

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

JOHN ADAMS,
Appellant

v.

D1-20-114

DEPARTMENT OF STATE POLICE,
Respondent

Appearance for Appellant:

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Commissioner:

Christopher C. Bowman¹

Summary of Decision

This appeal involves the termination of a State Trooper who was previously assigned to Troop E, a Unit of the Department of State Police that was disbanded after multiple members engaged in serious misconduct related to: 1) writing false “ghost” citations; 2) submitting citations with false information; and 3) being paid for hundreds of hours of overtime hours not worked.

Here, there was no allegation that the Appellant wrote ghost citations or submitted citations with false information. The Appellant’s issue was limited to whether he actually worked six, two-hour overtime shifts between January and March 2015.

¹ The Commission acknowledges the assistance of Law Clerk Alana Khan with the preparation of this decision.

The Department's investigation of the Appellant did not commence until 2018. Their findings rely heavily on circumstantial evidence, much of which was not provided to the Appellant for rebuttal until his Department Trial Board hearing in 2020. The Department essentially asked the Appellant, who worked over 200 hours each month, to rebut charges that he did not work six, two-hour overtime shifts over a period of time reaching back five years.

Based on the thousands of pages of documents and the live testimony of more than a dozen witnesses over nine days of hearing, the Department has shown, by a preponderance of the evidence, that the Appellant did not work a total of six hours of overtime for which he was paid approximately \$393. The Department has failed to show that the Appellant did not work the other six hours in question.

The difficult question here is whether the Appellant—who had already been suspended in 2015 for misconduct related to accepting payment for two unauthorized funeral escorts—was terminated for just cause, or whether a modification of the penalty is warranted.

Fourteen troopers who had failed to work reported overtime shifts avoided termination and entered into Disciplinary Agreements that allowed them to continue employment with the Department. They paid restitution between \$2,268.97 and \$15,901.89 for unworked overtime shifts ranging from 35 to 244 hours. They served suspensions from 9 days to 841 days.

One comparable example is Trooper 19, who failed to work 167 hours of claimed overtime totaling just under \$11,000 in wages, and whose disciplinary record was more numerous than the Appellant's. Trooper 19 received a Disciplinary Agreement to continue employment with 270 days unpaid suspension, restitution of \$10,835.06, and various other restrictions regarding his continued employment.

After a careful review of the entire record, including the lesser discipline meted out to other troopers who engaged in more serious misconduct, including submitting citations with false information, the Commission has concluded that a modification of the Appellant's termination is appropriate. Accordingly, the disciplinary penalty is hereby modified from termination to a 270-day suspension without pay and restitution of \$393 for the six hours of overtime not worked. This decision does not prevent the Department from imposing other restrictions on the Appellant similar to those imposed on Trooper 19, including a prohibition on promotions and/or overtime for a finite period of time.

Nothing in this decision should detract from the Department's ongoing efforts to restore integrity to an organization whose reputation has been seriously harmed by the gross misconduct of its uniformed members, some of which has resulted in criminal prosecution. Rather, the scope of this decision is limited to the following conclusion: based on a thorough review of the facts and comparable disciplinary cases, the evidence does not support termination in the Appellant's case, but rather a modified penalty of long-term suspension and restitution.

DECISION

On July 15, 2020, the Appellant, John Adams (Appellant or Trooper Adams) filed a timely appeal with the Civil Service Commission (Commission) pursuant to G.L. c. 31, §§ 41-43 and G.L. c. 22, § 13 as amended by Chapter 43 of the Acts of 2002 (the Special Act providing limited civil service protections to uniformed members of the Department). The appeal challenged the Department's decision to terminate the Appellant's employment as a State Trooper, specifically whether the Department: (a) had just cause to terminate the Appellant under G.L. c. 31, § 43 (Section 43 just-cause appeal); and (b) followed the procedural requirements of G.L. c. 31, § 41 in terminating the Appellant (Section 42 procedural appeal). On August 4, 2020, I conducted a remote pre-hearing conference. I subsequently conducted a remote full hearing² over nine days between December 2020 and July 2021 which was recorded via the Webex videoconferencing platform.³

The parties had the hearing transcribed by a Certified Court Reporter and Notary Public, and the transcript was filed with the Commission as the official record of the proceeding.⁴ The hearing was made public at the request of the Appellant. Witnesses were sequestered except for

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

³ Co-counsel for both parties should be commended for their high degree of professionalism and preparedness throughout the proceedings, including the nine days of hearing which were conducted remotely because of pandemic-related restrictions.

⁴ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with this transcript of the hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

the Appellant. The parties submitted proposed decisions on August 12, 2022.⁴ For the reasons set forth below, the appeal of Trooper Adams is allowed in part.

FINDINGS OF FACT

One hundred twenty-three documents were marked as exhibits as follows: Appellant Exhibits (AE 1-24); Respondents Exhibits (RE 1-15); Joint Exhibits (JE 1-69); and Commission Exhibits (CE 1-15). The Commission admitted the following exhibits with conditions attached or for a limited purpose: AE 1, 8, 9, 10, 11, 12, 13, 17; and RE 5, 7, 12. The Appellant's proposed exhibit, AE 18, was withdrawn. Based on the exhibits entered into evidence and the testimony of the following witnesses:

Called by the Respondent:

- Steven Hennigan, retired Detective Lieutenant, current post-retirement employee in the Division of Standards and Training, Department of State Police
- Joseph Ballou, Detective Lieutenant, Office of Professional Integrity and Accountability, Department of State Police
- Michael Faiola, Assistant Payroll Director, Department of State Police
- Robert Impemba, Fuel Site Coordinator, Department of Transportation (MassDOT)
- Stephen Collins, Assistant Administrator for Tolls, Highway Division, MassDOT
- James Delashmit, District 6 Lead Communications Engineer, MassDOT
- John Ruggiero, Electrical Engineer, Department of State Police

Called by the Appellant:

- Appellant John Adams, Trooper, Department of State Police
- James White, Sergeant, Department of State Police
- Michaela Dunn, Deputy Commissioner, Department of Criminal Justice Information Services
- Michael Sullivan, Trooper and Union Representative, Department of State Police
- Lisa Butner, Detective Lieutenant, Department of State Police
- Timothy Luce, retired Lieutenant, Department of State Police

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies, and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following facts:

Department Organization

1. The Department consists of the following divisions: Field Services (DFS), Investigative Services (DIS), Standards and Training (DST), Homeland Security and Preparedness (DHS), and Administrative Services (DAS). With the exception of DAS, each division within the Department has a Division Commander who holds the rank of Lieutenant Colonel.

(Testimony of Ballou – IV, 263)
2. At all times relevant to this matter, DFS was comprised of six troops according to their geographical location across Massachusetts. Troops A, B, C, and D were assigned in the northeastern, western, central, and southeastern parts of the State, respectively. Troop E generally covered the Massachusetts Turnpike/Interstate 90, as well as the tunnel system through Boston. Troop F covered Logan Airport. (JE 22; Testimony of Ballou – IV, 263)
3. Troops A, B, C, and D were under the sole command, control, and budget of the Department, while Troop F was funded by the Massachusetts Port Authority (MassPort). (Testimony of Hennigan – I, 33, 238; Ballou – IV, 265-267)
4. Troop E was funded first by the Massachusetts Turnpike Authority and later by MassDOT. MassDOT reimbursed the Department to perform patrol and all other police functions within Troop E. (Testimony of Hennigan – I, 238; Ballou – IV, 265-267)
5. Each troop is divided into stations or barracks; most are then divided into sectors. Troopers are assigned to a sector for patrol duties. (Testimony of Ballou - III, 210, 218)

Appellant's Background

6. At the time of the hearing, the Appellant was fifty-four years old. He has three adult children and two grandchildren. (Testimony of Appellant – VIII, 7)

7. The Appellant is a graduate of Somerville High School. He has an associate degree in criminal justice from Western New England College. The Appellant served in the military for eight years of active duty and in the National Guard for nineteen years. He served in Iraq, Saudi Arabia, and Kuwait for Desert Storm, Operation Freedom, and Operation Enduring Freedom. After twenty-seven years of service, he retired as a Master Sergeant. (Testimony of Appellant – VIII, 7-9)
8. Following his military service, the Appellant worked for the Department of Revenue's Child Support Enforcement Division (DOR/CSE) from 1993 to 1997. The Appellant then worked for the Everett Police Department as a police officer from 1997 to 2000. He became a Massachusetts State Trooper in 2000 after being accepted into the 75th Recruit Training Troop (RTT). (JE 12; Testimony of Appellant – VIII, 10-11)
9. At all times relevant to this matter, the Appellant lived in Hudson, Massachusetts. (JE 13; Testimony of Hennigan – I, 83; Ballou – III, 206-207)

Appellant's Employment History with the Department

10. The Appellant's experience as a Trooper included barracks assignments in Leominster, Holden, and Devens with Troop C, the Massachusetts Turnpike with Troop E, and his last assignment was with Troop F. (JE 12; Testimony of Appellant – VIII, 12-13)
11. From 2000 until June 2012, the Appellant worked as a road trooper assigned to DFS in Troop C. During that time, he was assigned to a patrol sector and was primarily responsible for making arrests, enforcing speed limits, attending to disabled motor vehicles, and responding to emergencies. (JE 12; Testimony of Appellant – VIII, 206)
12. In June 2012, the Appellant was transferred to the tunnels barracks (E-4) in Troop E. (JE 12)

13. The Appellant's employment evaluations from 2010 to 2015 described him as an employee who was "Acceptable" or "Outstanding" in his performance factors. The Appellant's supervisors described him as excellent, taking action to increase productivity, willing to help, and taking responsibility for his actions. (JE 37; Testimony of Ballou – III, 223-225 and IV, 137-140; Luce – VI, 200-201)

History of the Department's Community Action Teams (CAT Teams)

14. During the fuel shortage in the late 1970s, the Department created "55 Teams" which were selective traffic enforcement groups in each troop used to enforce the fifty-five mile per hour speed limit. (Testimony of Hennigan – I, 62)

15. In the 1990s, the Department renamed the 55 Teams (excluding Troop E) "Community Action Teams." Looking at metrics related to accidents, the Department utilized the CAT Teams to increase selective enforcement in "hotspots" to reduce the number of motor vehicle crashes in those locations. CAT Teams also performed assignments within communities. (Testimony of Hennigan – I, 60-62; Ballou – III, 177-178)

16. Members of CAT Teams differed from other members who work patrol sectors in that they are proactive rather than reactive. While other patrol sectors often responded to calls regarding accidents and disabled motor vehicles, CAT Team members went to hotspots to conduct selective enforcement. (Testimony of Ballou – III, 212)

17. Duties of CAT Team members included stopping cars, writing citations, making arrests, augmenting patrols during snowstorms, and filling staff shortages to reduce the amount of overtime. CAT Team members also received other assignments at the discretion of the Troop Commander/Major, such as assisting at wakes and funerals, providing security at protests, and escorting the transport of human organs needed for transplants, hazardous

cargo, and/or high security prisoners. (Testimony of Luce – VI, 131-134; Hennigan – I, 60-61; Ballou – III, 177-180)

18. CAT Team members were hand-picked by the Troop Commander/Major and could be asked to leave the unit at any time. (Testimony of Hennigan – I, 84; Ballou – III, 211 and IV, 134-135)

Troop E Evening CAT Team

19. For many years, Troop E, unlike all other troops, continued referring to its CAT Team as the “55 Team.” Members assigned to the Troop E 55 Team worked the day shift. (Testimony of Ballou – III, 215-216; Luce – IV, 125; Appellant – VIII, 219)

20. When he was the Division Commander of DFS, Lieutenant Colonel Edward Amodio, collected statistical data from each troop, including the number of crashes and arrests which occurred within its borders. As a result of Troop E’s relatively low number of arrests in comparison with other DFS troops, Troop E Commander Major Terry Hanson created a CAT Team for the evening shift consisting of a sergeant and five troopers.⁵ (Testimony of Luce – VI, 127-129)

21. Major Hanson created the annual budget for Troop E, working closely with MassDOT. (JE 57; Testimony of Luce – VI, 126)

22. Funding for the evening CAT Team’s overtime came through Troop E’s general budget. MassDOT would then reimburse the Department in exchange for Troop E performing all

⁵ To ensure clarity, all references in this decision to the “evening CAT Team” refer to Troop E CAT Team members who worked the evening shift (which included the Appellant). “Day 55 Team” refers to Troop E CAT Team members who worked the day shift.

police functions on the Turnpike and the Metropolitan Highway System. (Testimony of Ballou – IV, 266-267)

23. At all times relevant to this matter, Troop E’s command staff consisted of the following individuals: Troop Commander, Major Terry Hanson; Troop Executive Officer, Captain Thomas Reney; Troop Operations Officer, Lieutenant Drew Kalton; and Traffic Programs Officer, Lieutenant Timothy Luce. (Testimony of Ballou – IV, 268-270; Hennigan – I, 34)
24. Until March 2014, Sergeant Michael Smith was the Unit Commander of the evening CAT Team. Sergeant Richard Welby took over this role in March 2014. Sergeant Welby was already the Unit Commander of the day 55 Team at that time, so he became the Unit Commander of both shifts. (JE 65)
25. Upon Sergeant Welby’s retirement in 2014, Sergeant Robert McCarthy became the Unit Commander of the evening CAT Team and the day 55 Team. Sergeant McCarthy worked the day shift Monday through Friday. (Testimony of Luce – VII, 138)
26. Major Hanson budgeted four hours of overtime per week for the evening CAT Team. Evening CAT Team members were required to work the four hours to be compensated. (Testimony of Ballou – IV, 273)

Appellant’s Appointment to Troop E Evening CAT Team

27. On December 21, 2012, Sergeant Smith (then-Unit Commander of the evening CAT Team) posted a vacancy announcement for five troopers to apply to the evening CAT Team with the following description:
 - a. The officer places a “personal premium on teamwork, self motivation, and professionalism;
 - b. The officer has strong knowledge of Motor Vehicle and Criminal laws;
 - c. The officer has strong report writing ability and courtroom testimony presence;

- d. The officer will assist the sectors whenever a major incident occurs;
- e. Activity of Officers will be monitored on a consistent basis and will be a determining factor for the duration of the assignment;
- f. The CAT Team will be responsible to the Troop E Commander and Executive Officer through the Traffic Programs Officer;
- g. The position requires the willingness to withdraw from the unit/section at any time at the request of the Troop/Unit Commander; and
- h. Interested Officers shall submit their requests to Major Terry G. Hanson, Troop Commander prior to December 31, 2012.

