**	108	111	115	103	105	91	79	75	74	71	73	**74**
TOTAL OPEN DISCIPLINE, LAYOFF & BYPASS CASES	**361**	354	360	360	332	241	220	201	195	193	190	195	**195**

7/1/10

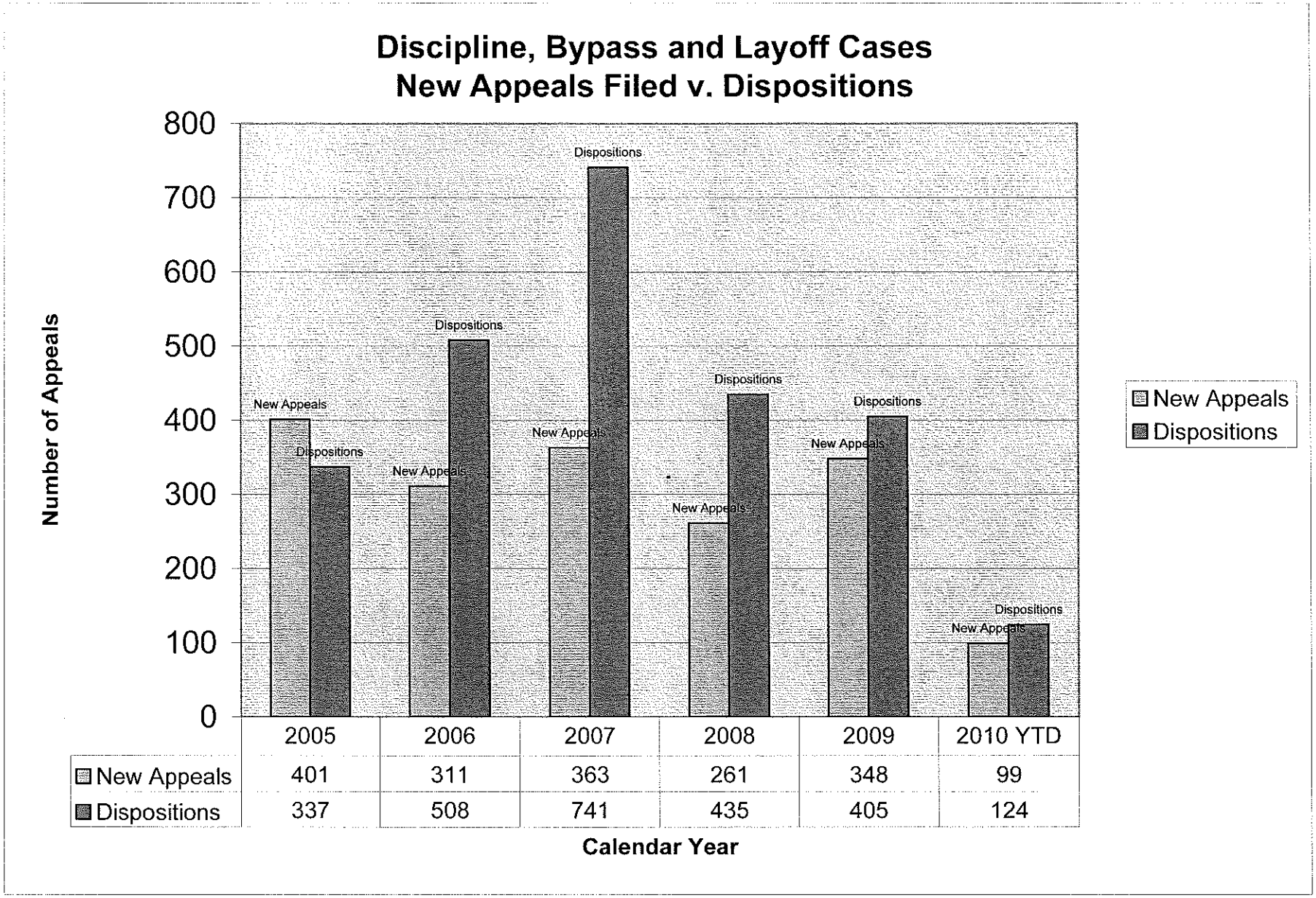
Massachusetts Civil Service Commission

Open Discipline, Layoff and Bypass Cases: Month-End Aging Report

YEAR APPEAL FILED	**June 09**	July *09*	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09	Jan 10	Feb 10	March 10	April 10	May 10	**June 10**
Pre-2004	**9**	9	9	9	9	9	9	9	9	9	9	9	**9***
2004	**4**	4	4	3	3	3	3	3	2	2	2	2	**2**
2005	**18**	16	15	15	15	13	13	10	10	10	10	9	**9**
2006	**13**	9	8	8	8	7	6	6	6	6	6	5	**4**
2007	**44**	38	35	32	27	27	25	21	19	17	17	15	**14**
2008	**81**	75	71	65	53	49	42	40	38	37	30	29	**27**
2009	**193**	204	219	229	218	133	122	101	92	82	70	64	**60**
2010	**--**	--	--	--	--	--	--	11	19	30	46	62	**70**
Total	**361**	354	360	360	332	241	220	201	195	193	190	195	**195**

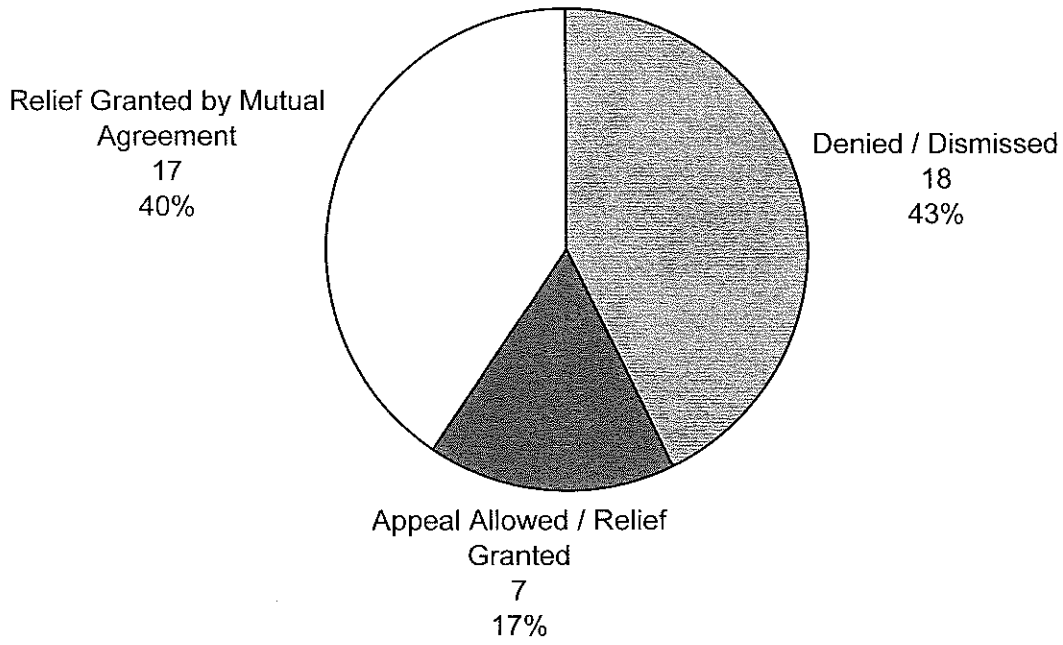
*All of the pre-2004 cases have been held in abeyance by mutual request of the parties due to a pending federal district court case related to these appeals.

