

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

**JOSEPH ABASCIANO,**

*Appellant*

v.

**BOSTON POLICE DEPARTMENT,**

*Respondent*

Docket Number:

D1-23-033

Appearance for Appellant:

Mark P. Gagliardi, Esq.

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Appearance for Respondent:

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Commissioners:

Paul M. Stein

**SUMMARY OF DECISION ON MOTION FOR RECONSIDERATION**

The Commission denied the request of a former Boston police officer for the Commission to grant relief beyond what was already awarded in a [decision issued on December 30, 2024](#).

**DECISION ON MOTION FOR RECONSIDERATION**

On March 23, 2023, the Appellant, Joseph Abasciano, appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 43, contesting his discharge as a police officer with the Boston Police Department (BPD). By decision dated December 19, 2024 (the Decision), the Commission allowed the Appellant's appeal and vacated his termination without further

compensation or other benefits. On December 30, 2024, the Appellant filed a Motion for Reconsideration, asserting that the Commission erred by (1) denying him compensation for 111F benefits he allegedly would have earned but for his termination; (2) overlooking evidence that the BPD had acted in bad faith in denying his request for enhanced attorneys' fees; and (3) enabling the BPD to use the Commission's decision to estop the Appellant from claiming damages for "economic loss" in his pending civil action in the U.S. District Court. The BPD opposed the motion.

Pursuant to 801 C.M.R. 1.01(7)(l), a motion for reconsideration of the Decision "must identify a clerical or mechanical error in the decision or a significant factor that the [Commission] or the Presiding Officer may have overlooked in deciding the case." Upon review of the grounds for the Appellant's Motion for Reconsideration, I find no clerical or mechanical error or any factor that was overlooked, save for one scrivener's error in Finding No. 70 identified below, which reinforces, rather than detracts from, the Decision's conclusion as to the appropriate remedy.

First, as to the remedy, I carefully considered whether the decision to allow the Appellant's appeal should include an order for reinstatement or further compensation. In particular, I did not overlook the fact that the Appellant's termination cut off his receipt of the 100% tax free 111F benefits he was receiving at the time of his termination. In concluding that such relief was not warranted under the unique circumstances of this appeal, I considered that: a) the Appellant had not performed the duties of a police officer since July 2020; b) he remained totally disabled from performing those duties at the time of his termination on March 13, 2023; c) he had been on injured leave and receiving 111F benefits, which equal payment of base salary substantially tax-free; and d) as he is now retired, he would not be eligible to receive such benefits after March 13, 2023. See G.L. c. 41, § 111F, ¶1.<sup>1</sup>

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<sup>1</sup> Section 111F of G.L. c. 41 provides, in relevant part, that such benefits cannot be paid "for any period after such police officer or fire fighter has been retired or pensioned in accordance with law".

Moreover, the Appellant has been receiving accidental disability retirement benefits pursuant to G.L. c. 32, § 7, effective March 13, 2023,<sup>2</sup> which provide for 72% of his base salary, also substantially tax free, and are at least equivalent to or better than the base salary he would earn as a full-duty BPD police officer. I concluded that, under these circumstances, the Appellant has already been made whole for purposes of his civil service rights and that to order additional compensation or benefits for the tax-free differential between 111F benefits and disability retirement benefits for the period after March 13, 2023, pursuant to G.L. c. 31, § 43, ¶ 2 (as amended effective November 20, 2024), would not be warranted. See generally, Boston Police Department v. Jones, 98 Mass. App. Ct. 762, 765–66, (2020). (citing *White v. Boston*, 57 Mass. App. Ct. 356, 360, (2003) (the phrase "loss of compensation and other rights" imposes no obligation on a government employer "to pay more than the employee's salary or base pay as fixed by statute or ordinance." )

Second, I considered the Appellant’s claim for enhanced attorneys’ fees under the amendment to Section 2(e) of Chapter 31, enacted in Section 112 of St. 2024, Ch. 238, which now authorizes an award of enhanced attorneys’ fees when the appointing authority has acted in bad faith.<sup>3</sup> I did consider the evidence that the Appellant’s Motion for Reconsideration identifies as suggestive of the

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See G.L. c. 41, §111F, ¶1. Should the Appellant have any basis to believe otherwise, his remedy to seek continuation of such 111F benefits would lie in another forum. See Boutin v. City of Westfield, Docket No. 2079CV0114 (Hampden Sup. Ct. 2020) (granting preliminary injunction to restore 111F benefits). See generally Jordan v. City of Lynn, 25 MCSR 100 (2012) (addressing distinction between civil service reinstatement rights of recovered disability retiree and reinstatement rights under retirement law over which Commission does not have jurisdiction).

<sup>2</sup> There is a scrivener’s error on page 47 of the Decision. The retroactive effective date of the Appellant’s 72% tax free disability retirement benefit is the close of business on **March 13, 2023**, not March 13, 2024 as the Decision incorrectly stated on page 47. See Finding No. 70 in the Decision.

<sup>3</sup> The statute as amended states that the Commission may “award reasonable attorneys’ fees and costs up to \$25,000 to an appellant who prevails in an appeal brought under this chapter, upon an express finding of either bad faith on the part of the appointing authority or an egregious or willfully repeated violation of this chapter, unless special circumstances would render such an award in full unjust.”

BPD acting in bad faith, including the Commission's note that the BPD's action "exudes a tinge of being result-driven" and Superintendent Dottin's candid testimony that she wasn't much of an "expert" on the freedom of speech issue and "there's still some grey area between . . . free speech . . . [and] being a police officer and, you know, dealing with the citizens that we serve." Clearly, mistakes were made, but that does not equate to bad faith or an egregious or willfully repeated violation of the civil service law. To be sure, the Appellant's tweets were largely misinformed and some of the language he used was "particularly harsh" and could fairly be thought to be offensive to some. The line between a police officer's protected speech and conduct unbecoming, however, is not an easy one to draw, as the strenuously contested evidence in this appeal and the Commission's lengthy Decision illustrates. The BPD's first command staff review of the Appellant's conduct got it right and the second review got it wrong, but I stand by my conclusion that both actions were taken in the belief that they were justified by the BPD's rules and regulations and made with a view to the perceived interests of the police department and the citizens of Boston – and not made in bad faith.

Third, I have considered the Appellant's contention that the Commission's decision may work to estop him from claiming damages in another pending federal court civil action for violation of his First Amendment rights. I find this argument to be without merit. The Commission's Decision made explicit that its purview was limited to redressing the civil service rights of the Appellant and was not intended to adjudicate any other non-civil service rights that the Appellant may or may not properly assert in another forum. Should the Appellant have such other rights that were infringed by the BPD's actions that caused him compensable damages, it is beyond the purview of the Commission's jurisdiction to adjudicate those claims.

Accordingly, for the reasons stated above, the Appellant's Motion for Reconsideration is denied.  
Civil Service Commission.

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By 4-0 vote of the Civil Service Commission (Bowman, Chair; Markey, McConney and Stein, Commissioners) [Dooley, Commissioner, not participating] on March 6, 2025.

Notice to:

Mark P. Gagliardi, Esq. (for Appellant)

Joseph A. McClellan, Esq. (for Respondent)