(JE 38, Testimony of Ballou – III, 217-218; Luce – VI, 127- 129)

28. After successfully applying and interviewing with Sergeant Smith and Lieutenant Luce, the Appellant joined the evening CAT Team in January 2013. (JE 38; Testimony of Appellant – VIII, 14-15)
29. During all times relevant to this appeal, the day 55 Team and the evening CAT Team each consisted of four members. (Testimony of Hennigan – I, 72)
30. As a member of the Troop E evening CAT Team, the Appellant typically worked a four-on, two-off schedule. His shift began at 3:00 P.M. and ended at 11:30 P.M. While performing patrol duties, the Appellant would report to duty or “Code 5” when he entered the Turnpike at Route 495. It typically took the Appellant fifteen minutes to drive from his home to this entrance of the Turnpike. (JE 15; Testimony of Appellant – VIII, 20-21)
31. The Appellant’s 2014 performance evaluation referenced the following job duties:
- a. CAT is responsible for conducting selective enforcement initiatives and patrols with the goal of providing for public safety and crash reduction within Troop E jurisdictional boundaries;
 - b. CAT jurisdiction is Route 90 (“Pike”) from Boston to the New York Border (140 miles) and the Metropolitan Highway System around Boston encompassing high profile and critical infrastructure of Zakim and Tobin Bridges as well as the Williams, Callahan, Sumner, and O’Neil tunnels;
 - c. CAT tasks include assisting state, federal, and local authorities with high risk prisoner transport, dignitary protection, felony motor vehicle stops, and protests;

- d. CAT members were deployed to key locations during several incidents of civil unrest and protests in Boston during November and December 2014; and
- e. CAT members were usually used as a mobile field force that could rapidly respond where needed.

(JE 37; Testimony of Ballou – III, 224-229; IV, 141-144)

Appellant’s Disciplinary History

- 32. Steven Hennigan has been employed by the Department since 1992. For twenty-six years he was a sworn member assigned to DFS, as well as a staff member for ten recruit classes at the State Police Academy. From 2013 to 2018, he was a Detective Lieutenant assigned to the Internal Affairs Section. Hennigan retired in October 2018, but returned the following month as a post-retirement employee in the Division of Standards and Training. (Testimony of Hennigan – I, 22-23)
- 33. In 2014, while assigned to the Internal Affairs Section, then-Detective Lieutenant Hennigan was directed to investigate an internal complaint initiated by Lieutenant Luce alleging that the Appellant and another Troop E member had used their cruisers off-duty to conduct unauthorized funeral escorts. (JE 64, 66-67; Testimony of Hennigan – I, 78, 84-85)
- 34. Funeral homes can hire members through the Department’s detail offices to conduct funeral escorts or details. The funeral home pays the Department, and the Department then hires the member. The Department pays the member through a Commonwealth fund. (Testimony of Hennigan – I, 78-79)
- 35. Detective Lieutenant Hennigan interviewed Lieutenant Luce, who stated that he had observed two Troop E cruisers, one of which he recognized as the Appellant’s, conducting a funeral detail. Lieutenant Luce subsequently checked both members’ payroll submissions and learned neither one had put in for a detail. He then confirmed with their supervisor,

Sergeant Welby, that they had not received permission to conduct a funeral escort. (JE 64, 66)

36. Detective Lieutenant Hennigan interviewed the Appellant four times between June 2014 and June 2015. (JE 60-63, 66-67; Testimony of Hennigan – I, 83)
37. In his first interview, the Appellant acknowledged that he had worked the funeral escort in question as well as one in February 2014. The Appellant also stated that he had received a check for \$200 for the February escort, which his girlfriend signed and deposited into his account. He was also offered payment for the April escort but he refused to accept it. (JE 60)
38. The Appellant’s third interview took place at General Headquarters during the day shift on March 9, 2015. (JE 62; Testimony of Ballou – III, 199-200)
39. As a result of this investigation, the Appellant was removed from the evening CAT Team and began working the evening shift at E-4 (the tunnels barracks) in March 2015. (Testimony of Ballou – III, 198-203)
40. Detective Lieutenant Hennigan interviewed the Appellant a fourth time on June 2, 2015, after learning that a check to the Appellant from the same funeral home—for an escort done on October 19, 2013—had been cashed against the Appellant’s bank account. The Appellant acknowledged that he must have done the October 2013 escort, but he did not recall doing it, and he believed his girlfriend must have signed his name and cashed the check. (JE 63)
41. The Appellant told investigators his life had been “chaotic” at the time due to personal issues. (JE 63)
42. In a report dated July 3, 2015, Detective Lieutenant Hennigan concluded that the Appellant had performed three unauthorized funeral escorts, while in uniform and with his cruiser, between October 2013 and April 2014. In doing so, the Appellant violated policy and

circumvented the Department's detail process. The Appellant received compensation for two of the three funeral escorts. (JE 67)

43. As a result of Detective Lieutenant Hennigan's findings, the Department brought administrative charges against the Appellant for violations of the following Departmental Rules and Regulations:

1. two specifications of Article 5.15.1 (Abuse of Position) (Class A)
2. three specifications of Article 5.1 (Violation of Rules: General Order TRF-22 (Escorts and Relays)) (Class C); and
3. three specifications of Article 5.1 (Violation of Rules: General Order ADM-19A (Vehicle Use and Maintenance)) (Class D).

(RE 14; Testimony of Hennigan – I, 88)

44. Per the Department's discipline guidelines, a first offense Class A violation warrants the following discipline: a suspension of not less than thirty days up to and including termination. (JE 8)

45. On September 30, 2015, the Appellant waived his right to a Trial Board and agreed to accept the following discipline: suspension without pay for twenty-five days and forfeiture of five vacation days. He further agreed to a suspension without pay for sixty days, without a hearing or right of appeal, to be held in abeyance for one year, if a complaint made during that one-year period was sustained and led to discipline. (RE 8)

46. During the funeral escort investigation, Detective Lieutenant Hennigan also questioned the Appellant about possible discrepancies in 2014 between his payroll submissions, fuel records, and transponder records. (JE 62)

47. As part of this investigation, Detective Lieutenant Hennigan examined the following evidence: Criminal Justice Information Services (CJIS) history, court cards, PayStation (payroll), fuel history, and transponder records. (JE 66-67)

48. In his investigation report, Detective Lieutenant Hennigan wrote:

Trooper Adams was able to reasonably explain the majority of the discrepancies noted. Most of these were explained as administrative errors caused by Trooper Adams listing overtime or details on the incorrect day, or Trooper Adams going to court on a day he mistakenly thought he had court. . . . Trooper Adams would acknowledge these facts anyway by adding that he has taken steps toward improving, to include working fewer hours and sitting down with his [L]ieutenant who has helped him coordinate all of his events in a calendar.

(JE 66 pp. 26-28, quoting ¶109)

Permissible Overtime for Troop E Evening CAT Team

49. When the evening CAT Team was initially formed in 2012, the Unit Commander (Sergeant Smith) would work overtime assignments together with the other evening CAT Team members. During Sergeant Smith's tenure as Unit Commander, the evening CAT Team overtime shifts were expected to be traffic enforcement patrols. (Testimony of Appellant – VIII, 39-40)

50. During Sergeant McCarthy's tenure as Unit Commander, which began in late 2014, evening CAT Team members were permitted to earn overtime for non-traffic enforcement duties such as administrative work, gear cleaning, weapons maintenance, and cruiser maintenance. (Testimony of Appellant – VIII, 39-40)

51. Evening CAT Team members could work their overtime remotely at home, but it was not a consistent practice that they would do so. (Testimony of Luce – VII, 34-36)

52. The evening CAT members adopted an unused portion of the Southborough barracks as a makeshift office. This enabled access to computers, a printer, a telephone, a fax machine, a radio system, beds, a DOT fuel pump, and an area to wash a cruiser. The Appellant spent time at this office working on reports, cleaning his cruiser, maintaining equipment, and occasionally sleeping overnight. (Testimony of Appellant – VIII, 44-45)

53. The Appellant was instructed to take overtime for two or four hours only before or after a regular shift. (Testimony of Appellant – VIII, 38-41, 47, 50, 67-68; Luce – VI, 176-179)

54. If another overtime shift unrelated to the evening CAT Team became available, non-CAT Team members of Troop E had preference over it because evening CAT Team members already had four hours of budgeted overtime each week. Based on all relevant testimony, I infer that there was an expectation that the four evening CAT Team members would choose to work four hours of budgeted overtime at some point every week. (Testimony of Luce – VI, 173-174, 177-178 and VII, 103-104).

Recording of Overtime in Troop E Evening CAT Team

55. Evening CAT Team members were required to let someone in their chain of command know what they were doing for overtime and when. (Testimony of Luce – VI, 179)

56. Major Hanson, Captain Reney, Lieutenant Kalton, Lieutenant Luce, and the Unit Commander could all authorize overtime. (Testimony of Luce – VII, 56-57)

57. The Department used PayStation as its official record system for recording the time and attendance of sworn members. The Department’s payroll week runs from Sunday to Saturday. Members entered their time weekly for regular shifts, exceptions such as vacation or sick leave, overtime, and details. Members could also indicate any other information in the comments section before electronically submitting their timesheet for approval. A supervisor could also submit time on behalf of a subordinate member. (Testimony of Faiola – II, 7-8, 13)

58. Members would enter the date of the overtime, number of hours, and description (including, for example, if they worked out of a different station), along with any other comments in PayStation. Under the “description” heading, there was a dropdown feature to select the type

of overtime used (e.g., CAT). In the remarks section, members would note the actual hours worked and the category type (e.g., “CAT Special”). (Testimony of Faiola – II, 10, 20-23)

59. Before submitting to PayStation for approval, members had to check a box attesting that their entry was “an accurate account of [one’s] attendance and overtime performance for the week ending as shown.” (Testimony of Appellant – VIII, 203-204)

Audit and Investigation of Evening CAT Team Overtime

60. In 2017, Detective Lieutenant Hennigan investigated a different Troop E member to determine whether that member had been present for his reported Accident Injury Reduction Effort (AIRE) patrol overtime shift. Detective Lieutenant Hennigan learned that the member had submitted, and been paid, for five overtime shifts in 2016 for which he was allegedly not present and did not work. (Testimony of Hennigan – I, 24-26)

61. The member had also issued traffic citations falsifying times of stops, thereby giving the appearance that the stops occurred during his reported overtime shifts. In reality, the stops occurred during different shifts when the member was actually working. (Testimony of Hennigan – I, 28-29)

62. In December 2017, following the investigation into this Troop E member, Detective Lieutenant Hennigan was directed to audit all Troop E members who had reported working AIRE patrols in 2016.⁶ Detective Lieutenant Hennigan was supposed to determine: 1) whether they had actually been present at the AIRE shifts for which they received overtime pay; and 2) whether their related traffic citations had actually been issued and, if so, whether

⁶ The Appellant did not submit any AIRE patrols in 2016. (Testimony of Hennigan – I, 234-235).

the reported stop times on the citations were accurate. (Testimony of Hennigan – I, 26-27, 41)

63. In Phase 1 of the audit, Detective Lieutenant Hennigan and the other auditors examined traffic citations and cross-referenced them with members' entries on PayStation (to view assigned overtime hours as well as types of overtime that members submitted as having worked). The auditors also looked at data from a CJIS audit. (Testimony of Hennigan – I, 29-30, 37-38)
64. Several of the sixty-seven members audited for AIRE patrols were cleared at this initial stage of the audit. (Testimony of Hennigan – I, 30-31)
65. Members who were flagged moved on to Phase 2, during which auditors examined additional data such as fuel and transponder records for assigned cruisers, administrative journals maintained at the barracks, and radio affiliation logs. (Testimony of Hennigan – I, 31-32).
66. In March 2018, Major Brian Watson of Administrative Services—acting on behalf of Detective Lieutenant Hennigan—forwarded Colonel Gilpin the names of approximately thirty members who had been flagged in the audit. Major Watson also memorialized requests for investigation to the Division Commander of the Division of Standards and Training (hereinafter referred to as the “Watson letter”). (Testimony of Hennigan – I, 59-60, 69-70)
67. The Department subsequently held Duty Status Hearings for the thirty members. A Duty Status Hearing is an internal review by the Department to determine a member's duty status as one of four options: full duty, restricted duty, suspension with pay, or suspension without pay. A duty status board, which consists of three commissioned officers, reviews relevant information and makes a recommendation to the Colonel regarding the member's duty status.