7/1/10

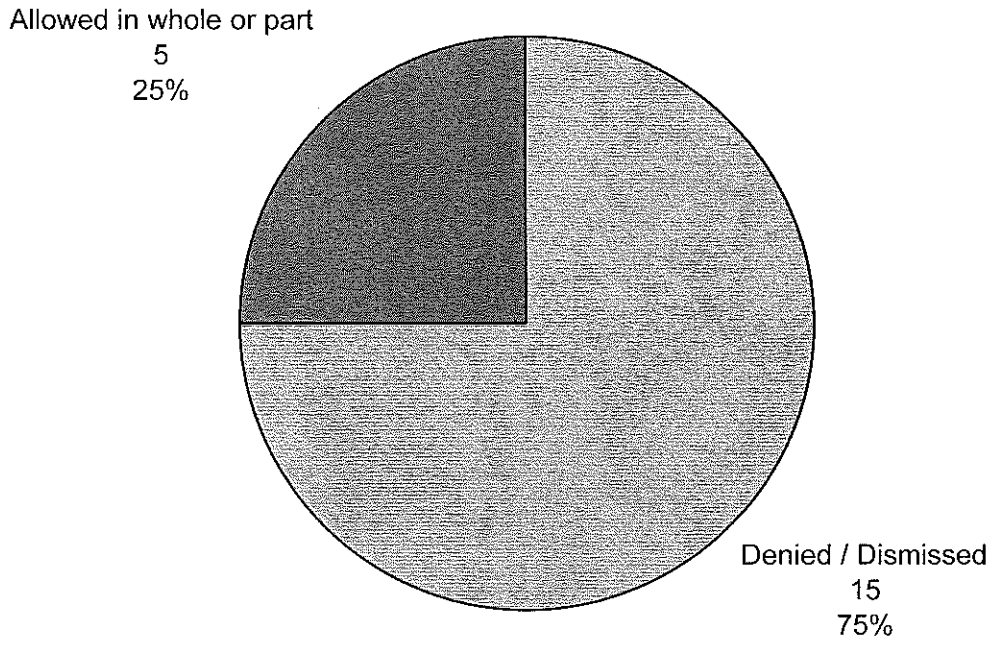


Month-Ending June 30, 2010

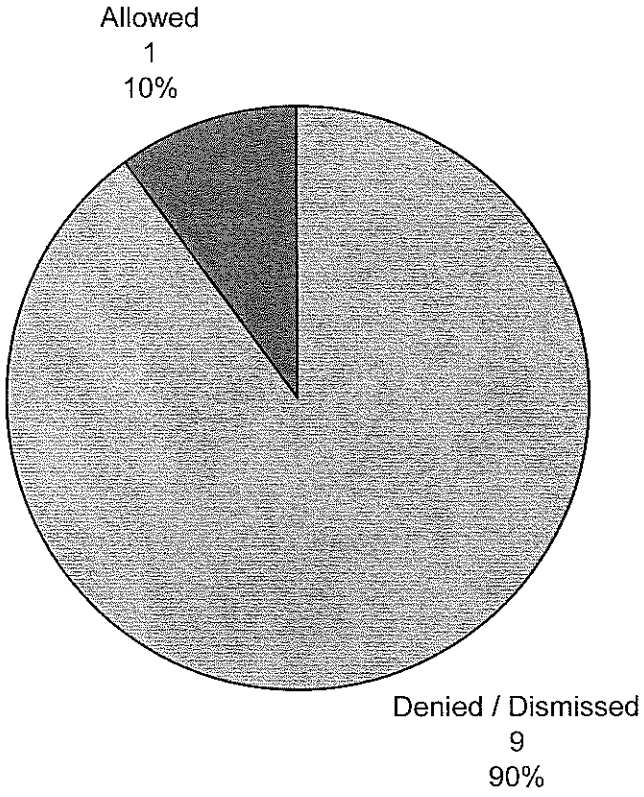
2010 YTD Bypass and Related Appeals Seeking Relief: 42 Decisions



2010 YTD Disciplinary and Layoff Appeals: 20 Substantive Decisions
Allowed v. Denied



2010 YTD Classification Appeals: 10 Substantive Decisions
Allowed v. Denied



COURT DECISIONS ISSUED SINCE JANUARY 1, 2007 REGARDING APPEAL OF COMMISSION DECISIONS
NUMBER OF COMMISSION DECISIONS AFFIRMED BY COURT – 73 (75%); OVERTURNED / REMANDED / OTHER – 25 (25%)

