

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

ALEX AIELLO,
Appellant

v.

CITY OF GLOUCESTER,
Respondent

Docket No.:

D-22-171

Appearance for Appellant:

Ian Collins, Esq.
Sandulli Grace, P.C.
44 School Street
Boston, MA 02108

Appearance for Respondent:

Suzanne Egan, Esq.
City of Gloucester Law Department
9 Dale Avenue
Gloucester, MA 01930

Commissioner:

Angela C. McConney

SUMMARY OF MEMORANDUM OF DECISION

The Superior Court referred this matter back to the Civil Service Commission for clarification in support of the Commission's decision to reduce the City's discipline from five days to three days. *Aiello v. Massachusetts Civil Service Comm'n et al.*, No. 24-00248 (Suff. Sup. Ct., Feb. 20, 2025) This memorandum provides that clarification.

MEMORANDUM OF DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Alex Aiello, appealed the December 6, 2022 decision of the City of Gloucester (City) suspending him from his employment as a police officer for five days.

The Commission held an evidentiary hearing on March 29, 2023.

On December 28, 2023, the Commission issued its decision, reducing the five-day suspension to a suspension of three days. [*Aiello v. Gloucester*, 36 MCSR 454 \(2023\)](#). One commissioner issued an opinion, concurring in part, arguing that the appropriate discipline should have been limited to a written discipline or no more than a one-day suspension, citing *Schlichte v. Gloucester*, 30 MCSR 124 (2017) (affirming Gloucester’s one-day suspension for alleged pattern of mocking fire chief).

On February 20, 2025, the superior court remanded the matter, finding that the “Commission thus imposed a three-day suspension but did not explain why that penalty was appropriate.” *Aiello v. Massachusetts Civil Service Comm’n, et al.*, No. 24-00248 (Suff. Sup. Ct., Feb. 20, 2025). The Commission majority reiterates that the three-day suspension was appropriate for the Appellant’s actions, and that the Commission’s decision is duly supported by the administrative record.

The Section 41 hearing sustained the Internal Affairs investigation; to wit, that Mr. Aiello had violated four Department rules and regulations, described by the hearing officer as:

Gloucester Police Department Core Values, to wit, Professionalism

Officer Aiello’s actions of August 2, 2022 bring into question his professionalism as it relates to his work as a Patrolman. Professionalism is a powerful quality that involves not only being reliable, setting your own high standards, and showing that you care about every aspect of your job, but being a role model for politeness and good manners.

Rule 6.3.10 Insubordination

Officer Aiello’s actions of August 2, 2022, demonstrated insubordination by overtly disrespecting the Chief of Police by openly mocking and disagreeing with his orders thus potentially putting the Chief’s authority in doubt.

Rule 6.7.6 Discourtesy

Officer Aiello’s actions of August 2, 2022, demonstrated his disrespect toward his superior, the Chief of Police.

Rule 6.7.24 Public Statements

Officer Aiello’s actions of August 2, 2022, displayed a derogatory and

disparaging public statement to all GPD staff, sworn officers, superior officers, and non-sworn officers.

Modification of Penalty

Section 43 of G.L. c. 31 also vests the Commission with the authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated “considerable discretion” in this regard, albeit “not without bounds,” so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. See, e.g., *Police Comm’r v. Civil Service Comm’n*, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; *Falmouth v. Civil Service Comm’n*, 61 Mass. App. Ct. 796, 800 (2004); *Faria v. Third Bristol Div.*, 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). However, the Supreme Judicial Court has added that, in the absence of “political considerations, favoritism, or bias,” the same penalty is warranted “unless the commission’s findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way.” *Falmouth v. Civil Service Comm’n*, 447 Mass 814, 824 (2006).

In the Commission’s de novo review, I find that Mr. Aiello violated two of the cited violations: *Gloucester Police Department Core Values, to wit, Professionalism, Rule 6.7.6 Discourtesy* and *Rule 6.7.24 Public Statements*. I find that the City did not meet its burden in proving the most serious violation, *Rule 6.3.10 Insubordination*. This necessitated a reduction in the discipline.

The court’s decision, drawing mainly from the Commission’s decision, rehearses many of the reasons why discipline stiffer than a one-day suspension is warranted. Indeed, there are diverse reasons for the Commission’s decision for reducing the penalty from a five-day to three-day suspension: (1) the “maximum discipline” of a 5-day suspension appeared unwarranted given that the Commission could not sustain two of the four charges pressed against Aiello

(especially where the standard for overt insubordination had not been met); (2) the level of discipline should be modified to correspond with discipline normally meted out for discourteous or unprofessional, but not overtly insubordinate, behavior – referencing another officer who was suspended for 3 days in 2022 for sending a rude and insolent email; (3) the police chief himself, recognizing that post-midnight emails are often not reflective of one’s best judgment, was willing to deem a 3-day suspension “served” (plus two days in abeyance) sufficient (albeit only if Mr. Aiello apologized – whereas on this point the Commission thought that both sides should let bygones be bygones); (4) the topics covered in Mr. Aiello’s email all touched on matters of legitimate concern for his union members; and (5) the Commission traditionally has guarded the principle of progressive discipline and the notion that discipline should be remedial, and not punitive, in nature.

The concurring opinion sought a one-day suspension. However, a clear Commission majority (4 of the 5 commissioners) did not agree with the concurring opinion that the discipline should not have been any harsher than a one-day suspension. The decision notes, for example, that Mr. Aiello previously (in 2015) had been given a written warning for disobeying a superior’s order [although the court misconstrued Commission finding no. 10 in stating that “[t]here were three prior instances of discipline” on Aiello’s record when, in fact, there had been only one prior event giving rise to three forms of discipline]. Mr. Aiello’s email was highly unprofessional and could be read to undermine the chief’s authority. The Respondent City’s memorandum in support of judgment on the pleadings in Superior Court called for outright affirmance of the Commission decision (even though the CSC had ordered a reduction in the suspension length). The court writes that, at oral argument, “the Plaintiff did not press the claim that the Commission’s decision is subject to substantive challenge, *and for good reason.*” Memorandum

of Decision at 7 (emphasis added).

The court noted that:

... the Commission considered Aiello's argument that another officer with a more serious disciplinary history had received a three day suspension in 2022 for failure to follow rules and regulations regarding mandatory email usage and for insubordination.

Memorandum of Decision at 4.

Officer Aiello has asserted that his five-day suspension was unusually punitive given his disciplinary history, which is limited to a written warning from 2015. He submitted into evidence a February 2022 disciplinary letter for an officer who received a three-day suspension for failure to follow Department rules and regulations regarding mandatory email usage and for insubordination. This officer had a disciplinary history and chose to resign. Officer Aiello proposes that this exhibit shows that he was treated differently from another officer in a similar situation. There are no further facts in the administrative record to support this allegation. The conduct of another officer violative of the Department rules and regulations is not an excuse for Officer Aiello's conduct and nor has the case been made for further fine-tuning of the penalty here based on that event alone.

Conclusion

After a further review of the administrative record, the Commission finds no basis for revising its earlier downward modification of Mr. Aiello's discipline from five days to three days.

CIVIL SERVICE COMMISSION

/s/ *Angela C. McConney*

Angela C. McConney, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, and

Stein, Commissioners) on March 6, 2025.

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 C.M.R. § 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Notice to:

Ian Collins, Esq. (for Appellant)

Suzanne Egan, Esq. (for Respondent)