The Colonel's decision is then posted in General Orders. (Testimony of Hennigan-I, 59-60, 65-66)

68. Internal Affairs then commenced investigations. (Testimony of Hennigan – I, 59-60, 69-70)

Expansion of Audit and Review of Appellant's Evening CAT Overtime

69. While reviewing records during Phase 1 of the audit, Detective Lieutenant Hennigan had broader concerns that additional members were not working other types of selective overtime. After Detective Lieutenant Hennigan voiced these concerns through his chain of command, he was instructed in March 2018 to expand the audit to cover 2015 and include other types of overtime (specific to X patrols, the Commercial Vehicle Enforcement Unit, the day 55 Team, and the evening CAT Team). (Testimony of Hennigan – I, 60-62)

70. By June 2018, the audit had been further expanded to cover 2017. Around this time, Detective Lieutenant Hennigan forwarded the names of twelve other members whom auditors had flagged. The Department held duty status hearings for those members during the first week of June 2018. (Testimony of Hennigan – I, 64-66; 71)

71. By that point, auditors had flagged a total of forty-two members. Approximately one-third of those members retired on the day of their duty status hearings, one-third were returned to full duty, and one-third were suspended without pay. (Testimony of Hennigan – I, 66-67)

72. Around this time, Detective Lieutenant Hennigan realized he had not audited the Troop E evening CAT Team members after discovering that the day 55 Team used the "55" pull-down menu to record their overtime, but the evening CAT Team used the "CAT" pull-down menu. He subsequently reviewed overtime data for the evening CAT Team, which included the Appellant. (Testimony of Hennigan – I, 71-72, 108-109)

73. During the audit, Detective Lieutenant Hennigan was unable to find any written policies or guidelines regarding overtime for Troop E evening CAT Team members. (Testimony of Ballou – III, 248 and IV, 131)

74. As a result of this audit, all four members of the Troop E evening CAT Team, including the Appellant, were flagged for overtime issues. In August 2018, Detective Lieutenant Hennigan forwarded their names in requests for investigation. (Testimony of Hennigan – I, 72-73, 75)

Referral to United States Attorney and Massachusetts Attorney General

75. Between March and August 2018, the Department forwarded the names of forty-six members, along with the information gleaned from its audits, to both the United States Attorney's Office and the Massachusetts Attorney General's Office for possible criminal prosecution. Each agency reviewed the data and conducted its own investigation. The United States Attorney's Office charged eight members criminally, all of whom had issues with both attendance and fake citations. All eight members pled guilty and were convicted. The Massachusetts Attorney General's Office charged three members criminally. Two of them have pled guilty, and the remaining member was scheduled for trial at the time of this hearing. (Testimony of Hennigan – I, 73-74, 98)

76. Neither agency charged or prosecuted the Appellant for any criminal offense. (Testimony of Hennigan – I, 72-73)

Appellant's Duty Status Hearing and Unpaid Administrative Leave

77. On August 9, 2018, Major Watson issued a To/From memo to the Commander of Administrative Services questioning six, two-hour overtime shifts that the Appellant had reported while he was assigned to Troop E. The Appellant first read Major Watson's memo on August 13, 2018, when he was placed on administrative leave (see below). The end of the

memo indicated that “PayStation entries and the applicable radio affiliation logs were attached,” but the Department did not provide the Appellant with said attachments. (JE 10; Testimony of Appellant – VIII, 80-81)

78. On August 13, 2018, Lieutenant Colonel Robert Favuzza issued a Division Commander’s Order placing the Appellant on Administrative Leave. Lieutenant Colonel Favuzza also scheduled the Appellant’s Duty Status Hearing, pursuant to Rule 6.2.1 of the Respondent’s Rules and Regulations, for August 15, 2018 at 10:00 a.m. at General Headquarters. The Certificate of Service is blank. (JE 49)
79. On August 15, 2018, before his Duty Status Hearing, the Appellant received a To/From letter from Captain James O’Leary advising that the Appellant was the subject of an Internal Affairs Investigation resulting from an audit of Troop E covering 2015 and 2016. (JE 11; Testimony of Appellant – VIII, 81-82)
80. The Appellant was also notified that the Department would be suspending his License to Carry (LTC) and that he could transfer any weapons to a friend. When the Appellant accessed the system to transfer his personal firearm, he discovered that his LTC had already been suspended. (JE 48; Testimony of Appellant – VIII, 83-84)
81. The Appellant’s LTC was suspended at 5:15 am on August 15, 2018, almost five hours before his scheduled Duty Status Hearing at 10:00 am. (AE 4; JE 48; Testimony of Dunn – V, 108-111; Appellant – VIII, 84)
82. The Appellant filed an appeal of the LTC suspension which, at the time of the Commission’s hearing, remained pending in Framingham District Court. (AE 23)
83. The Appellant’s Duty Status Hearing occurred on August 15, 2018. The Duty Status Board read the general allegations of overtime irregularities as contained in Major Watson’s August

9, 2018 memo. The Board then recommended that the Department suspend the Appellant without pay and suspend his LTC. The Board did not hear witness testimony, review documentary evidence, or make factual findings. (JE 10; AE 22; Testimony of Appellant – VIII, 85-87)

84. Colonel Gilpin accepted the Board’s recommendation and suspended the Appellant without pay. (AE 3)

85. The Appellant filed an internal review appeal pursuant to G.L. c 22, § 43. (Testimony of Appellant – VIII, 87)

86. The Appellant made multiple requests to obtain the attachments referenced in Major Watson’s memo. In November 2018, the Department allowed the Appellant and his counsel two hours to view related documents at a designated location, but prohibited them from making copies of any documents. The Appellant reviewed the documents and found the voluminous material difficult to understand. (JE 10; Testimony of Appellant – VIII, 89-90)

Detective Lieutenant Ballou’s Investigation

87. Detective Lieutenant Hennigan’s audit flagged six reported overtime shifts that the Appellant had allegedly missed while he was a member of the evening CAT team:

- | | |
|----------------------|--|
| 1. January 4, 2015: | 1:00 P.M. – 3:00 P.M. (2 hours prior to regular shift) |
| 2. January 26, 2015: | 11:30 P.M. – 1:30 A.M. (2 hours after regular shift) |
| 3. January 27, 2015: | 11:30 P.M. – 1:30 A.M. (2 hours after regular shift) |
| 4. February 8, 2015: | 11:30 P.M. – 1:30 A.M. (2 hours after regular shift) |
| 5. February 9, 2015: | 11:30 P.M. – 1:30 A.M. (2 hours after regular shift) |
| 6. March 3, 2015: | 11:30 P.M. – 1:30 A.M. (2 hours after regular shift) |

(JE 10)

88. At all times relevant to this appeal, the Appellant was paid an hourly overtime rate of \$65.46. (JE 18; Testimony of Faiola – II, 43-44)

89. For five of those shifts, the audit found no activity or other indicia that the Appellant had been working during the recorded period of overtime. The audit did find activity for January 4, 2015, which is discussed in more detail below. Detective Lieutenant Hennigan still flagged the January 4 shift because he concluded that the Appellant was commuting to his regular shift and not working a two-hour overtime shift. (Testimony of Hennigan – I, 260-261)
90. The Appellant was transferred out of the CAT Team in March 2015, so no CAT Team overtime shifts were flagged for the Appellant after that. During the three-month period reviewed while the Appellant was still a member of the CAT Team, he had not missed any AIRE patrols or issued any false citations. (Testimony of Hennigan – I, 77, 111-112, 157-158)
91. On August 17, 2018, Detective Lieutenant Joseph Ballou was assigned to conduct the Internal Affairs investigation into the allegations that arose from the audit. (JE 10-11; RE 2; Testimony of Ballou – III, 182-184)
92. Detective Lieutenant Ballou has been a sworn Department member for twenty-seven years and performed a variety of assigned duties. He was transferred into the Office of Professional Integrity and Accountability in April 2018. (Testimony of Ballou – III, 173-175)
93. Detective Lieutenant Ballou worked with four other Internal Affairs investigators assigned to similar cases against other members with alleged overtime irregularities. (Testimony of Ballou – III, 183)
94. At the beginning of the investigation, Captain James O’Leary, Detective Lieutenant Ballou’s supervisor, told him that he could not interview Troop E members because of the pending criminal investigations. (Testimony of Ballou – III, 187-192 and IV, 184-186)

95. Detective Lieutenant Ballou would have wanted to interview Major Hanson and Captain Reney, but his understanding was that such Troop E members were not available for the investigation because they were either on witness lists for pending criminal cases, or could not be called in due to some other reason. (Testimony of Ballou – IV, 184-186, 239)
96. In May 2019, Lieutenant Colonel Warmington, the Division Commander of DST at the time, met with investigators and authorized them to begin interviewing some of the Appellant’s former supervisors, including Lieutenant Luce and Sergeant McCarthy. (RE 2; Testimony of JB – III, 264)
97. Another investigator had previously notified Lieutenant Luce that he was a witness/subject and ordered him to come in for an interview. Lieutenant Luce responded that he would appear on the condition that he be provided with the complaint and a list of questions to be asked. (RE 2; JE 28)
98. The interview was later postponed due to the criminal investigations. In May 2020, another investigator spoke on the phone with Lieutenant Luce, who had since retired, to reschedule the interview. Lieutenant Luce stated that although he wanted to be interviewed, his attorney had advised him not to due to his potential exposure in the criminal investigations. (RE 2; Testimony of Ballou – IV, 40-41)
99. Lieutenant Luce was never interviewed as part of the investigation. (Testimony of Ballou – IV, 105-106, 120-121)
100. When Detective Lieutenant Ballou first received the Appellant’s case in August 2018, he sent a notification letter to Sergeant McCarthy. Once the investigative team was authorized to interview certain members in spring 2019, an investigator called Sergeant McCarthy in for an interview. Sergeant McCarthy appeared with counsel for his interview on May 17, 2019,

and refused to speak with investigators after invoking his rights under the *Carney* and *Baglioni* cases, as well as *Miranda*. (JE 29; RE 2-3; Testimony of Ballou – III, 235-237 and IV, 38-39)

101. Detective Lieutenant Ballou also never interviewed the following relevant members of Troop E:

- Lieutenant Smith, the Appellant’s former supervisor;
- Sergeant Welby, the Appellant’s former supervisor;
- Sergeant White, Troop E Duty Officer;
- Lieutenant Butner, Troop E Duty Officer;
- Lieutenant Burke, Troop E Duty Officer;
- Lieutenant Wilson, Troop E Duty Officer; or
- Trooper Sullivan, Troop E Union Representative.

(Testimony of Ballou – IV, 40-41, 118, 178-179, 229, 248)

102. Detective Lieutenant Ballou called the Appellant in for an interview on June 5, 2019, ten months after the Appellant had been suspended without pay as a subject of the investigation. At the start of the interview, Detective Lieutenant Ballou read the Appellant the *Miranda* Warning and the Appellant exercised his right not to be interviewed. (JE 36; Testimony of Appellant – VIII, 90-91; Ballou – IV, 49)

103. As part of his investigation, Detective Lieutenant Ballou wanted to find a “digital footprint” to show what the Appellant had been doing at particular times during the six shifts in question. (Testimony of Ballou – III, 283 and IV, 97-98)

104. Detective Lieutenant Ballou examined the data received from Detective Lieutenant Hennigan’s audit. That data included the Appellant’s PayStation entries for 2015; any citations written during his overtime shifts; his driver, license plate, and CJIS queries; his fuel records; and his cruiser radio logs. (Testimony of Ballou – III, 188-93)

105. For each of the six flagged dates, Detective Lieutenant Ballou confirmed that the Appellant submitted to PayStation that he had worked a two-hour block of evening CAT Team overtime either before his regular evening shift (January 4, 2015), or immediately after his regular shift (January 26, January 27, February 8, February 9, and March 3, 2015). (JE 15)
106. Detective Lieutenant Ballou also contacted Michael Faiola, the Department's Assistant Payroll Director, for additional information. Mr. Faiola provided PayStation submission data which indicated that the Appellant had submitted his own PayStation on all but one of the relevant time periods. Sergeant McCarthy had submitted the Appellant's PayStation for the two-hour overtime shift on January 4, 2015. Each of the PayStation submissions were approved by either Sergeant McCarthy or Lieutenant Luce. (JE 17)