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
1/5/07	Suffolk Superior (Judge Locke)	8/17/05	Appellant (Bypass Appeal Allowed)	Gaudette v. Town of Oxford	G-02-298	Henderson	**Remanded** to Commission for de novo hearing (Appellant failed to appear for remand hearing; appeal was dismissed for lack of prosecution.)	▪ Commission conclusion that there was bias not supported by findings; ▪ Commission correct in ruling that negative reasons should have been given at time of bypass in this particular case. Court concerned, however, that Commission then proceeded to determine if negative reasons were supported by evidence.
2/8/07	Suffolk Superior (Judge Walker)	1/28/05	Appointing Authority (Termination Upheld)	Ly v. Lowell Police Department	D-01-1317	Henderson	**Affirmed**	▪ Appellant's "Carney Rights" were not violated; issue of whether information was obtained by police department as part of "criminal" investigation or "internal investigation.
2/21/07	Suffolk Superior (Judge Walker)	2/16/06	Appointing Authority (Termination Upheld)	Loughlin v. City of Fitchburg	D-03-10; D-04-274	Henderson	**Affirmed**	▪ Employee was terminated for poor performance, insubordination; rudeness and removing confidential information from files of fellow employees; ▪ On appeal to Superior Court, Appellant argued that Commission acted unlawfully by considering illegally obtained evidence (tape-recorded phone conversation); ▪ Court ruled that tape was only minimally mentioned in Commission decision and not heavily relied on in making decision; ▪ Court referenced credibility determinations made by CSC.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
3/7/07	Suffolk Superior (Judge Fahey)	4/10/04	Appellant (Bypass Appeal Allowed)	Nelson Nahim v. Boston Police Department	G-02-400	Guerin	**Affirmed**	▪ Commission had allowed bypass appeal. Although 209A issued, it was limited in scope and the circumstances surrounding its issuance were subsequently determined to be suspect.
3/14/07	Suffolk Superior (Judge Sanders)	11/24/06	Appointing Authority (Termination Upheld)	Pau G. Chafe v. City of Chelsea	D-05-89	Guerin	**Affirmed**	▪ Commission dismissed disciplinary appeal which was filed four years after termination, far beyond the 10-day filing requirement.
3/13/07	Suffolk Superior (Judge Cratsley)	10/3/05	Appointing Authority (Promotional Bypass Appeal Dismissed)	Palmer et al v. Department of Correction	G2-03-438	Guerin	**Affirmed**	▪ Court affirmed Commission's decision that DOC promotions were conducted in accordance with applicable provisions of c. 31.
4/25/08	Appeals Court	*Superior Court Judgment Affirmed*						
3/26/07	Middlesex Superior (Judge Fischman)	3/11/05	Appellant (30-day suspension overturned)	Metzler v. Lowell Public Schools	D-02-860	Taylor	**Affirmed**	▪ Commission overturned 30-day suspension issued to custodian for charges related to sexual harassment; ▪ No credible evidence to support charges; case relied heavily on credibility assessments of various witnesses; ▪ Court upheld Commission's decision without much comment.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
4/23/07	Suffolk Superior (Judge Walker)	10/20/06	Appointing Authority (Layoffs upheld)	Porio, Shea & Trachtenberg v. DOR and HRD	D-02-715; D-02-763; D-02-408	Bowman	**Affirmed**	▪ Plight of the Provisionals ▪ In regard to layoffs, individuals promoted to provisional positions are considered to have left their permanent position; ▪ Court decision centered on whether the SJC decision in Andrews was retroactive to this case (Timberlane exceptions). Court ruled that CSC correctly determined that Andrews case was effective retroactively.
5/7/07	Suffolk Superior (Judge Cratsley)	6/29/06	Appellant and HRD	Weinburgh v. Haverhill and HRD		Bowman	**Reversed**	▪ Court ruled that Commission (and HRD) were wrong to determine that an individual "shall have been employed" in the next lower position in order to sit for promotional exam, ruling that a retroactive seniority date, previously ordered by the Commission, was sufficient to allow the Appellant to sit for the exam.
9/4/08	*Appeals Court*	***Affirmed the Judgment of the Superior Court***						
12/7/08	*SJC*	***Denied request for Further Appellate Review***						
5/22/07	Suffolk Superior (Judge MacDonald)	4/25/06	Appointing Authority (Termination Upheld)	Dapkas v. Department of Correcction	D-02-793	Marquis	**Affirmed**	▪ Court affirmed CSC Decision in which it determined DOC had reasonable justification for terminating an employee with a long disciplinary history for falsifying forms regarding an alleged on-duty injury not disturbing the Commission's credibility assessments, which were central to the decision.
4/14/09	*Appeals Court*	*Superior Court Judgment Affirmed*						

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
6/7/07	Appeals Court	11/5/04	Appointing Authority (Termination Upheld)	Fierimonte v. Lowell Public Schools	D-03-407	Henderson	**Affirmed**	▪ Appeals Court ruled that the overwhelming evidence of the Appellant's poor work performance was more than ample to support the Commission's decision.
6/21/07	Appeals Court	10/9/03	Appointing Authority (Termination Upheld)	Pearson v. Town of Whitman	D-01-1564	Tierney	**Affirmed**	▪ Appeals Court ruled that Commission was correct in determining that there was substantial evidence justifying termination
6/25/07	Plymouth Superior Court (Judge Powers)	4/20/06	Appointing Authority / HRD	Gillis v. City of Boston and HRD	G-02-587	Taylor	**Affirmed**	▪ Commission's decision was not arbitrary or capricious when it determined that Appellant was not eligible for preference authorized by G.L. c.31, s. 26.
7/6/07	Plymouth Superior Court (Judge McLaughlin)	8/16/05	Appointing Authority (5-day suspension)	Lapworth v. Town of Carver	D-02-417	Guerin	**Affirmed**	▪ Commission possessed substantial evidence to support its conclusions regarding the Appellant's misconduct.
7/12/07	Suffolk Superior Court (Judge Troy)	2/16/06	Appellant (termination overturned)	Mullen and McGuiness v. DOC	D-05-53 & D-05-54	Henderson	**Vacated / Remanded**	▪ Commission decision not supported by substantial evidence; was arbitrary and capricious and exceeded Commission's authority.
8/22/07	Bristol Superior Court (Judge Moses)	3/23/06	Appointing Authority (termination upheld)	Markland v. City of Fall River	D-02-882	Guerin	**Affirmed**	▪ Findings of Commission supported by substantial evidence and were not arbitrary or capricious.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
9/20/07	Suffolk Superior Court (Judge Hogan)	1/10/06	Appointing Authority (upheld decision to bypass)	Anthony Gaul v. City of Quincy	G-02-673	Taylor	**Affirmed**	▪ Appellant was bypassed for reasons related to driving record; 209A; incomplete application; and being a smoker. ▪ Commission's decision was "legally sound and was not arbitrary, capricious or an abuse of discretion".
10/30/07	Bristol Superior Court (Judge Kane)	7/7/05	Appointing Authority (upheld denial of request for reclassification)	Nancy Fournier v. Department of Revenue	C-02-558	DALA	**Affirmed**	▪ Substantial evidence for the magistrate to find that Fournier did not perform the duties of the position being sought more than 50% of the time.
10/30/07	Bristol Superior Court (Judge Kane)	7/7/05	Appointing Authority (upheld denial of request for reclassification)	Theresa Hyde v. Department of Revenue	C-02-334	DALA	**Remanded**	▪ Magistrate erred by relying solely on job duties established by DOR and HRD after the Appellant's request for reclassification was required. ▪ Case must be re-heard and decided based upon job duties in place at time of appeal.
10/30/07	Plymouth Superior Court (Judge Chin)	6/15/06	Appointing Authority (upheld one-day suspension)	Raymond Orr v. Town of Carver	D-02-2	Bowman	**Affirmed**	▪ Commission did not abuse its discretion when it found that Orr's posting of an offensive cartoon was not activity protected under G.L. c. 150e; ▪ Commission did not abuse its discretion by assigning the case to another Commissioner to write decision after a former Commissioner left the Commission; ▪ Decision supported by the evidence and not arbitrary or capricious.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
11/26/07	Suffolk Superior Court (Judge Cratsley)	1/12/07	Appointing Authority and HRD (ruled there was no bypass)	James Verderico v. Boston Police Department	G-02-213	Bowman	**Affirmed**	▪ On remand, the Commission was directed to determine if the Appellant would still have been "not reachable" on civil service list based on end of consent decree in City; ▪ Commission concurred with HRD that Appellant would not have been reachable and hence, there was no bypass; ▪ Court concurred.
12/18/07	Suffolk Superior Court (Judge Brassard)	10/16/06 & 3/15/07	Appointing Authority and HRD (Granted C.S. Permanence to provisional employees and upheld transfer)	BPPA v. City of Boston and HRD	G-06-113; G-07-33; I-07-34	Taylor / Guerin / Bowman / Ittleman	**Affirmed**	▪ On this consolidated appeal, the Court upheld all three Commission decisions related to the merger of the Boston Municipal Police Department with the Boston Police Department; ▪ Commission correctly determined that union in this case did not have standing; ▪ Commission has "significant discretion" in determining what response and to what extent, if at all an investigation under Section 2A is appropriate; ▪ The exercise of authority under Chapter 310 is "largely committed, if not entirely committed, to the informed discretion of the Civil Service Commission".

