

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

CASLEY BAILEY,

Appellant

v.

BOSTON FIRE DEPARTMENT,

Respondent

Docket Number:

D-24-037

Appearance for Appellant:

Steven R. Yormak, Esq.

2 Burlington Woods Drive

Suite 100

Burlington, MA 01803

Appearance for Respondent:

Robert J. Boyle, Jr., Esq.

Boston City Hall

Room 624

Boston, MA 02201

Commissioner:

Shawn C. Dooley

SUMMARY OF DECISION

The Commission affirmed the decision of the Boston Fire Department (BFD) to suspend a firefighter for 60 days for violation of rules related to untruthfulness and misrepresentation regarding the unauthorized use of emergency lights and sirens on his personal vehicle.

DECISION

On March 14, 2024, the Appellant, Casley Bailey (Appellant) appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 43, from a 60-day suspension he received

from the Boston Fire Department (BFD).¹ On April 17, 2024, the Commission held a remote pre-hearing conference. On July 17, 2024, I held a full hearing at the offices of the Commission in Boston, MA. Subsequently, three additional days of hearing were held remotely on July 30, 2024, September 18, 2024, and October 9, 2024. The hearings were recorded via Webex, and copies of the hearing were provided to the parties.² Both parties filed proposed decisions. For the reasons set forth below, the Appellant's appeal is denied.

FINDINGS OF FACT

Forty-six exhibits were introduced into evidence with the BFD entering 36 (Resp Ex. 1-36)³, the Appellant entering seven (App Ex. 1-7), and three Joint exhibits (Jt Ex. 1-3) accepted. Based on the exhibits entered into evidence and the testimony of the following witnesses:

Called by the Boston Fire Department:

- Colin O'Brien, Massachusetts State Trooper;
- Kevin Meehan, District Fire Chief and Executive Assistant to the Fire Commissioner;
- Christopher Burke, Deputy Fire Chief and Chief of Personnel;
- Glenn Campbell, Lieutenant assigned to the Department's Major Case Unit;

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

² A link to the audio/video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this 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. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

³ BFD filed 31 exhibits prior to the commencement of the hearing and five post hearing. On August 14, 2024, the Respondent moved to reopen the record and submit exhibits 32-36 with the Appellant objecting. The Commission held a remote hearing, granted the motion to re-open, and accepted these exhibits on September 20, 2024.

- GK, the Appellant's cousin;
- DS, boyfriend of Appellant's ex-wife.

Called by the Appellant:

- Casley Bailey, Appellant

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

1. The Appellant has been employed as a firefighter by the BFD since August 15, 2006.

(Stipulated Facts)

2. The Appellant is currently in school to obtain a Nurse Practitioner degree. *(Testimony of Appellant)*

November 9th Incident

3. The Superintendent of the BFD, through the RMV, is authorized to issue a "red-light permit" to personnel employed by the BFD for the use of emergency lights in their personal vehicle. Currently, the only permit issued is to the Chaplain of the BFD. *(App. Ex. 5; Testimony of Chief Burke)*
4. The BFD and RMV found no record of the Appellant ever having been issued a red-light permit. *(R. Ex. 4)*
5. The Appellant did not know he needed a permit to install emergency lights on his personal vehicle. *(Testimony of Appellant; R. Ex. 8)*
6. On Thursday, November 9, 2023, at about 3:45 PM, Massachusetts State Trooper Colin O'Brien was heading home after work in a marked State Police Ford Explorer. There was heavy, stop-and-go traffic on all three southbound lanes of Route 24. *(Testimony of O'Brien)*

7. Trooper O'Brien heard a siren coming up from behind him. The siren was a low "whooshing" tone that O'Brien had never heard before. *(Testimony of O'Brien)*
8. Trooper O'Brien observed a black Ford Explorer "split" the heavy traffic, with lights and siren activated. The vehicle split the left (overtaking) lane and the center lane. The two wheels on the left side of the vehicle were in the overtaking lane and the wheels on the right side were in the center lane. The chassis of the vehicle was directly over the divided line between the lanes. *(Testimony of O'Brien)*
9. Trooper O'Brien pulled over with his left front tire on the grass to make way for what he thought to be an emergency vehicle. The driver of the Ford Explorer, with lights and siren still activated, looked straight ahead as he travelled past O'Brien's vehicle, less than fifteen feet away. *(Testimony of O'Brien)*
10. Trooper O'Brien then observed that the lights and siren of the Ford Explorer were turned off for a short period of time pulling back into traffic, then reactivated with the driver again "splitting" traffic. *(Testimony of O'Brien)*
11. Having noted the license plate of the Explorer, Trooper O'Brien ran it with the Registry of Motor Vehicles on his on-board State Police computer. *(Testimony of O'Brien)*
12. The result of the RMV query stated that the vehicle was owned by the Appellant and provided his driver's license picture. *(Testimony of O'Brien)*
13. While Trooper O'Brien identified the driver as the Appellant upon pulling up the RMV record, he later stated in his conversation with Chief Meehan that he would not be able to swear to that in court since he did not pull him over and speak with the driver face to face. During testimony before the Commission, Trooper O'Brien stated that the picture on his computer was the same as the person driving the vehicle at the time. Trooper O'Brien

positively identified the Appellant as the driver of the vehicle during his testimony before the Commission. *(Testimony of O'Brien)*