Evidence Reviewed in Detective Lieutenant Ballou's Investigation

Cruiser Radio Data

107. Radio affiliation logs, the electronic history of each cruiser radio, show when a radio turns on and off. The cruiser radios were programmed to automatically go on when the cruiser started up and to automatically go off when the cruiser ignition was turned off. Detective Lieutenant Hennigan, as part of the prior audit, obtained the radio affiliation logs for the Troop E cruiser radios from John Ruggiero, an electrical engineer in the Department's Communication Section who was responsible for the operation and maintenance of the State's public safety radio communication system. Detective Lieutenant Hennigan utilized the radio affiliation logs in the audit to help determine when a member was operating a cruiser. (Testimony of Hennigan – I, 44-46; Ruggiero – III, 4-6)

108. The Department is the largest user of the State's public safety radio communication system. The radio system has approximately 30,000 users/radios from about thirty-six agencies, which include local police and fire departments as well as several State agencies. The radio network consists of approximately 100 tower sites across the State which connect to the core radio network in Framingham. Radios communicate with the tower sites, which then communicate with the core radio network. The system also has partner relationships with radio towers owned by municipalities such as Boston, Cambridge, and Worcester, which connect and communicate with the core radio network. (Testimony of JR – III, 9-15)
109. The radio system is a trunked system. A radio registers or affiliates with the system by transmitting to the tower a radio identifier and what channel and tower site it is on. By registering or affiliating, the radio indicates it has turned itself on, changed channels, or switched tower sites. (Testimony of Ruggiero – III, 11-17)
110. The radio is constantly searching for the tower site with the best signal; if it finds a better signal from a different tower, it will register or affiliate again to the new tower site. There are numerous tower sites across the state which are used by the Department's radio system. Some sites consist of only one tower (independent sites), while other sites have multiple towers within them (multi-sites). (Testimony of Ruggiero – III, 17-18; 35-41)
111. Department employee Brian Egnitz created a map of the radio tower sites which was provided to investigators. (JE 22; Testimony of Ruggiero – III, 35-38)
112. Unique identifiers were assigned to each radio and linked to a particular cruiser using the alias "MSP-" followed by the cruiser number. (Testimony of Ruggiero – III, 31, 34)
113. On May 21, 2019, Detective Lieutenant Ballou and his team interviewed James DeLashmit, an engineer for MassDOT, regarding Troop E's cruiser radios. Mr. DeLashmit

confirmed that the cruiser radios were programmed to automatically turn on when the cruiser was started, and that each radio would register to a unique radio identification number. Mr. DeLashmit maintained a manual journal of each radio identification number and the assigned alias or cruiser number. When radios were removed from a decommissioned cruiser to a new one, Mr. DeLashmit would make sure the cruiser numbers matched up so the radio alias did not change. Although the radios were embedded with GPS, it was not enabled at that time and thus could not be retrieved. (RE 2, 4)

114. When reviewing cruiser radio data for a member's reported shift, one would expect to see the radio registering prior to the shift, some changes in radio activity throughout the shift, and then deregistration after the shift ended. (Testimony of Ruggiero – III, 107)

115. Tower Site 5 is a multi-site system consisting of nine towers but operating as one. It generally covers the area of Troops A and H. Tower Site 8, also a multi-site system, is in Troop C, located to the west of Tower Site 5. (Testimony of Ruggiero – III, 52-54, 56-58)

116. Detective Lieutenant Ballou found patterns in the cruiser radio data. For instance, right before and then toward the end of the Appellant's shift, the tower sites changed or waffled back and forth between Tower Site 5 and Tower Site 8. This was due to the radio constantly searching for the best signal. As one traveled east, the radio would generally prefer Tower Site 5; as one traveled west, the radio would generally favor Tower Site 8. Waffling between sites was a result of the radio having approximately equal signal between the two tower systems. Such a pattern was commonly seen in areas along the borders of tower systems. In the Appellant's case, this type of waffling was seen along I-495, with one such area being in Hudson where the Appellant lived at the time. (JE 22; Testimony of Ruggiero – III, 54-85, 110-114)

Portable Radio Data

117. All members were issued a high-band, 800-megahertz portable radio. These portable radios, like the cruiser radios, used the Department's radio tower system. (Testimony of Ballou – III, 258-259)

118. Mr. Ruggiero produced the affiliation data for the Appellant's portable radio. Unlike the cruiser radios for Troop E which were owned by MassDOT, the Department owned the portable radios. (Testimony of Ruggiero – III, 91-95)

119. Detective Lieutenant Ballou reviewed the affiliation data for the Appellant's portable radio and found that it corroborated the cruiser radio data in that all usage of the portable radio fell within the parameters of when the Appellant's cruiser radio was active. (JE 25; Testimony of Ballou – III, 258-260)

CJIS Query Data

120. When a member ran a check of a motorist's license, it would go through CJIS audits. By running an audit of CJIS activity, investigators sought to determine when a member had made CJIS inquiries and whether they were done during the member's overtime shift. CJIS audits were also used to see if the member ran the motorist's information contemporaneously with when the citation was written. (Testimony of Hennigan – I, 54-55; Ballou – III, 240-243)

121. Detective Lieutenant Ballou reviewed the data from an audit of the Appellant's CJIS queries in order to see when he was working. If CJIS showed the Appellant had queried someone during a period of CAT overtime, that would have indicated to Detective Lieutenant Ballou that perhaps the radio data was not correct or that he needed to explore it further. (JE 39, 68; Testimony of Ballou – III, 241-242)

Administrative Journal Data

122. In Detective Lieutenant Hennigan's prior audit, he had reviewed the daily administrative journal for the barracks where members were assigned at the time of recorded events. Examples of such events were tractor trailer rollovers, and weather and road conditions. The daily administrative journal, sometimes referred to as a "log," provided additional information as to what a member may have been doing during an assigned overtime shift, especially in instances where other information, such as citations, was not present. (Testimony of Hennigan – I, 43-44, 184-188)

123. Detective Lieutenant Ballou also reviewed the daily administrative journals in his investigation. He wanted to see if there were any notations regarding what the Appellant had been doing on a particular day, such as if he had responded to a crash scene. Detective Lieutenant Ballou was looking for corroboration and context with respect to the Appellant's reported shifts. (Testimony of Ballou – III, 272-273)

Laptop Data

124. Members had laptops in their cruisers for querying traffic stops, license plates, and people. The laptops could be removed from cruisers and used for other tasks such as submitting time into PayStation, accessing computer files to make log notes, and so on. (Testimony of Ballou – III, 240-243 and IV, 10-11)

125. Captain James O'Leary, the head of Internal Affairs at the time, spoke to Brian Egnitz, a Department employee, about whether investigators could access any location data from the laptops. Captain O'Leary learned that everything was processed through a proxy server in either Chelsea or General Headquarters, and unfortunately neither server captured the user's location. (RE 2; Testimony of Ballou – III, 249-250)

126. The laptop used by the Appellant during the relevant dates can emit a geographic location, but the three-year time lapse before conducting the investigation exceeded Verizon's timeframe and the records had been destroyed. (Testimony of Ballou – IV, 116)

RAMS Data

127. Detective Lieutenant Ballou also searched the Appellant's name in RAMS, the case management system for DFS, to look for any information that would explain what the Appellant had been doing during the flagged shifts. Detective Lieutenant Ballou reviewed the daily administrative journals, arrest reports, and complaint applications. He also checked whether the Appellant had been involved in any long-term investigations, but found none. (RE 2; Testimony of Ballou – III, 248-249)

Fuel Data

128. Investigators interviewed Robert Impemba, MassDOT's Statewide Fuel Site Coordinator, along with Scott Wilson, MassDOT's Deputy Chief of Operations and Maintenance, regarding the fueling system for Troop E. They discussed how the fuel system operated as well as the fueling records MassDOT had previously provided to the Department during its audit. (RE 2, 5)

129. The fuel records used in the audit were the same ones Detective Lieutenant Ballou used in his investigation of the Appellant. (RE 2; JE 19)

130. Despite an issue with the clock's accuracy, investigators found that the fuel records were relevant because they showed which cruiser the Appellant was in, his location, and his mileage. Further, investigators found no evidence of the Appellant ever using a spare cruiser. (Testimony of Ballou – IV, 192-193)

Transponder Data

131. Investigators also obtained transponder records MassDOT. The toll system was still in place along the Turnpike in 2016. Each member assigned to Troop E had a transponder in their cruiser used for payment when going through tolls. Each time a vehicle passed through a toll booth, the transponder's information was recorded and created a timestamp.

(Testimony of Hennigan – I, 32, 42-43)

132. The Turnpike is divided into two roadways: the Western Turnpike (from the New York border to the Route 128 interchange) and the Metropolitan Highway System (Route 128 to downtown Boston, the tunnels, and the Tobin Bridge). (Testimony of Collins – II, 134)

133. MassDOT provided transponders to Troop E members and recorded and maintained the data from their use. Lieutenant Kalton assigned the transponders to Troop E's cruisers and not to individual members. In most circumstances, transponders recorded when a vehicle entered or exited the Turnpike; however, the cash lanes, snow gates used by maintenance crews and snowplows, and some exits between Newton and downtown Boston did not record any data. There would also be no transponder recording if a member was making a U-turn on either the Western Turnpike or the Metropolitan Highway System, or when exiting through the back of barracks such as Weston, Charlton, or Southborough. (Testimony of Collins – II, 137-139, 162-166)

134. Detective Lieutenant Ballou reviewed the Appellant's transponder data. The transponder data further corroborated the radio affiliation data in showing that the Appellant's cruiser radio was never off while his cruiser passed through a toll booth. (JE 30-32; RE 2;

Testimony of Ballou – III, 252-254 and IV, 195)

135. Significant to Detective Lieutenant Ballou's investigation was the area of Exit 11A, the I-495 interchange with the Turnpike in the area of Hopkinton/Westborough. The Appellant's home in Hudson was located 12.6 miles from Exit 11A, and the time to drive that distance was approximately sixteen minutes. (JE 14; Testimony of Ballou – III, 252-254)
136. The Appellant's transponder records frequently showed his cruiser entering and exiting the Turnpike at I-495 approximately twenty minutes before or after the time shown in his cruiser radio logs. Detective Lieutenant Ballou found that the approximate twenty-minute period was consistent with the Appellant's drive between his home in Hudson and the I-495 interchange. Detective Lieutenant Ballou also observed the waffling pattern between Tower Sites 5 and 8—which indicated the Appellant was traveling along I-495—during the same periods of time. (JE 14, 22-24, 32; RE 2; Testimony of Ballou – III, 255-256)

Snow Gate Data

137. On June 5, 2019, two members of the investigative team interviewed Charles Wade, a MassDOT employee responsible for the readers used to access the snow gates located along the Turnpike. Mr. Wade explained that when members used their cards to access the readers at closed snow gates, MassDOT stored the location, date, and time of each use. Detective Lieutenant Ballou obtained the audit history for the Appellant's snow gate reader which showed the Appellant had only used it four times on December 18, 2015. (JE 35; RE 2; Testimony of Ballou – III, 250-252)
138. The Appellant had previously told Detective Lieutenant Hennigan, during the funeral escort investigation, that he typically did not use the snow gates. (JE 62, 66)

Detective Lieutenant Ballou's Summary and Conclusions

139. To examine all of the Appellant's overtime shifts (CAT Special and AIRE patrol) submitted in 2015, Detective Lieutenant Ballou summarized all of the information from different data sets in a chart. Using that data, he plotted the range of when the Appellant's cruiser was active according to the cruiser radio logs, followed by the range of when his portable radio, transponder, CJIS queries, citations, and fueling activity were active. None of the latter data conflicted with the cruiser radio logs; all activity corresponded with the times the Appellant's cruiser appeared to be active. However, the data also showed that the Appellant was not present for the six CAT overtime shifts that had been flagged. (RE 2; Testimony of Ballou – III, 284-292)

Specifics Regarding the Six Flagged Overtime Shifts

January 4, 2015: 1:00 p.m. – 3:00 p.m.

140. The Appellant's supervisor, Sergeant McCarthy, submitted and approved overtime for the Appellant for January 4, 2015, indicating that the Appellant had worked a CAT Special overtime shift from 1:00 p.m. to 3:00 p.m. The Appellant then worked a regular shift from 3:00 p.m. to 11:30, and an Emergency Response Station post from 11:30 p.m. to 7:00 a.m. on January 5, 2015. (JE 15; Testimony of Appellant – VIII, 95-96)

141. The Appellant recalls doing maintenance on his weapon and/or Department gear at his home from 1:00 p.m. to 2:00 p.m. on January 4, 2015, which he is certain was approved by Sergeant McCarthy, and then leaving his home at 2:00 p.m. and completing one hour of CAT overtime on the road. (JE 15, 32, 51; Testimony of Appellant – VIII, 98-104)

142. Detective Lieutenant Ballou determined that the Appellant's radio came on at 2:00 p.m. on January 4, 2015. (JE 23, 40)

143. During Detective Lieutenant Hennigan's prior audit, he had found that there was CJIS activity during this 1:00 p.m. to 3:00 p.m. timeframe, with the Appellant conducting a CJIS inquiry at or around 2:30 p.m. on January 4, 2015. (Testimony of Hennigan – I, 261)

144. Detective Lieutenant Hennigan still flagged the January 4 shift because he believed the Appellant was commuting to his regular shift, which began at 3:00 p.m. Detective Lieutenant Ballou adopted this conclusion during his subsequent investigation. (Testimony of Hennigan – I, 261)

January 26 and 27, 2015

145. On January 26 and 27, 2015, there was a blizzard that resulted in over thirty inches of snow. The Appellant recalled this as a memorable event. (JE 26; Testimony of Appellant – VIII, 105-106)

146. On January 26, the Appellant worked an AIRE patrol overtime shift from 11:00 a.m. to 3:00 p.m. He then worked a regular 3:00 to 11:30 p.m. shift, and then reported working a CAT Special overtime shift from 11:30 p.m. on January 26 to 1:30 a.m. on January 27. (JE 15, 26; Testimony of Appellant – VIII, 114-116)

147. The Appellant's radio was turned off at 11:21 p.m. on January 26, 2015, and no data sources indicated the Appellant was working after that time. (JE 23, 40).