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
1/18/2008	Bristol Superior (Judge Gary Nickerson)	5/18/06	Appointing Authority (Decision not to grant reclassification affirmed)	Daniel Burns v. Department of Revenue	C-03-183	DALA	**Affirmed**	▪ Serving as a "back-up supervisor" did not meet the requirement of the higher classification which specified that the incumbent supervises 1-5 employees; ▪ Magistrate's decision was not arbitrary and was based on substantial evidence.
1/31/08	Appeals Court	1/3/05	Appointing Authority (Decision not to grant reclassification affirmed)	Anne Hartnett v. Department of Revenue	C-03-184	DALA	**Affirmed**	▪ "Assisting" superiors with certain higher level duties does not mean that the employee had the "authority" to perform the duty.
2/4/08	Hampden Superior Court (Judge Carhart)	2/16/06	Appellant (Overturning Termination)	Jason Brouillard v. Holyoke Police Department	D-03-130	Henderson	(Affirmed by Superior Court) **Vacated by Appeals Court (see below)**	▪ Involves issue of probationary employee becoming tenured at end of probationary period absent written notice by the Appointing Authority; ▪ Appeals court vacated Commission judgment ruling that Appellant was a probationary employee and Commission had no jurisdiction to hear appeal.
8/6/09	Appeals Court	*Superior Court decision overturned: Appeals Court vacated Commission decision ruling that Appellant was a probationary employee and the Commission had no jurisdiction to hear appeal.*						
2/6/08	Suffolk Superior Court (Judge Cratsley)	9/8/06	Appointing Authority (Decision not to grant reclassification affirmed	Arvanitis & Jacobs v. DOC	C-02-645 & C-02-646	Taylor	**Affirmed**	▪ Commission re-asserted that it does not have jurisdiction over challenges to a *reallocation* of positions resulting from collecting bargaining agreement
3/6/09	Appeals Court / SJC	*Superior Court Judgment Affirmed: "The judge properly deferred to the commission's reasonable interpretation of its statutory authority." SJC denied request for further appellate review on 9/10/09.*						

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
3/3/08	Suffolk Superior (Judge Hopkins)	7/27/06	HRD	Shea v. HRD	G1-03-219	Bowman	**Affirmed**	▪ G.L. c. 31, § 40 does not require HRD to place an employee's name on every employment list for which the employee is remotely qualified. Rather, they are only required to place the employee's name on the list for the permanent civil service position from which the employee was laid off.
3/12/08	Suffolk Superior Court (Judge Cosgrove)	2/9/07	Appointing Authority (upheld termination)	McCoy v. Town of Wayland	D-05-171	Guerin	**Affirmed**	▪ Court found that: "while progressive discipline is certainly a hallowed precept of labor law, the court is not persuaded that it is necessarily an indispensable prerequisite for dismissal; particularly, where, as here, the violations are serious." ▪ The Appellant's undisputed lying and falsification of documents, considered in light of his length of service and prior record as a police officer, sufficed to support this discharge.
3/17/08	Hampden Superior Court (Judge Carhart)	5/17/07	Appellant (Decision to bypass not justified)	Randolph & Shewchuk v. City of Springfield	G-02-215 & G-02-801	Guerin	**Affirmed**	▪ Commission's findings that promotions were marked by improper political and community pressure were not arbitrary or capricious.
3/20/08	Suffolk Superior Court (Judge Brassard)	10/27/06	Appointing Authority (Suspensions upheld)	Ameral & Kiely v. Somerville Police Department	D-03-292 & D-03-289	Bowman	**Affirmed**	▪ No accompanying memorandum from court; ▪ Commission decision concluded that the Appellants were untruthful thus justifying their suspensions.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
3/31/08	Suffolk Superior (Judge Macdonald)	5/4/06	Appellant (in part) Suspension reduced from 13 months to 8 months	Reilly v. Department of State Police	D-05-382	Marquis Bowman	**Affirmed**	▪ The Commission had the Authority to review the Colonel's disciplinary action in general; (G.L. c. 22C, § 13) ▪ Modification justified given reasons articulated by Commission in its decision.
4/29/08	Suffolk Superior (Judge Cratsley)	11/30/06	Appointing Authority (upholding suspension and demotion)	Robert Downer v. Town of Burlington	D-03-188	Bowman	**Affirmed**	▪ Case involved alleged racial remarks made by Appellant; ▪ Court ruled that facts as found by the hearing officer as well as the credibility determinations made by him provide substantial evidence supporting the Commission's decision.
6/3/08	Middlesex Superior Court (Judge Zobel)	5/26/05	Appointing Authority (upholding termination)	Gregory Ratta v. Town of Watertown	D-02-85	Guerin	**Affirmed**	▪ Court ruled that: "Absent a showing of motivation akin to selective prosecution – of which the record is bare – Plaintiff cannot, by pointing to other, retained employees, avoid the Town's well-grounded decision to terminate him.
10/29/09	Appeals Court	*Superior Court Decision Affirmed by Appeals Court*						

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
6/27/08	Essex Superior Court (Judge Murtagh)	3/23/07	Appointing Authority (upholding termination)	Paul Murphy v. Salem Police Department	D-03-405	Bowman	**Affirmed**	▪ Court ruled that decision (to uphold termination) was based on "a rational explanation of the evidence presented in three days of hearings and found in the Commissioner's findings of fact."
6/30/08	Suffolk Superior Court (Judge Lauriat)	11/24/06	Appellant (psychological bypass not justified)	Kerri Cawley v. Boston Police Department	G1-06-95	Bowman	**Affirmed**	▪ The Commission "has not gone so far as to conclude that [the Appellant] is psychologically fit to become a police officer. Instead, the Commission has concluded that [the Appellant] 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."
6/30/08	Suffolk Superior Court (Judge Quinlan)	4/20/07	Appointing Authority (upholding 1-day suspension)	Ronald Fries v. Town of Norwell	D-04-529	DALA	**Affirmed**	▪ The Commission's decision "was based upon substantial evidence. There was a directive. The plaintiff was aware of the directive. The plaintiff violated that directive without justification or cause…The Commission's decision was not [arbitrary]."
7/2/08	Suffolk Superior Court (Judge Holtz)	4/5/07	Appointing Authority (upholding promotional bypass for sergeant)	Mark Zielinski v. City of Everett	G2-04-133	Guerin	**Affirmed**	▪ No evidence of political considerations in bypass decision; ▪ Decision by Commission not arbitrary or capricious.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
7/16/08	Bristol Superior Court (Judge Moses)	3/6/07	Appointing Authority (upholding original bypass)	Frederick T. Preece, Jr. v. Department of Correction	G1-05-5	DALA	**Affirmed**	▪ G.L. c. 276, s. 100C did not preclude DOC from considering Appellant's CORI as, in light of Globe Newspaper Co. V. Pokaski, the Appellant's records were not sealed. In Globe, First Circuit concluded that the first paragraph of this statute, is unconstitutional. Thus, the Appellant's records were not automatically sealed after the Appellant was found not guilty of murder. ▪ In re: admissibility of CORI report: Under G.L. c. 30A, agencies are not required to follow the rules of evidence observed by the courts. Evidence may be admitted and given probative effect if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. ▪ While Appellant was acquitted of the charges in question, the Commonwealth was held to a higher standard of proving its case beyond a reasonable doubt as compared with the standard of preponderance of the evidence that typically applies to a civil case.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
7/17/08	Suffolk Superior Court (Judge Connolly)	6/15/06	Appointing Authority (upheld layoff for lack of funds)	John Oleski v. Department of Mental Health	D-5121	Bowman	**Affirmed**	• The Appointing Authority exercised its judgment prior to any crisis existing regarding funding; • Its action were based on sound judgment at the time; • To require the Appointing Authority to be a Monday morning quarterback makes no sense at all.
1/6/10: Oleski Superior Court Judgment Affirmed by Appeals Court for "substantially the reasons detailed ... in the Superior Court Decision								
7/24/08	Suffolk Superior Court (Judge Cratsley)	5/18/07	Appointing Authority (Dismissal of appeal based on jurisdiction issues)	Rodrigues and Monteiro v. City of Brockton	G1-04-4; G1-04-5; G1-05-212; G1-05-213	Guerin	**Affirmed**	• Commission correctly ruled that there was no actual harm to Appellants whose names were not included on civil service list because their scores were too low, as minority candidates, to be included on list.
6/29/10	*Affirmed by Appeals Court on 6/29/10 for same reasons cited by Superior Court)*							
7/25/08	Suffolk Superior Court (Judge Quinlan)	7/19/07	Appellant (overturned loss of 20 days of accrued vacation)	Rosemarie Hicks v. Department of State Police	D-02-795	DALA	**Affirmed**	• Commission does have jurisdiction to hear appeal where the discipline imposed was the loss of accrued vacation time; • Since Magistrate reached different conclusion than State Police, Falmouth case does not apply in regard to not being able to modify discipline imposed.
7/25/08	Middlesex Superior Court (Judge Kottmyer)	8/2/07	Appointing Authority (upheld termination)	Scott Nadile v. City of Somerville	D1-07-69	Bowman	**Affirmed**	• Commission correct in determining no disparate treatment (treating verbal threats and physical acts of violence differently is neither arbitrary unreasonab