148. The Appellant recalled having arranged with Lieutenant Drew Kalton, who was in charge of day-to-day operations of cruisers and other equipment, to have his plate reader repaired on January 27, 2015. The Appellant further recalled that the previous day, Sergeant McCarthy had approved the Appellant to use his CAT Special overtime to drive his cruiser to the repair shop in Milford. The Appellant testified that his girlfriend drove his personal car to the repair shop in the blizzard between 11:20 and 11:30 p.m., then the Appellant drove his

personal car home and arrived between 12:30 and 12:40 p.m. (JE 26; Testimony of Appellant – VIII, 114-122; Butner – VI, 45-48)

149. Lieutenant Luce recalled that Troop E used a repair shop in Milford to repair plate readers. (Testimony of Luce – VI, 143-144).

150. As previously referenced, none of the duty officers, who may have had first-hand knowledge of the shift that night, were interviewed during the audit or investigation. (JE 26, 40; Testimony of Ballou – IV, 62-79)

151. The snow emergency continued on January 27, the Turnpike was covered in snow, and there was only one passable lane going West. (AE 26; Testimony of Ballou – IV, 225-226).

152. That day (January 27, 2015), the Appellant worked a regular shift from 3:00 to 11:30 p.m. and then a CAT Special overtime shift from 11:30 p.m. to 1:30 a.m. (JE 15; Testimony of Appellant – VIII, 95-96)

153. The Appellant's cruiser radio came on at 10:58 a.m. on January 27, 2015.⁷ (JE 23)

154. The Appellant and his girlfriend went to Milford to pick up his cruiser up between 1:30 and 2:00 p.m. on January 27, at which time he was told that he needed to return the cruiser the next day (January 28, 2015) to complete the repairs. (JE 23; Testimony of Appellant – VIII, 123-127).

155. The Appellant's radio was turned off at 10:42 p.m. on January 27, 2015. The Appellant passed through a transponder at 10:28 p.m. that evening, and no other data sources indicated that he was working after 10:42 p.m. (JE 40; Testimony of Ballou – IV, 85-88)

⁷ Before the Commission, the Appellant suggested that this was the time the repair shop in Milford must have started his cruiser to attempt to perform repairs. The Department suggested that this was likely the time the Appellant cleared his cruiser and home driveway from snow.

156. The Appellant recalled that Sergeant McCarthy had approved him to use CAT Special overtime on January 27 to travel back to the repair shop in Milford after his regular shift that night, where his girlfriend picked him up. (Testimony of Appellant – VIII, 127-131)
157. Lieutenant Luce approved the Appellant’s overtime in PayStation for January 27, 2015. (JE 17)
158. As a result of the testimony presented to the Commission, I instructed the Department to attempt to obtain any records related to the repairs of the Appellant’s plate reader. (CE 1-15; IX, generally)
159. Detective Lieutenant Hennigan was able to locate the Appellant’s old cruiser and two plate readers inside of it. He had them removed and took them to the Cyber Crimes Unit for a forensic analysis. The Cyber Crimes Unit was unable to decipher the data. (CE 11; Testimony of Hennigan – IX, 46-53)
160. Detective Lieutenant Hennigan also spoke with individuals about whether there had been any repairs on the Appellant’s plate reader, including the technician who was responsible for repairs in 2013 and 2014. There had been none done during that time because the equipment was new. In 2014, Imperial Motors took over for repairs of the plate readers until August 2014, when another company purchased the rights from Imperial Motors. Detective Lieutenant confirmed this information through an internet search as well as the Department’s Finance Section. He then made a records inquiry of any repair records on the Appellant’s cruiser, including work done on the plate reader. Detective Lieutenant Hennigan was told that there was one record pertaining to a warranty item on the Appellant’s cruiser in November 2014, but there were no records of any repairs on the plate reader. (CE 4-6; Testimony of Hennigan – IX, 37-44)

161. Detective Lieutenant Hennigan also contacted Lieutenant Kalton and inquired as to what he would have done if someone had a problem with a plate reader or if it needed to be repaired. Lieutenant Kalton recalled that Troop E had possibly two plate readers at that time, and he did not remember there being any issues with them. (Testimony of Hennigan – IX, 44-45)

February 8 and 9, 2015

162. On February 8, 2015, there was another snowstorm, bitter cold temperatures, and travel reduced to forty miles per hour on the Turnpike. (Testimony of Ballou – IV, 227-228)

163. That day, the Appellant worked an AIRE patrol overtime shift from 11:00 a.m. to 3:00 p.m., a regular shift from 3:00 to 11:30 p.m., and then reported working a CAT Special overtime shift from 11:30 p.m. to 1:30 a.m. (JE 15; Testimony of Appellant – VIII, 132-133)

164. While the Appellant's cruiser radio registered a signal from 9:44 a.m. until 10:57 p.m. on February 8, the Appellant's transponder registered no activity after 3:04 p.m. on February 8 until 2:40 p.m. on February 10, 2015. (JE 32, 40; Testimony of Appellant – VIII, 132-133)

165. The Appellant's radio was turned off at 10:57 p.m. on February 8, 2015, and no other data sources indicated that the Appellant was working after 10:57 p.m. (JE 23, 40)

166. On February 9, 2015, the Appellant worked an AIRE patrol overtime shift from 11:00 a.m. to 3:00 p.m., a regular shift from 3:00 to 11:30 p.m., and reported working a CAT Special overtime shift from 11:30 p.m. to 1:30 a.m. (JE 15)

167. The Appellant's radio was turned off at 10:42 p.m. on February 9, 2015, and no other data sources indicated that the Appellant was working after 10:42 p.m. The Appellant's transponder never registered any transponder activity during the entire reported overtime shift. Detective Lieutenant Ballou found that the Appellant was not on the Pike that day and

did not use access sources that are not monitored by the transponder system. (JE 23, 40; AE 32; Testimony of Ballou – IV, 233-236)

168. Before the Commission, the Appellant did not have a specific recollection of the February 8 and 9 overtime shifts, but believed he had likely been working in the Southborough barracks. (Testimony of Appellant – VIII, 134-135)

169. Sergeant McCarthy approved the Appellant's overtime in PayStation for February 8 and 9, 2015. (JE 17)

170. As a result of the Appellant's testimony, I instructed the Department to attempt to obtain any records related to whether the Appellant had accessed the Southborough barracks on February 8 or 9, 2015, and any data showing whether the Appellant may have used his laptop and/or had any activity on a desktop in the Southborough barracks during those shifts. (CE 1-15; IX, generally)

171. Detective Lieutenant Hennigan revisited the Southborough barracks and confirmed that there was not any electronic system (e.g., swiping of badges) that tracked who enters and exited the Southborough barracks. Rather, the doors had a manual push-button lock system in which a code was manually entered to access the barracks. (Testimony of Hennigan – IX, 15-20)

172. Detective Lieutenant Hennigan was able to locate the Appellant's laptop, which was in a pile of laptops set for disposal, and had it forensically examined by the Cyber Crimes Unit. The laptop had been issued to two additional members after the Appellant was terminated in 2018. The Cyber Crimes Unit was unable to retrieve any data for the relevant timeframe between January and March 2015. (Testimony of Hennigan – IX, 20-30)

March 3, 2015

173. On March 3, 2015, according to PayStation records, the Appellant attended court from 9:00 a.m. to 1:00 p.m., worked a regular shift from 3:00 to 11:30 p.m., and then reported working a CAT Special overtime shift from 11:30 p.m. to 1:30 a.m. (JE 15; Testimony of Appellant – VIII, 136-137)
174. The Appellant’s radio was turned off at 11:26 p.m. on March 3, 2015, and no data sources indicated that the Appellant was working after 11:26 p.m. (JE 23, 40)
175. Before the Commission, the Appellant recalled that he and Lieutenant Luce attended a CopLink training all day at the Acton Police Department, and Lieutenant Luce had directed the Appellant not to work the CAT Special overtime on March 3, 2015 from 11:30 p.m. to 1:30 a.m. on March 4 because he did not want the Appellant too tired for the training. (JE 26; Testimony of Appellant – VIII, 138-140)
176. The Appellant acknowledged that he put in for CAT Special overtime on March 3, 2015, but attributed it to being an administrative oversight at the time. (JE 15, 23, 26, 32; Testimony of Appellant – VIII, 141-148)

Appellant’s Trial Board

177. As a result of the Internal Affairs investigation, the Appellant was administratively charged with violating two specifications of Article 5.8.2 (Unsatisfactory Performance) (for not working hours he reported himself working as well as for receiving compensation for hours he did not work without advising the Commonwealth of the overpayment, respectively) and one specification of Article 5.27.3 (Truthfulness) (for submitting PayStation entries claiming hours of overtime he did not work) of the Rules and Regulations of the Massachusetts State Police, arising from his conduct on or about: January 4, 2015;

January 26, 2015; January 27, 2015; February 8, 2015; February 9, 2015; and/or March 3, 2015. The specifications were charged as second offense Class A violations because the Appellant had previously been disciplined for, among other things, a violation of Article 5.15.1 (Abuse of Position) arising from the unauthorized funeral escort matter. (JE 9; RE 9)

178. Lieutenant Colonel Warmington subsequently sent a letter to the Appellant's counsel notifying him that the Department would be seeking to terminate the Appellant's employment. Accompanying the termination letter was a copy of Detective Lieutenant Ballou's report and the exhibits referenced therein. (Testimony of Appellant – VIII, 317-318)

179. Prior to the Trial Board, the Appellant was offered the opportunity to waive the Trial Board process, accept the charges against him, and accept an offer of termination. The Appellant declined this offer. (Testimony of Appellant – VIII, 153-154)

180. Through a letter dated September 6, 2019, the Departmental Prosecutor notified the Appellant that a Trial Board would commence on November 5, 2019, to hear and adjudicate the charges against him. (JE 41)

181. In a letter dated October 31, 2019, Colonel Gilpin notified the Appellant that his Trial Board was scheduled for November 5, 2019. Attached to Colonel Gilpin's letter was a copy of the personnel order, issued the same day, naming the members of the Trial Board. (JE 42-43)

182. That day, after learning of the Trial Board members, the Appellant's counsel contacted the Departmental Prosecutor to report a conflict with one of the members. The Department made a substitution and notified the Appellant's counsel on November 1, 2019 of the new Trial Board member. At that time, the Department also provided the Appellant's counsel

with a copy of an amended personnel order dated November 1, 2019, replacing the Trial Board member who had been removed. (JE 44-45)

183. On November 1, 2019, the Appellant sent a request to the Department asking the President of the Trial Board to issue twelve subpoenas. The Department's Chief Legal Counsel declined to forward the request to the Trial Board President for consideration, primarily based on his conclusion that the witness testimony sought was not relevant. (JE 44, 46)

184. The Trial Board occurred over the course of five days beginning on November 5, 2019, with testimony heard and evidence presented. (JE 2)

185. The Appellant did not testify before the Trial Board. (Testimony of Appellant – VIII, 91).

186. The Trial Board concluded on January 13, 2020, when the Board returned the following findings and recommendations to Colonel Gilpin:

[A]s a result of this hearing, and after careful review of the evidence and through deliberations, the Board, pursuant to a majority vote, makes the following findings:

<i>Charge I Specification I:</i>	<i>Guilty</i>	<i>Second Offense Class A</i>
<i>Charge I Specification II:</i>	<i>Guilty</i>	<i>Second Offense Class A</i>
<i>Charge II Specification I:</i>	<i>Guilty</i>	<i>Second Offense Class A...</i>

The Board respectfully recommends that the following disciplinary action be taken against Trooper Adams:

<i>Charge I, Specification I:</i>	<i>Guilty</i>	<i>Termination</i>
<i>Charge I, Specification II:</i>	<i>Guilty</i>	<i>Termination</i>
<i>Charge II, Specification I:</i>	<i>Guilty</i>	<i>Termination</i>

(JE 2; Testimony of Appellant – VIII, 156).

187. In regard to Charge 1, Specification 1 (Unsatisfactory Performance), the Trial Board found that the Appellant “did not work during hours for which he reported himself as working.” (JE 2)
188. In regard to Charge 1, Specification 2 (Unsatisfactory Performance), the Trial Board found that the Appellant “received compensation for hours of overtime he did not work without advising the Commonwealth of the overpayment.” (JE 2)
189. In regard to Charge 2, Specification 1 (Truthfulness), the Trial Board found that the Appellant “did, in the official course of his duties, execute, file or publish false written reports, minutes or statements, knowing the same to be false. This occurred when Trooper Adams submitted PayStation entries claiming hours of overtime that he did not work.” (JE 2)

190. The discipline for violation of the above offenses is as follows:

- Article 5.8.2 (Unsatisfactory Performance) (Second Offense Class A): from ninety-day suspension without pay to Termination;
- Article 5.8.2 (Unsatisfactory Performance) (Second Offense Class A): from ninety-day suspension without pay to Termination; and
- Article 5.9.1(2) (Truthfulness) (Second Offense Class A): from ninety-day suspension without pay to Termination.