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
8/13/08	Suffolk Superior Court (Judge Giles)	9/7/06	Appointing Authority (upheld 1-day suspension)	William Dwan v. Boston Police Department	D-02-869	Bowman	**Affirmed**	▪ Commission decision supported by substantial evidence; no error of law; was not arbitrary or capricious.
8/26/08	Suffolk Superior Court (Judge Hines)	5/4/07	Appointing Authority (upholding termination)	Gregory Tanger v. Town of Weymouth	D-05-203	Guerin	**Affirmed**	▪ Commission decision is "amply supported by substantial evidence in the administrative record"; ▪ Decision was based on a "rational explanation of the evidence".
9/11/08	Suffolk Superior Court (Judge Lauriat)	8/14/06	Appointing Authority (upholding layoffs)	Raymond et al v. Town of Athol	D-04-95-98	Goldblatt	**Reversed**	▪ Commission decision failed to consider the effect of the Fire Chief's improper motivations on the budget process; ▪ Fire Chief deprived the Board of Selectmen, Finance Committee and Town Meeting of the ability to make a good faith, non arbitrary determination that its revenues would be insufficient to pay the employees' salaries.
10/29/08	Suffolk Superior Court (Judge Lauriat)	6/5/06	Appointing Authority (upholding termination)	Chin v. City of Boston	D-02-902	Guerin	**Affirmed**	▪ There was substantial evidence that the Appellant was guilty of misconduct ; ▪ Further, Appellant can not broaden the scope of her argument beyond what was presented to the Commission.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
10/27/08	Suffolk Superior Court (Judge Henry)	3/28/07	Appointing Authority (reinstatement rights issue)	27 Former Boston Municipal Police Officers v. City of Boston	D1-07-05 – D1-07-31	Bowman	**Affirmed**	▪ The Commission did not commit any error of law in interpreting and applying G.L. c. 31, s. 40.
11/20/08	Suffolk Superior Court (Judge Connolly)	8/27/07	Appointing Authority (termination upheld)	Robert Grinham v. Town of Easton	D-05-293	DALA	**Affirmed**	▪ The evidence is "literally overwhelming" in support of the findings and decision of the Civil Service Commission…to dismiss Ginham from his position as a police sergeant.
12/8/08	Suffolk Superior Court (Judge Hines)	8/27/07	Appointing Authority (no jurisdiction to hear appeal related to Boston Cadet Program)	Sean Finn v. Boston Police Department	G1-05-441	Marquis	**Affirmed**	▪ The appointment of (Boston Police) cadets as new police officers, like the appointment of new cadets, is not subject to the civil service law or rules, and a cadet may not seek Commission review regarding the denial or withdrawal of his appointment.
12/11/08	Suffolk Superior Court (Judge Henry)	11/14/06	Appointing Authority (provisional promotion upheld)	Joan Rainville v. Mass Rehab Commission	G2-06-11	Marquis	**Affirmed**	▪ The Appointing Authority acted in accordance with c. 31 when it made a provisional promotion.
12/29/08	Suffolk Superior Court (Judge Cratsley)	6/14/07	Appointing Authority (5-day suspension upheld)	Aaaron Zachary v. Department of Correction	D-07-52	Marquis	**Affirmed**	▪ Since the Appellant admitted the incident in question took place, there was no question of material fact and no full hearing before Commission was necessary, even where the Appellant argued that he could show at full hearing that he was following procedure.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
12/31/08	Suffolk Superior Court	6/28/07	Appellant (termination reversed)	Lamont Davis v. City of Newton	D-06-256	Bowman	**Affirmed**	▪ There has been no showing that the Commission's decision was arbitrary and capricious or based on an error of law.
1/16/09	Essex Superior Court (Judge Feeley)	7/26/07	Appointing Authority (bypass appeal dismissed due to similar arbitration appeal)	Dennis Carmody & James McDonald v. City of Lynn	G2-07-65 & G2-07-66	Marquis	**Remanded**	▪ Although both the arbitration and the Commission appeals concern the promotional appointment of the City, each raise and address different issues. Hence, the Court overturned the Commission's decision to dismiss the Appellant's appeal and reinstated the Appellant's appeal for the Commission to conduct a bypass hearing.
1/16/09	Suffolk Superior Court (Judge Lauriat)	11/1/07	Appointing Authority (bypass appeal dismissed – no bypass)	Scott Petersen v. Department of Correction	G2-06-258	Guerin	**Affirmed**	▪ DOC used time in grade as opposed civil service seniority date when choosing from among tied candidates on civil service list; ▪ CSC dismissed appeal as a tie is not a bypass ▪ Court affirmed CSC decision and ruled that is was not unreasonable for DOC to use time in grade as opposed to civil service seniority date to break tie.
2/19/09	Suffolk Superior Court (Judge Rufo)	5/4/07	Appointing Authority (termination upheld)	Dorian Lapworth v. Town of Carver	D-03-341	Guerin	**Affirmed**	▪ A reasonable mind could look at the evidence and come to the same conclusion as the Commission;

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
2/19/09	Appeals Court	1/10/06	Appointing Authority (upholding bypass decision)	Anthony Gaul v. City of Quincy	G-02-673	Taylor	**Affirmed**	▪ The evidence that Gaul smoked, which was supported in the record, alone justified the City's decision (to bypass the applicant)
3/12/09	Middlesex Superior Court (Judge Haggerty)	1/16/01	1 Termination Upheld; 2 suspensions modified; Appellants Appealed to Court	Jose Rivera, John Leary and David Pender v. Lowell Police Department	D-6265, 6274, 6266	Tierney	**Affirmed**	▪ The Appellants' status as police officers should be taken into consideration when assessing the discipline imposed, even if the conduct occurred off-duty; ▪ Dishonesty and failure to disclose material facts during the course of an official investigation is a sufficient basis for suspending an officer; ▪ Although there may have been past instances where other officers received more lenient sanctions for similar misconduct, the Commission is not charged with a duty to fine-tune employees' suspensions to ensure perfect uniformity. ▪ The City Manager did not need to recuse himself from the disciplinary hearing when he was accused of having predetermined conclusions; ▪ The fact that the plaintiffs were denied legal or union representation during their interviews with Internal Affairs…does not mean that the Commission's decision was in violation of constitutional provisions for failure to reinstate the officers. The Appellants were afforded notice, a hearing, an opportunity to respond and a de novo review before the Commission, in full satisfaction of their due process rights.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
3/9/09	Suffolk Superior Court (Judge Hines)	10/11/07	Appointing Authority (10-day suspension upheld)	Tyrone Smith v. Boston Police Department	D-02-192	Guerin	**Affirmed**	▪ The Commission's decision with regard to the acts of disrespect is supported by substantial evidence; ▪ The Commission properly found that the Appellant instigated a verbal and physical confrontation;
4/15/09	Suffolk Superior Court (Judge Henry)	3/13/09	HRD (upheld decision to band police promotional socres)	Pratt et al v. HRD		Bowman (for the majority)	**Other**	▪ Court enjoined HRD from issuing eligibility lists for promotions of police officers in score bands rather than in the manner in which such score[s] have been reported up to the time of this change; ▪ Banding is a "significant alteration in the promotion process which has been established by statute and by rules of HRD"
4/21/09	Suffolk Superior court (Judge MacDonald)	9/27/07	Appointing Authority (majority upheld 1-year suspension)	Roy Frederick v. Boston Police Department	D-06-235	Bowman (for the majority)	**Affirmed**	▪ Decision based on substantial evidence and there was no error of law.
5/27/09	Plymouth Superior Court (Judge Rufo)	2/14/08	Appointing Authority (upholding 90-day suspension)	Cully Rossi v. Duxbury Police Department	D-05-189	Guerin	**Affirmed**	▪ Haven chosen a summary decision, the Appellant can not now challenge the procedure used by the Commission or the evidence relied on in making their decision; ▪ The Commission's decision was not based on an error of law.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
6/19/09	Suffolk Superior Court (Kenton-Walker)	8/14/08	Appointing Authority (upholding 1-year suspension	Joseph Schiavone v. City of Medford	D-05-178	Heard by DALA; decision affirmed by 4 members of Commission for different reasons	**Remanded**	• Since DALA magistrate had not based her decision on prior discipline, it was an error of law for the Commission to then use that prior discipline as a basis for affirming the Appointing Authority's decision.
7/21/09	Suffolk Superior Court (Cratsley)	8/12/08	Appointing Authority (upholding original bypass decision)	Timothy MacMillan v. Town of Plymouth	G2-05-245	Bowman (for majority)	**Affirmed**	• Commission's decision to affirm the Appointing Authority's decision to bypass was based on substantial evidence.
7/24/09	Essex Superior Court (Lu)	8/12/08	Appellant (overturning Appointing Authority's decision to bypass)	Sean Bell v. Beverly Department	G1-07-200	Taylor	**Vacated**	• Commission erred by substituting its judgment for that of the Appointing Authority.
6/26/09	Suffolk Superior Court (McIntyre)	9/5/08	Appointing Authority (upholding promotional bypass)	Lance Budka v. Department of Correction	G2-07-41	Taylor	**Affirmed**	• The decision of the Commission was not based upon an error of law and was supported by substantial evidence.
6/29/09	Plymouth Superior Court (Creedon)	7/3/08	Appointing Authority (upholding original bypass)	David Langill v. Town of Hingham	G1-06-283	Guerin	**Affirmed**	• Despite the Appellant's strong academic and professional record, the Commission's decision upholding the bypass was proper. The Town followed the proper procedures and provided reasonable justification for the bypass.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
8/6/09	Suffolk Superior Court (Judge Ball)	9/27/07	Appointing Authority (not required to make provisional employee permanent)	Lawrence Hester v. City of Lawrence	C-05-266	DALA	**Affirmed**	• Provisional employee not entitled to permanency solely because there has not been a civil service examination for the position in question for many years.
8/19/09	SJC (Justice Ireland)	4/2/09	Appointing Authority (no bypass occurred; Appellant's appeal was dismissed)	Gary Smyth v. City of Quincy	G2-08-295	Bowman	**Decision Stands;** *SJC denied Appellant's request to have case remanded to Commission.*	• SJC accepted reasons of HRD and denied Appellant's request to have case remanded to Commission. Case involved question of whether a bypass actually occurred regarding a Fire Chief vacancy in the City of Quincy.
8/21/09	Suffolk Superior Court (Judge Muse)	7/10/08	Appellant	Justiniano Plaza v. Boston Police Department	G1-07-101	Stein, Henderson and Taylor	**Vacated / Nullified**	• Court accepted reasons of Boston Police Department and vacated / nullified Commission's decision overturning the Department's decision to bypass the Appellant
8/28/09	Suffolk Superior Court (Judge Kaplan)	7/19/07	Appointing Authority (appeal dismissed as untimely)	Kevin McKenna v. Boston Housing Authority	D-05-416	Guerin	**Affirmed**	• Court concurred that appeal was not timely filed.
8/28/09	Worcester Superior Court (Judge Curran)	8/7/08	Appellant (bypass appeal allowed)	Jeremy LaFlamme v. Town of Shrewsbury	G1-07-249	Henderson	**Reversed**	• The Commission "utterly ignored the legal standard of actual physical residence and instead, engaged in a result-oriented decision." • The Commission's decision, in attempting to gloss over both the facts and the law to reach a different conclusion, was erroneous as a matter of law."

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
9/17/09	Plymouth Superior Court (Judge Locke)	11/29/07	Appointing Authority (upholding termination)	Joel Weinrebe v. Department of Correction	D1-06-347	Bowman	**Affirmed**	▪ "Read as a whole, the finding of the hearing officer, and the conclusion that they support a decision to terminate employment, is based on substantial evidence and does not involve any legal error."
9/18/09	Middlesex Superior Court (Judge Curran)	8/21/08	Appellant (overturning bypass)	Matthew Edson v. Town of Reading	G2-05-195	Henderson	**Vacated**	▪ There is no evidence in the record , acceptable to a reasonable person, that adequately supports the Commission's findings that the interview process was impermissibly subjective. ▪ The Commission cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations.
9/18/09	Middlesex Superior Court (Judge Curran)	8/7/08	Appointing Authority (ruling that a tie is not a bypass)	Matthew Edson v. Town of Reading	G2-07-257	Bowman (for majority)	**Affirmed**	▪ It is reasonable for the Commission to interpret the statutory language "any qualified person other than the qualified person whose name appears highest" as meaning a candidate lower on the list, not one with the same score.
9/29/09	Suffolk Superior Court (Judge Ball)	3/27/08	Appointing Authority (upholding termination)	Jovan Lacet v. Boston Police Department	D-05-4	Guerin	**Affirmed**	▪ The Appellant's immunized testimony can be used against him in a proceeding before the Civil Service Commission, an "administrative tribunal".