(JE 2, 8, 9)

191. The Trial Board recommended that the Appellant be terminated from his employment with the Department. (JE 2, 6)

192. On various dates between January 2020 and March 2020, the Appellant engaged in settlement discussions with the Department related to the Troop E Internal Affairs investigation. (Stipulation)

193. Present for the settlement discussions were Lieutenant Colonel Warmington, the Appellant, counsel for the Appellant, and the Union President (Trooper Corey Mackey). (Stipulation)
194. The settlement discussions included, but were not limited to, a proposed Disciplinary Agreement for the Appellant of an unpaid suspension lasting twenty-four to twenty-six months. (Stipulation)
195. The proposed Disciplinary Agreement also included other conditions, including the Appellant's removal from any promotional lists, restitution payments to the Department, and a prohibition on participating in any selective enforcement overtime assignments coordinated by and/or organized through the Traffic Programs Section for a period of two years from the effective date of the unpaid suspension. (Stipulation)
196. The proposed Disciplinary Agreement needed further review and approval before it could be offered to the Appellant as a formal offer of settlement. (Stipulation)
197. Lieutenant Colonel Warmington advised the Appellant that he had to notify Lieutenant Colonel Warmington of his acceptance of any approved Disciplinary Agreement within three days. (Stipulation)
198. The Appellant, through his counsel, notified Lieutenant Colonel Warmington that he would accept the proposed Disciplinary Agreement if it were formally approved. (Stipulation)
199. The proposed Disciplinary Agreement discussed was subsequently rejected by the Department. (Stipulation)
200. On July 7, 2020, through personnel orders issued by the Department, Colonel Christopher Mason (who was appointed as Department Superintendent following Colonel Gilpin's

retirement) adopted the Trial Board's findings and recommendations, terminated the Appellant's employment with the Department, and dishonorably discharged the Appellant from the Department. (JE 3-4)

201. Also on July 7, 2020, the Appellant received written notification of the Trial Board's Findings and Recommendations, as well as the disciplinary action and dishonorable discharge imposed by Colonel Mason. (JE 1)

Discipline of Other Troopers Found Guilty of Overtime-Related Misconduct

202. Below is a list of outcomes for the forty-six troopers who engaged in overtime-related misconduct:

- Sixteen members retired with a General Discharge designation;
- Fourteen members retained employment under Disciplinary Agreements;
- Eight members resigned under a Dishonorable Discharge;
- Three members retired with a disability;
- Two members retired with a Honorable Discharge designation;
- One member received a negative employment evaluation;
- One member's disciplinary process was still pending; and
- The Appellant was terminated.

(JE 58; AE 13)

203. The Appellant had a prior finding of a first "Class A" offense against him in 2014 for three unauthorized funeral escorts. Before the Commission, the Department alleged that the Appellant also committed a second "Class A" offense which calls for a possible punishment range of a "suspension for not less than 90 days up to and including termination." (JE 3, 8; RE 8-9)

204. Outlined below is the discipline of the Appellant and three other Troop E CAT Team members found to have engaged in misconduct related to overtime:

Member	Allegations	Charge Sheet	Resolution
Appellant (2015 only)	*Not present for 6 OT shifts	Three Class A offenses (second)	Termination – <i>On Appeal</i>
CAT Member Grid No. 25 ⁸	*Not present for 66 CAT OT shifts *Partially Present for 15 CAT OT shifts *Left Early for 51 CAT OT Shifts 2016 *Not present for 71 CAT OT shifts *Partially Present for 26 CAT OT shifts *Left Early for 65 CAT OT Shifts	Ten Class A offenses (first)	7/13/2020 *Resignation / Dishonorable Discharge
CAT Member Grid No. 42	2015 *Not present for 7 CAT OT shifts *Partially Present for 9 CAT OT shifts *Left Early for 8 CAT OT Shifts 2016 *Not present for 32 CAT OT shifts *Partially Present for 14 CAT OT shifts *Left Early for 18 CAT OT Shifts	Nine Class A offenses (first)	7/09/2020 *Suspended without pay for 696 days; *Pay \$6,670.00 in restitution *Restricted duty status from 7/12/20 – 8/10/20 *all time suspended cannot count to seniority *name removed from lists for promotion *two year ban from working selective enforcement OT assignments
CAT Member Grid No. 43	2015 *Not present for 31 CAT OT shifts *Partially Present for 11 CAT OT shifts *Left Early for 28 CAT OT Shifts 2016 *Not present for 26 CAT OT shifts *Partially Present for 22 CAT OT shifts *Left Early for 12 CAT OT Shifts	Nine Class A offenses (first)	7/09/2020 *Suspended without pay for 696 days; *Pay \$15,143.00 in restitution by 9/01/2020 *Restricted duty status from 7/12/20 – 8/10/20 *all time suspended cannot count to seniority *name removed from lists for promotion *two year ban from working selective enforcement OT assignments

(JE 58; AE 13; Testimony of Ballou – IV, 124)

⁸ Corresponds to AE 13 where the Appellant assigned numbers to each trooper included in JE 58.

205. Fourteen troopers entered into Disciplinary Agreements that allowed them to continue employment with the Respondent. They paid restitution between \$2,268.97 and \$15, 901.89.

They served suspensions ranging from 9 days to 841 days. (JE 58; AE 13)

206. Trooper 19 received a Disciplinary Agreement to continue to be employed with 270 days unpaid suspension and restitution of \$10,835.06,⁹ along with various other restrictions regarding his continued employment including: removal from any and all current promotional lists; and being barred from participating in any selective enforcement overtime assignments for two years. Below is Trooper 19's disciplinary history at the time of the agreement:

- I. 7/17/2015 – Guilty of two Class C violations related to a Violation of Rules of the Respondent and, upon executing a Waiver of his Right to A Trial Board, forfeited ten vacation days relative to four separate incidents (as detailed in four different charge sheets) on 10/31/12 (failing to properly complete, by omitting the time, whether or not an accident had occurred as well as incorrectly checking owner and operator, and enter into the citation database a citation he issued.); 12/8/12 (failing to properly complete and enter into the citation database a citation in a timely manner); 6/23/13 (failing to properly complete and enter into the citation database a citation he issued); and 11/25/13 (failing to follow established evidence collection, handling, recording and storage procedures with respect to the seizure of evidence from a motor vehicle stop).
- II. 2/8/2008 – Suspended for five days for an unspecified charge, unknown Class, amended down from ten days, after the Colonel had reviewed a decision from the Civil Service Commission.
- III. 1/9/2004 – Guilty of two unspecified counts, unknown Class, and order to be suspended without pay for ten days.
- IV. 7/12/2000 – Unsatisfactory Performance, unknown Class,¹⁰ after a Trial Board and ordered to forfeit one vacation day.

⁹ At an hourly overtime rate of approximately \$65, that total equates to approximately 167 hours of alleged overtime not worked.

¹⁰ Under Rule 5.8, a violation can be a Class A through D depending on the allegation.

- V. 9/20/1998 – Unsatisfactory Performance, unknown Class, after a Trial board and ordered to forfeit one vacation day.

(JE 58)

207. On July 8, 2020, Trooper 18, who had been charged with seven first-time Class A violations, accepted a Waiver of Right to Trial Board with an offer of unpaid suspension for ninety days beginning on September 1, 2020 and restitution of \$2,469.86. However, on July 28, 2020, Lieutenant Colonel Pinkham issued a directive that in exchanged for Trooper 18's forfeiture of 408 vacation hours, his suspension was lifted and he was eligible to return to work on August 15, 2020. (JE 58-59)
208. On July 9, 2020, Trooper 20, who had been charged with six first-time Class A violations, accepted a Waiver of Right to Trial Board with an offer of unpaid suspension for 120 days beginning on September 1, 2020 and restitution of \$4,045.72. However, on August 4, 2020, Lieutenant Colonel Pinkham issued a directive that in exchange for Trooper 20's forfeiture of 304 vacation hours, twenty-four personal hours, and one holiday day off, his suspension was lifted and he was eligible to return to work on October 24, 2020. (JE 58-59)
209. On July 9, 2020, Trooper 28, who had been charged with ten first-time Class A violations, accepted a Waiver of Right to Trial Board with an offer of unpaid suspension for 240 days beginning on September 1, 2020 and restitution of \$8,605.48. However, on August 4, 2020, Lieutenant Colonel Pinkham issued a directive that in exchange for Trooper 28's forfeiture of 368 vacation hours, eight personal hours, and four holiday days off, his suspension was lifted and he was eligible to return to work on January 17, 2021. (JE 58-59)
210. On July 9, 2020, Trooper 29, who had been charged with eight first-time Class A violations, accepted a Waiver of Right to Trial Board with an offer of unpaid suspension for

ninety days beginning on September 1, 2020 and restitution of \$2,941.32. However, on August 4, 2020, Lieutenant Colonel Pinkham issued a directive that in exchange for Trooper 229's forfeiture of 129 vacation hours, twenty-four personal hours, and seven holiday days off, his suspension was lifted and he was eligible to return to work on October 11, 2020. (JE 58-59)

211. On July 9, 2020, Trooper 41, who had been charged with eleven first-time Class A violations, accepted a Waiver of Right to Trial Board with an offer of unpaid suspension for 270 days beginning on September 1, 2020 and restitution of \$15,901.89. However, on August 4, 2020, Lieutenant Colonel Pinkham issued a directive that in exchange for Trooper 41's forfeiture of 144 vacation hours and six holiday days off, his suspension was lifted and he was eligible to return to work on April 1, 2021. (JE 58-59)

212. On July 9, 2020, Trooper 22, who had been charged with eleven first-time Class A violations (including writing nine false citations), accepted a Waiver of Right to Trial Board with an offer of unpaid suspension for 841 days, time served, plus thirty days of restricted duty and restitution of \$9,325. (JE 58, AE 13)

APPLICABLE CIVIL SERVICE LAW

The mission of Massachusetts civil service law is to enforce "basic merit principles," which means "assuring fair treatment of all applicants and employees in all aspects of personnel administration," "providing of training and development for employees, as needed, to assure the advancement and high-quality performance of such employees," and ensuring that all employees "are protected from arbitrary and capricious actions." G.L. c. 31, § 1. Basic merit principles require that discipline be remedial, not punitive, "correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected" *Id.*

The statute governing disciplinary actions against state troopers, G.L. c. 22C, § 13, provides in relevant part:

A uniformed member of the state police who has served for at least 1 year and against whom charges have been preferred shall be tried by a board to be appointed by the colonel or, at the request of the officer, a board consisting of the colonel. A person aggrieved by the finding of the trial board under this subsection may appeal the decision of the trial board under sections 41 to 45, inclusive, of chapter 31.

The civil service statute codifying initial due process protections, G.L. c. 31, § 41, states that prior to terminating a tenured employee,

such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the holding thereof

G.L. c. 31, § 42 provides:

Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. . . .

If the commission finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.

Finally, G.L. c. 31, § 43 states:

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against [a tenured civil service employee] . . . it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of the evidence establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall

not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

(Emphasis added).

The Commission determines whether there was just cause for discipline by inquiring whether the employee has committed “substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.” See *Doherty v. Civ. Serv. Comm’n*, 486 Mass. 487, 493 (2020), quoting *Police Comm’r of Boston v. Civ. Serv. Comm’n*, 39 Mass. App. Ct. 594, 599 (1996); see also *Brookline v. Alston*, 487 Mass. 278, 292 (2021); *Cambridge v. Baldasaro*, 50 Mass. App. Ct. 1, 3 (2000).

The Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” *Falmouth v. Civ. Serv. Comm’n*, 447 Mass. 814, 823 (2006).

An appointing authority must provide “adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law” to sustain the discharge of a civil service employee. *Comm’rs of Civ. Serv. v. Municipal Ct.*, 359 Mass. 211, 214 (1971), citing *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928) (stating that justification for discharge of a public employee requires proof by a preponderance of evidence of “proper cause” for removal made in good faith). The preponderance of the evidence standard 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 (1956) (emphasis added).

Due to the powers conferred by their office, police officers are held to a high standard of conduct than other civil service employees. As the Massachusetts Appeals Court has stated:

Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

Police Comm'r of Boston, 39 Mass. App. Ct. at 601, quoting *Police Comm'r of Boston v. Civ. Serv. Comm'n*, 22 Mass. App. Ct. 364, 371 (1986).