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
10/23/09	Suffolk Superior Court (Judge Chiles)	7/31/08	Appellant (Overturning decision of BPD to bypass)	Juan Rodrigues v. Boston Police Department	G1-07-121	Taylor	**Vacated**	▪ 'The Commission's validation of Rodrigues' *excuses* does not change the *facts*: he was disciplined six times by two different entities and then lied about his disciplinary history on his application. In sum, there was reasonable justification for the action taken by the BPD here; in rejecting the appointing authority's reasons out of hand, the Commission overstepped its authority."
10/29/09	Suffolk Superior Court (Judge Connors)	6/26/08	Appointing Authority (Decision to deny Appellant's reclassification appeal affirmed)	John B. Shields v. Department of Revenue	C-06-303	Guerin	**Affirmed**	▪ "Notwithstanding… testimony about the inconsistencies in the DOR's classification system, the Commission's hearing officer found that, in this case, Shields had been properly classified as a Tax Examiner VI…there was substantial evidence to support that conclusion, and nothing in the record indicates that the hearing officer's decision was based upon an error of law.
11/12/09	Middlesex Superior Court (Judge Chernoff)	12/11/08	HRD (Appellants appeals deemed untimely; request for investigation denied)	Stephen P. O'Neill v. City of Lowell and HRD	G2-08-97	Stein	**Affirmed**	▪ Appellant failed to file fair test appeal with Commission within statutorily required 17 days. ▪ Although it did not impact the outcome of this appeal, Court did clarify that the time period for filing appeal with HRD does not begin until applicants RECEIVES HIS TEST SCORE from HRD.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
11/18/09	Suffolk Superior Court (Judge McIntrye)	6/12/08	Appointing Authority (upholding termination)	McGuiness and Mullen v. Department of Correction	D-05-53 & D-05-54	DALA	**Affirmed**	▪ A Commission split votes dismisses the Appellant's appeal; ▪ There was substantial evidence to support the DALA judge's factual findings as well as her recommended decision.
11/18/09	Middlesex Superior Court (Judge Kern)	12/4/08	HRD (upholding decision not to credit time as MIT police officer toward 25-year 2-point credit)	DeFrancesco, James v. Human Resources Division	G1-08-54	Bowman	**Affirmed**	▪ Time spent as MIT police officer should not count toward 25 years of services required for 2-point training and experience credit on promotional exam.
12/17/09	Suffolk Superior Court (Judge Hogan)	11/13/08	Appointing Authority (upholding termination)	Michael Rizzo v. Town of Lexington	D1-07-736	Bowman	**Affirmed**	▪ Commission decision was supported by substantial evidence and warranted by the facts.
12/22/09	Middlesex Superior Court (Judge Budd)	1/8/09	Appellant (allowing bypass appeal in part)	Douglas Cronin v. Town of Arlington	G2-07-269 & G2-07-270	Bowman	**Vacated**	▪ Although town failed to prove 2 of 3 reasons proffered regarding bypass, they were justified based on third reason, which they did prove.
1/4/10	Suffolk Superior Court (Judge Hines)	10/30/08	Appellant (allowing bypass appeal)	David Suppa v. Boston Police Department	G1-07-346	Stein	**Reversed**	▪ The Commission exceeded its authority and was not in accordance with the law when it found that the Department should not have bypassed Suppa based upon evidence that Suppa was arrested and charged with assault and battery with a deadly weapon, a felony; assault to maim, a felony; assault and battery, a misdemeanor and admission to felonious acts.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
12/30/09	Suffolk Superior Court (Judge Roach)	9/25/08	Appellant (overturning bypass decision)	Shawn Roberts v. Boston Police Department	G1-06-321	Stein	**Affirmed**	▪ Stripped of the inappropriate foundations [as cited by the Commission], BPD expert opinions failed to establish reasonable justification for the bypass which was based on the results of the Appellant's psychological evaluation.
1/13/10	Suffolk Superior Court (Judge Lauriat)	9/26/09	HRD	Joseph et al v. HRD	E-08-228	Bowman	**Affirmed**	▪ Appeal was properly dismissed as it was untimely; ▪ Even if appeal was timely, Commission properly exercised its discretion to not grant relief.
2/5/10	Suffolk Superior Court (Judge MacLeod-Mancuso)	11/20/08	Appellant (overturning bypass decision)	Leslie Anderson v. Department of Correction	G1-08-106	Stein	**Reversed**	▪ It is permissible for DOC to review a CORI and make a determination based on the record as to whether the applicant should be denied. The Department need not investigate the underlying circumstances of individual offenses in deciding whether the applicant is suitable. To require otherwise would place on the Department the unreasonable burden of examining every single criminal charge on an applicant's record by ordering docket entries, accessing police reports, and even ordering transcripts of proceedings. The time and cost expended in such an exercise would be prohibitive.
2/12/10	Suffolk Superior Court (Judge Connolly)	5/22/08	Appellant (overturning bypass decision)	Albert Riva v. Boston Police Department	G1-07-283	Bowman	**Reversed**	▪ The Civil Service commission decision permits a prospective employee to lie or make false or untrue statements to his prospective employer and then on appeal to the Civil Service Commission to prove that his original false and untrue statements that he made to his prospective employer were in fact themselves lie or untrue statements, and then as a result therof, the BPD would be ordered not to bypass him.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
3/16/10	Bristol Superior Court (Judge Moses)	9/4/08	Appointing Authority (upholding 18-month suspension)	David DeOliveira v. City of Taunton	D-04-200	Bowman	**Affirmed**	▪ The Commission had substantial evidence to support its conclusion that the Appellant engaged in an off-duty physical altercation and that the Appointing Authority had reasonable justification to impose penalties on him for his violation of the rules and regulations of the Taunton Police Department
3/29/10	Hampden Superior Court (Judge Kinder)	7/3/08	Appointing Authority (upholding 3-day suspension)	Edward Eckert v. City of Holyoke	D-07-181	Guerin	**Affirmed**	▪ The Commission's decision was supported by substantial evidence, was not based on an error of law and was not arbitrary and capricious.
4/14/10	Suffolk Superior Court (Judge Quinlan0	4/9/09	Appointing Authority (denied Appellant's Section 42 appeal)	Barry Thornton v. Town of Andover	D-08-135 D-08-195	Bowman	**Overturned**	▪ The Court construes the phrase "five days or less" in s. 41 to mean five calendar days, i.e. "the space of time that elapses between two successive midnights". The suspension of the plaintiff began at 08:00 hours on June 22, 2008 and lasted until 08:00 hours on July 7, 2008. June 22 and 29 and July 6 were Sundays, June 28 and July 5 were Saturdays and July 4 was a legal holiday. Workdays consisted of two calendar days. On days off, the plaintiff was prohibited from working any details which would otherwise have been available. In calculation the days on which the plaintiff was suspended, the court excludes Saturday, Sundays and legal holidays as required under s. 41. Using this formulation, the plaintiff was suspended without a hearing for ten days in violation of s. 41.
4/29/10	Suffolk Superior Court (Judge MacDonald)	2/4/10	Appellant (psychological bypass appeal allowed)	Daniel Fitzgibbon v. Boston Police Department	G1-07-224	Henderson	**Commission Decision Stayed**	▪ The [BPD] is likely to succeed on appeal because … the Commission's decision invalidating the Department's conclusion that the Appellant was psychologically unfit was, in essence a substitution of the Commission's own judgment for that of the Department.

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
5/12/10	Suffolk Superior Court (Judge Hines)	4/9/09	Appellant	Daniel Moriarty v. Boston Police Department	G1-05-442	Guerin	**Reversed**	▪ The Commission's decision cannot be sustained because the Department's retraction of its employment offer was reasonably justified. ▪ Two qualified psychiatrists evaluated the Appellant and concluded that he was psychologically until for the position of Boston Police Officer.; ▪ The Appellant's work history, however stellar, cannot displace the results of the psychological testing and clinical interviews of Dr. Scott and Dr. Reade. The Commission erred in concluding otherwise.
5/27/10	Middlesex Superior Court (Judge Curran)	10/9/08	Appellant	Michael Barry v. Town of Lexington	G2-05-231	Henderson	**Reversed**	▪ Once again, the Commission has engaged in revisionist and creative fact-finding. Although the Town articulated four valid reasons for bypassing the Appellant, the Commission gave the Town no deference and substituted its own judgment for that of the Town's.
6/16/10	Suffolk Superior Court (Judge Brassard)	5/7/09	Appellant	Kelley Coutts v. Boston Police Department	G1-07-277	Henderson	**Affirmed**	▪ After hearing and for reasons set forth on the record …[Commission decision affirmed]

7/1/10; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.