ANALYSIS

Appellant's Procedural Appeal Under G.L. c. 31, § 42

The Appellant argued that the Department failed to follow the requirements of G.L. c. 31, § 41 before terminating his employment, and that his rights were prejudiced by the Department's failure to follow such requirements. Specifically, the Appellant alleged the following:

- The Department never provided the Appellant with written notice that he may be subject to termination for his alleged misconduct. Rather, at the outset of the Trial Board, the Department notified the Appellant, verbally, that termination was a possible outcome.
- The notice sent to the Appellant regarding the Trial Board did not include Sections 41 through 45 of the civil service law, as required.
- In addition to failing to state the contemplated action of termination, the notice failed to provide the “specific reasons” for the unstated contemplated action. Rather, the notice simply stated the Appellant violated Articles 5.8 and 5.27.3, which applied to offenses that occurred on six specific dates in early 2015 in the Town of Weston.
- The Department did not provide notice to the Appellant at least three days in advance of the hearing, as required, but instead gave notice two days before the hearing.

- After the conclusion of the hearing, the Trial Board failed to provide their findings with recommendations to the Department forthwith. Rather, the Trial Board submitted a To/From memo approximately ten weeks after the hearing, finding the Appellant guilty of the charges with a recommendation of termination. Nearly six months later, on July 7, 2020, after receiving the Trial Board's findings and recommendations, the Colonel issued Personnel Order (Number 20PER289) entering a finding of guilty to all charges as alleged and found by the Trial Board and ordered that the Appellant be terminated.
- The Appellant was deprived of the opportunity to have a full hearing before the Trial Board because he was not permitted to call witnesses or adequately review all of the evidence against him.

The Appellant argued that his rights were prejudiced by these alleged violations of G.L. c. 31, § 41. The Appellant claimed that he would have been better able to rebut specific allegations if the Department had provided timely notice with specific allegations, made it known from the outset that the end result could be termination, and provided with a copy of G.L. c. 31, §§ 41-45 as required by the civil service law. Instead, the Appellant stated that he was provided with copious amounts of highly technical documents and indiscriminate conclusions, without a meaningful opportunity to understand said documents and with no opportunity to subpoena witnesses.

Respondent's Argument

The Department, in a footnote to its post-hearing brief, argued the following regarding the Appellant's Section 42 Procedural Appeal:

The Appellant has argued, on procedural grounds, that the Department was in violation of the notice requirement of M.G.L. c. 31, s. 41 when it issued the amended personnel order on November 1, 2019, to reflect that a board member had been replaced. . . . The Appellant had received sufficient notice on October 31, 2019, of the trial board to commence on November 5, 2019; the amended order was to name the replaced board member after the Appellant's attorney had notified the Department of a potential conflict. Moreover, the Appellant suffered no prejudice where the Departmental Prosecutor notified him, through counsel, on September 6, 2019, as to the November 5, 2019, trial board date. Further, based on the plain language of M.G.L. c. 22C, § 13, members are

permitted to “appeal [only] the decision of the trial board under sections 41 to 45,” and not the process leading up to it.

(Emphasis added).

Commission’s Conclusion Regarding Section 42 Procedural Appeal

The Commission lacks jurisdiction to hear a Section 42 procedural appeal filed by uniformed members of the Department.

In 2020, a superior court judge ruled that the Commission lacked jurisdiction to hear an appeal regarding a suspension of a State Trooper that resulted from a Duty Status Hearing, as opposed to a Trial Board. See *Dep’t of State Police v. Civ. Serv. Comm’n, et al.*, Suffolk Sup. Crt. No. 2019-1370-G (2020). The court stated that G.L. c. 22C, § 10 “is unambiguous. It specifically exempts Department appointees from the requirements of the civil service law contained in G.L. c. 31. Thus, members of the Department are not ‘civil service employees,’ to which G.L. c. 31, §§ 41-45 apply.” The court further clarified: “As the statute itself provides for Commission review only of Trial Board decisions, the Commission’s determination that ‘the Legislature clearly intended for uniformed members of the State Police to be entitled to access the Commission for all adverse employment actions that fall within the scope of G.L. c. 31, § 41’ is contrary to the plain language of G.L. c. 22C, § 13.” *Id.*

While the Court was specifically addressing the issue of whether a uniformed member of the Department could appeal a determination from a Duty Status Hearing, as opposed to a Trial Board, the Court was clear that the scope of protections afforded to Department members was more limited than those afforded to civil service employees. The court explicitly referred to the protections outlined in Section 41, which establish the procedural requirements that must be followed prior to the discipline or termination of a tenured civil service employee.

It is also noteworthy that the legislature, in at least one other circumstance, explicitly stated its intent to bestow pre-disciplinary procedural rights upon non-civil service (housing authority) employees. G.L. c. 121B, § 29 states:

No employee of any housing authority, except an employee occupying the position of executive director, who has held his office or position, including any promotion or reallocation therefrom within the authority for a total period of five years of uninterrupted service, shall be involuntarily separated therefrom except subject to and in accordance with the provisions of sections forty-one to forty-five, inclusive, of said chapter thirty-one to the same extent as if said office or position were classified under said chapter.

(Emphasis added). In comparison, G.L. c. 22C, § 13, states:

A uniformed member of the state police who has served for at least 1 year and against whom charges have been preferred shall be tried by a board to be appointed by the colonel or, at the request of the officer, a board consisting of the colonel. A person aggrieved by the finding of the trial board under this subsection may appeal the decision of the trial board under sections 41 to 45, inclusive, of chapter 31.

The Legislature, when adopting G.L. c. 22C, § 13, chose not to include the language from the housing authority statute stating “to the same extent as if said office or position were classified under said chapter.”

For these reasons, I do not believe that the procedural protections provided in Section 41 apply to uniformed members of the Department. That does not however, entirely prevent the Commission from considering due process-related issues as part of a just-cause appeal under Section 43 when applicable. For example, as noted above and further in this decision, I did consider various due process related factors, including but not limited to: the long delay between the alleged misconduct and when the Appellant was notified of such allegations, the Department’s failure to provide the Appellant with full and timely access to all evidence, and the Department’s failure to allow the Appellant to call certain witnesses before the Trial Board. All

of these due process-related issues impacted credibility assessments as well as how to appropriately apply the preponderance of evidence standard in this case.

In summary, I concur with the Respondent that the Commission lacks jurisdiction to hear a Section 42 procedural appeal filed by uniformed Department members. But, Section 43's "just cause" protection afforded to Department members does embrace fundamental due process protections.

Appellant's Just-Cause Appeal Under G.L. c. 31, § 43

The primary question regarding just cause is whether the Department has shown, by a preponderance of the evidence, that the Appellant falsely claimed to have worked six two-hour overtime shifts that he did not actually work. Put another way, does the entire record of evidence before the Commission show that it is "more probable or likely" that the Appellant failed to work these six two-hour overtime shifts for which he was paid?

The Department argued that after completing a thorough investigation, which used records and data to create a "digital footprint" of the Appellant, it has shown that the Appellant did not work any of the six overtime shifts.

The Appellant argued that the Department conducted an "incomplete and inadequate" investigation that resulted in erroneous conclusions regarding at least five of the six overtime shifts. The Appellant contended that the investigation was fatally flawed because it lacked critical information that could only be gleaned from individuals who were not interviewed such as the Appellant's former supervisors, the commander of the Troop E CAT Team, and Troop E Duty Officers.

In considering whether the Department met its burden here, I considered several factors particular to this appeal. First is the passage of time. It was not until 2018 that the Department

first notified the Appellant that he was being investigated for whether he actually worked six two-hour overtime shifts three years earlier in 2015. Absent exceptional memory capabilities, it would be almost impossible for any person to recall specifically what duties they performed during six two-hour shifts that occurred such a long time ago. That is particularly true when it comes to the job of a State Trooper, who typically works far more than forty hours each week, including details, court appearances, and various overtime shifts related to different Department programs.

Second, and relatedly, I considered the *additional* passage of time that occurred because of the Department's failure to provide the Appellant with the evidence against him in a timely manner. Even after the Appellant was charged and removed from the payroll following a brief Duty Status Hearing, the Department failed to provide the Appellant with the evidence against him in a timely manner. When the Department finally did allow the Appellant to review the evidence against him, it was in a highly restrictive manner which prevented the Appellant from retaining large amounts of data and documents that could only be deciphered and explained by witnesses who would later testify before the Trial Board and the Commission. While the Department claimed that the ongoing criminal investigation prevented it from being more forthcoming with evidence, the fact remains that the Appellant did not receive most or all of the evidence against him until at least 2020, five years after the events being investigated. I considered this additional passage of time when assessing whether the Appellant's difficulty in recalling what duties he may have been performing during those six shifts was proof that he did not actually work those shifts, or, rather, that it was simply impossible to recall given the total number of years that had elapsed.

Third, I considered whether the Department's failure and/or inability to interview key percipient witnesses detracted from its conclusions. The Department argued that, based solely on the data and records, the only reasonable conclusion was that the Appellant failed to work each of the six overtime shifts and was present at work only for his normal shifts on the dates in question. As discussed in more detail below, the Appellant provided testimony before the Commission about his possible whereabouts for five of the six shifts that is not necessarily inconsistent with the data and records produced by the Department. For example, if the Appellant did indeed work at the Southborough barracks during two of the shifts, as he asserts, that would not be inconsistent with the Department's data. Thus, it would have been helpful for the Department to obtain additional information from percipient witnesses, including duty officers who were assigned to the shifts in question.

Fourth, I considered that the Appellant opted not to testify before the Trial Board, from which both the Department and the Commission may draw an adverse inference. I considered his failure to testify, however, within the overall context described above and the key fact that the Department refused to allow the Appellant to call and subpoena various witnesses. That is particularly important here given that the Appellant was being asked to account for his whereabouts five years earlier. The testimony of those witnesses could have enabled the Appellant to refresh his memory regarding the six overtime shifts from five years ago, thus allowing him the opportunity to give informed testimony before the Trial Board. Effectively, the Appellant was seeking to fill the gaps in the Department's investigation in order to assist him in recalling the dates in questions. The Department's failure to allow the Appellant that opportunity must be considered as it relates to his failure to testify before the Trial Board.

Applying the preponderance of the evidence standard and considering the factors above, I now turn to the six individual overtime shifts in question.

January 4, 2015 (1:00 to 3:00 p.m.)

The Appellant claimed a CAT Special overtime shift from 1:00 to 3:00 p.m. on January 4, 2015. His time was actually entered and approved in PayStation by his direct supervisor, Sergeant McCarthy. The Department's evidence showed that the Appellant was active when his cruiser radio came on one hour into the shift (and one hour before his regular shift, which began at 3:00 p.m. that day). The Appellant also queried someone on CJIS thirty minutes later, and passed through the tolls eighteen minutes before his regular shift was scheduled to begin. The Department contended that this data was indicative of the Appellant simply starting his cruiser early and then commuting to his regular shift.

The Appellant testified that he believed he worked the first hour of overtime at home on an approved task. Indeed, Lieutenant Luce testified that working from home was generally approved for certain tasks. There was no record kept to document overtime for the CAT Team, and the Department did not present any statements or testimony from Sergeant McCarthy, the CAT Team Commander who actually entered and approved these two hours of overtime. As such, the Department has not shown, by a preponderance of the evidence, that the Appellant failed to work his reported two-hour overtime shift on January 4, 2015.

January 26 and January 27, 2015 (11:30 p.m. – 1:30 a.m. each night)

In 2015, Boston broke its all-time record for snow fall, with 110 inches of snow resulting in various snow emergency declarations throughout the winter. January 27, 2015 was a record-setting day, with approximately thirty inches of snow falling in one day, bringing almost all activity in the region to a halt.

The Appellant claimed a CAT Special overtime shift from 11:30 p.m. to 1:30 a.m. on January 26, 2015, and Lieutenant Luce approved the overtime in PayStation. The Appellant's radio was turned off at 11:21 p.m., and the Appellant passed through the tolls at 11:03 p.m. at the Turnpike exit he would likely use to go home. Therefore, the Department found that the Appellant likely went home after his regular shift and did not work the 11:30 p.m. to 1:30 a.m. overtime claimed on his PayStation.

The Appellant's cruiser radio came on at 10:58 a.m. on January 27, 2015. The same day, the Appellant claimed a CAT Special overtime shift from 11:30 p.m. to 1:30 a.m. after working his regular shift. Again, Lieutenant Luce approved the overtime in PayStation. The Appellant's radio was turned off at 10:42 p.m., his cruiser was in the vicinity of his residence when the radio went off, and no data points indicated the Appellant was working after 10:42 p.m. on January 27.

According to the Appellant, Lieutenant Kalton had previously arranged for him to have his plate reader repaired in Milford on January 27 and that Sergeant McCarthy authorized the Appellant to use CAT overtime to drop his cruiser off in Milford that night for the plate reader to be repaired the following day. The Appellant recalls that his girlfriend drove down in the middle of the night, and three more times over the next two days, to pick him up or bring him back to Milford, because the plate reader could not be fixed on January 27. According to the Appellant, he was then allowed to use CAT overtime after his regular shift on January 27 to bring his cruiser back to Milford again to be repaired on January 28. Lieutenant Luce testified that plate readers were repaired at a facility in Milford, potentially corroborating the Appellant's testimony.

The Department argued that the Appellant's account defies logic, stating that one is hard-pressed to believe that, in the midst of a blizzard, the Appellant was authorized to drop off his

cruiser to repair a plate reader, or that his girlfriend drove four times over the course of approximately thirty-six hours—in those weather conditions when civilians were instructed to be off the road—to assist him in getting his plate reader repaired.

Milford Headquarters had only one record pertaining to a warranty item on the Appellant's cruiser in November 2014, and there were no records of any repairs of the plate reader. Additionally, Lieutenant Kalton recalled that Troop E had possibly two plate readers at that time, and Lieutenant Kalton did not remember there being any issues with them.

This is a close call. The Appellant plausibly testified that, after hearing Lieutenant Luce (who was not interviewed by the Department) testify before the Commission that plate readers were repaired at a facility in Milford, it refreshed the Appellant's memory on repairs done to his cruiser's plate reader in January 2015. Also, the fact that the Appellant's cruiser was turned on at 10:58 a.m. on January 27 could support the Appellant's testimony that the repair facility turned on the cruiser in an (unsuccessful) attempt to repair the plate reader that day. I also considered that the Department was unable to obtain data from the plate reader to refute the Appellant's testimony, and that the data available does not rule out the possibility that the Appellant's recollection is accurate. Finally, as noted above, I considered that the Appellant was being asked to recall events that occurred several years ago.

Ultimately, however, after reviewing all the evidence, I conclude that it is more likely that the Appellant did not bring his cruiser to a repair facility in Milford on January 26 and January 27, 2015. It may well be that the Appellant, at some point, possibly during the winter months, brought the cruiser to a private repair facility during inclement weather. I do not, however, find it probable that this occurred during record-setting days of snowfall, in which the Appellant's girlfriend would have been called out into treacherous conditions that had brought

the region to a halt. Ultimately, I find it more likely that the Appellant's cruiser was turned on at 10:58 A.M. on January 27 due to the Appellant clearing his driveway during the ongoing snowstorm.

To be clear, I am not finding that the Appellant's testimony was not credible. Rather, I simply believe that, with the passage of years, the Appellant has incorrectly recalled the dates and times in which he may have brought his cruiser to a private repair facility.

For all the above reasons, I find it more likely that, rather than bringing his cruiser to a repair facility on January 26 and 27, 2015, the Appellant traveled home and did not perform the two hours of overtime for which he requested and received payment.

February 8 and 9, 2015 (11:30 p.m. to 1:30 a.m. each night)

On February 8, 2015, the Commonwealth was experiencing another snowstorm, bitter cold temperatures, and the speed limit had been reduced to forty miles per hour on the Turnpike. The Appellant claimed a CAT Special overtime shift on that date from 11:30 p.m. to 1:30 a.m. after working his regular shift. The Appellant's radio was turned off at 10:57 p.m., his cruiser was in the vicinity of his residence when the radio went off, and no data points indicated the Appellant was working after 10:57 p.m. on February 8.

The Appellant also claimed a CAT Special overtime shift on February 9, 2015, from 11:30 p.m. to 1:30 a.m. The Appellant's radio was turned off at 10:42 p.m., his cruiser was in the vicinity of his residence when the radio went off, and no data points indicated the Appellant was working after 10:42 p.m. on February 9.

While the Appellant's cruiser radio registered a signal from 9:44 a.m. until 10:57 p.m. on February 8, the Appellant registered no transponder activity after 3:04 p.m. on February 8 until 2:40 p.m. on February 10, 2015.¹¹

The Appellant did not specifically recall the February 8 and 9 overtime shifts, but believed he was likely working in the Southborough barracks. The Appellant was certain that any overtime for those days had been authorized by Sergeant McCarthy, who approved the Appellant's overtime in PayStation for February 8 and 9. As stated in the findings, despite the Department's good-faith effort, no evidence was available to prove or disprove whether the Appellant had been working in the Southborough barracks on February 8 or 9, 2015.

Although this is another close call, after reviewing all the evidence, the Department has not shown by a preponderance of the evidence that the Appellant went home on the two nights in question without working these two overtime shifts. Based on the evidence (or lack thereof), it is at least equally as likely that the Appellant went to the Southborough barracks, performed administrative duties, and was available to respond to calls on the Turnpike as needed during two overtime shifts. To question the Appellant's credibility, the Department pointed to his uncertainty about the two dates. I see it otherwise. The Appellant candidly acknowledged that he simply could not remember what duties he was authorized to perform on February 8 and 9, 2015. Credible testimony of the Appellant and others, however, confirmed that overtime work could have been—and was—performed at the Southborough barracks, and I credit the Appellant's testimony that he had performed work at those barracks in the past.

¹¹ This does not detract from the Appellant's testimony, but rather raises questions about the reliability of the transponder data in general.

For all the above reasons, the Department has not shown that the Appellant failed to work the two overtime shifts on February 8 and 9, 2015 for which he was paid.

March 3, 2015 (11:30 p.m. to 1:30 a.m.)

The Appellant claimed a special CAT overtime shift from 11:30 p.m. to 1:30 am. on March 3, 2015. The Appellant's radio was turned off at 11:26 p.m., his cruiser was in the vicinity of his residence when the radio went off, and no data points indicated that the Appellant was working after 11:26 p.m. on March 3.

Lieutenant Luce testified that he had scheduled a CopLink training for the Appellant on March 4, 2015, and had directed him not to work the 11:30 p.m. to 1:30 a.m. shift on March 3. The Appellant, after hearing Lieutenant Luce's testimony and reviewing records, believed that the claim of overtime on this date was an administrative error on his part and that he actually worked the CAT overtime shift on another day that week rather than on March 3. The evidence shows, however, that the Appellant was paid overtime for both dates. Put another way, the Appellant, after following Lieutenant Luce's directive, did not work the March 3 overtime shift, but failed to correct his payroll submissions and received payment of approximately \$130 that he had not earned.

Conclusions Regarding the Six Overtime Shifts in Question

The Department has shown, by a preponderance of the evidence, that the Appellant did not work three, two-hour overtime shifts for which he was paid. This amounts to six hours of time for which the Appellant was paid \$65/hour, totaling approximately \$390, and constitutes a violation of the rules cited by the Department.

The Department has not shown, by a preponderance of the evidence, that the Appellant failed to work the remaining three two-hour overtime shifts for which he was charged.

Disparate Treatment

Another question still stands regarding the Appellant's just-cause appeal: having determined that the Appellant did engage in some misconduct, was termination warranted?

G.L. c. 31, § 43 vests the Commission with the power to "modify any penalty imposed by the appointing authority." Such power "is at its core the authority to review and, when appropriate, to temper, balance, and amend. The power to modify penalties permits the furtherance of uniformity and the equitable treatment of similarly situated individuals." *Police Comm'r of Boston v. Civ. Serv. Comm'n*, 39 Mass. App. Ct. 594, 600 (1996). Modification is appropriate where the Commission finds, for example, the presence of "political considerations, favoritism, or bias," or material facts that differ from those reported by the appointing authority. *Falmouth*, 447 Mass. at 824. The Commission must provide a reasoned explanation for any modification. *Police Comm'r of Boston*, 39 Mass. App. Ct. at 600.

With respect to whether a modification of the penalty is warranted, the Department argued, in part:

The number of shifts involved is irrelevant to the determination of whether the Department had just cause to terminate the Appellant. For one, as a technical matter, while the Appellant is alleged to have submitted and been paid for six CAT overtime shifts he did not work, the Commission must only find by a preponderance of the evidence that he did so as to one overtime shift in order to satisfy the offenses as charged. Yet there is also a substantive argument to be made here. It cannot be ignored that the instant case arose from an investigation into a single sworn member's falsifying of citations and other PayStation irregularities which, in turn, morphed into an audit and subsequent historic investigation of an entire troop for overtime fraud, false citations, missed shifts, and other irregularities. The Troop E investigation resulted in the convictions of multiple members of the Department, as well as the resignation, retirement, and/or discipline of many others. The shameful actions of these 46 members, including the Appellant, have brought the Department into disrepute.

That argument would hold more weight if the Department, at or around the same time it terminated the Appellant, had not entered into Disciplinary Agreements with fourteen members who allegedly (a) were not present for reported overtime shifts, (b) left early from reported overtime shifts, and/or (c) were present for only part of their reported overtime shifts. The agreements ranged from 9 to 696 days of unpaid suspension and restitution payments between \$2,268.97 to \$15,901.89. Twelve members entered into their Disciplinary Agreements on July 9, 2020. The Appellant was terminated on July 7, 2020.

Trooper 19, who was not terminated after entering into a Disciplinary Agreement, was most similarly situated to the Appellant. Trooper 19 had a significant history of misconduct charges sustained against him. Starting in 2000, he had been charged and found to have committed Department rule violations seven times. While Trooper 19 might not have had a prior Class A violation, he engaged in a pattern of misconduct more numerous than the Appellant's.

The Department made much of the fact that the fourteen members who were spared termination “were given a chance to redeem themselves *when they admitted their culpability*, [and] *waived their right to a trial board . . .*” while the Appellant “*refused to accept responsibility for his actions* all the while changing his story as it fits him.” Admitting culpability for collecting up to \$15,000 for overtime not worked, solely in order to avoid termination, should not be viewed as a badge of honor. Nor should someone's decision to exercise their statutory due process rights be viewed as a factor in whether to terminate their employment. Further, I am not sure—at all— what the Department is referring to in its claim that the Appellant was “changing his story as it fits him.” The record simply does not support that unfounded assertion. Finally, the Department's argument ignores the fact that the Appellant,

similar to other members accused of misconduct, did indeed agree to resolve this matter through a settlement, which the Department ultimately decided against.

Even if the Department had not entered into Disciplinary Agreements with other members, there is a broader justification for a modification of the Appellant's discipline. The Department effectively argued that the Appellant must have been a knowing participant in the broad overtime scandal that compromised the integrity of that agency. The Department further suggested that a longer snapshot in time would have produced more evidence of misconduct against the Appellant. First, the record does not support that. The Department's own investigation shows that the Appellant did not miss any reported AIRE patrols by the Appellant; did not enter false information on citations; and did not write false "ghost" citations. Further, the Department was only able to show that the Appellant failed to work six hours of overtime during a period of time that covered several hundred hours. In regard to the six hours which were proven, the evidence is not persuasive—at all—that the Appellant was aware that he was engaged in fraudulent activity. Rather, the only certainty regarding at least four of those six hours is that the Appellant was simply unable to effectively rebut the largely circumstantial evidence marshalled against him for hours claimed several years ago. This is hardly the type of evidence upon which the Department can persuasively argue that the Appellant participated in a known effort to fleece taxpayers as part of the broader Department overtime scandal. Finally, in disregard for how appeals are adjudicated, the Department suggested that the Commission should speculate about whether a non-existent longer review period would have flagged additional shifts, let alone prove further misconduct. The Commission reviews the evidence before it, or lack thereof, and makes findings and conclusions accordingly.

CONCLUSION

The Department has shown just cause to discipline the Appellant for failing to work six hours of reported overtime, which differs from the Department's conclusion that the Appellant failed to work twelve hours of reported overtime. The Department treated the Appellant differently than other similarly situated employees, including Trooper 19, who failed to work 167 hours of overtime and had a pattern of prior discipline more numerous than the Appellant's.

For these reasons, the appeal of Trooper Adams, Docket No. D1-20-114, is hereby *allowed in part*. Pursuant to the Commission's authority under G.L. c. 31, § 43, the Appellant's discipline is hereby modified from termination to a 270-day suspension, the same penalty imposed upon Trooper 19. Further, nothing in this decision should be construed as preventing the State Police from imposing other penalties against the Appellant in the same manner as Trooper 19, including: restitution for overtime not worked; removal from any and all current promotional lists; and being barred from participating in any selective enforcement overtime assignments for two years. Except as noted above, the Appellant shall be returned to his position without loss of compensation or other rights.

In a footnote in its post-hearing brief, the Department, for the first time in this appeal, argued that even if the Commission orders the Department to reinstate the Appellant, his license to carry was revoked by the Colonel/Superintendent. The Department contended that without a valid license to carry, the Appellant cannot perform the essential functions of his job, and thus cannot be employed by the Department. In response, I point to an excerpt from the Massachusetts Supreme Judicial Court in *Brookline v. Alston*:

The statute is unequivocal: G. L. c. 31, § 43, states, "If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority,

otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights . . . ” This express and specific language is controlling. Therefore, we conclude that once the commission concluded that the town lacked just cause to terminate Alston, the commission was statutorily required to order Alston’s reinstatement.

487 Mass. 278, 306 (2021) (citations omitted), citing *Malloch v. Hanover*, 472 Mass. 783, 788 (2015) (“[W]here the language of a statute is plain and unambiguous, it is conclusive as to legislative intent.”). The Supreme Judicial Court further clarified: “Our holding, however, is simply that the civil service law requires Alston’s reinstatement, and we express no opinion as to what options the town or Alston may have going forward.” The same holds here.¹²

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on June 15, 2023.

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) (1), 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 the Superior Court, the Appellant, 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:
Daniel Moynihan, Esq. (for Appellant)
Mark A. Russell, Esq. (for Appellant)
Suzanne Caravaggio, Esq. (for Respondent)
Daniel Brunelli, Esq. (for Respondent)

¹² As stated in the findings, the Appellant has filed a License to Carry Appeal which, at the time of the Commission hearing, remained pending in Framingham District Court.