14. On Sunday, November 12, 2023, three days after the November 9th incident, Trooper O'Brien, during his next scheduled shift, did a google search on the Appellant and learned that he was a member of the Boston Fire Department. *(Testimony of O'Brien)*
15. Trooper O'Brien then discussed the situation with his supervisor regarding how to proceed with this matter and was instructed to call Boston Fire Department Headquarters to determine if the Appellant was authorized to have emergency lights and to file a civil infraction if it was determined that he was not authorized. *(Testimony of O'Brien)*
16. One day later, on Monday, November 13, 2023, Trooper O'Brien spoke with BFD District Fire Chief Kevin Meehan and was told that the Appellant was not authorized to have emergency lights in his vehicle. *(R. Ex. 4; Testimony of O'Brien and Meehan)*
17. Trooper O'Brien checked with the Registry of Motor Vehicles and confirmed that they had no record of a red-light permit ever having been issued to the Appellant. *(Testimony of O'Brien; R. Ex. 4)*
18. Trooper O'Brien issued the Appellant a citation for a "red/blue light" violation. *(R. Ex. 6; Testimony of O'Brien)*
19. District Chief Meehan wrote a memo to the Fire Commissioner summarizing the phone conversation with Trooper O'Brien and confirming that the Appellant did not have a permit to have emergency lights installed in his vehicle. *(R. Ex. 4)*
20. On November 17, 2023, Christopher Burke, Deputy Fire Chief and Chief of Personnel, spoke with Trooper O'Brien regarding the incident. *(Testimony of Burke; R. Ex. 8)*

21. On November 29, 2023, Deputy Chief Burke conducted an investigative interview with the Appellant. Richard Berger, an executive board member of IAFF, Local 718, provided the Appellant with union representation during the interview. (*Testimony of Burke; R. Ex. 8*)
22. During the interview, the Appellant admitted having emergency lights and a siren on his personal vehicle. The Appellant admitted having emergency lights installed and stated that they “are still on there, primarily used for details outside for safety.” (*Testimony of Burke; R. Ex. 8*)
23. The Appellant was advised by Deputy Chief Burke and his union representative to remove the lights immediately. The Appellant complied with this suggestion. (*Testimony of Appellant; R. Ex 8*)
24. On December 8, 2023, Deputy Chief Burke formally charged the Appellant with violating BFD Rule 18.44(m): untruthfulness or willful misrepresentation in matters affecting the department or its employees. Burke concluded that the Appellant falsely held himself out as a first responder to circumvent traffic laws and was untruthful about his use of the lights and siren. Burke stated that he knew of the Appellant’s prior discipline and considered the Appellant’s statement that he had the lights and siren for use at paid details as part of a pattern of misleading or false pretenses behavior. (*Testimony of Burke; R. Ex. 2*)
25. On February 6, 2024, the Appellant received notice from Fire Commissioner / Chief of the Department Burke that he would be given a hearing before the Commissioner’s designated hearing officers (hearing board) on the charge of violating rule 18.44(m).
26. The hearing board consisted of Deputy Fire Chief Scott Malone, District Fire Chief Jeffrey Whitman, and District Fire Chief Darrell Higginbottom. (*R. Ex. 13*)

27. On February 27, 2024, the BFD held a disciplinary hearing on the charges set forth by Deputy Chief Burke. (*R. Ex. 15*)
28. During this hearing, the Appellant acknowledged that he installed the lights and sirens into his personal vehicle without proper authorization—i.e., not obtaining a red-light permit. He stated that he installed them so that when on a detail they would be visible, although he insisted that he had never activated either the lights or the siren at any time.⁴ (*Testimony of Appellant; R. Ex. 15*)
29. After the close of all evidence, the hearing board unanimously found that the Appellant “was not truthful and misrepresented himself in matters affecting the department” and was guilty of violating Rule 18.44(m) as charged. (*R. Ex. 13*)
30. On March 7, 2024, Fire Commissioner Burke issued a letter to the Appellant that he was being suspended for 60 days. Commissioner Burke noted that he determined the level of discipline in part by applying progressive discipline and accounting for the past discipline of the Appellant. (*R. Ex. 1*)
31. The Fire Commissioner noted in the Appellant’s disciplinary letter: “In the present matter, your actions in maintaining unauthorized emergency red lights and sirens on your personal vehicle adversely affects the department or its employees. You are a firefighter holding yourself out as an emergency responder who is authorized to circumvent traffic laws and regulations by installing emergency red lights and sirens on your personal vehicle.” (*R. Ex. 1*)

⁴ During his testimony before the Commission, the Appellant reiterated the point that he never activated his lights and sirens, which I did not find to be credible for reasons discussed in the Analysis. He further testified that he also had them installed on his previous vehicle and never activated them while he owned that vehicle as well. He stated the cost to install the lights and siren was roughly \$2,500 per vehicle.

32. The Fire Commissioner further stated: “We must maintain the public’s trust and confidence that our members do not breach state laws or department rules and regulations.” (*R. Ex. 1*)

33. He further wrote that “holding oneself out as a firefighter with purported authority to have emergency red lights and sirens on one’s own private vehicle conveys the message and implies that you are entitled and authorized to use those same lights to bypass compliance with traffic and RMV rules and regulations.” (*R. Ex. 1*)

34. The Fire Commissioner also found that the Appellant “ha(d) not learned from your prior behavior and discipline for flouting department rules and regulations. You were previously disciplined in June 2021 for two weeks for this very same rule infraction for fraudulent use of a handicap placard, something also governed by state traffic and vehicle regulations. This case is similar.” (*R. Ex. 1*)

Prior Discipline of Appellant

35. On September 29, 2006, the Appellant was given a written reprimand and terminated from the Boston Fire Academy for being AWOL. (*R. Ex. 25*)

36. On June 15, 2010, the Appellant received an oral warning for multiple infractions including tardiness, leaving quarters, interaction with public, sick leave usage, and being disrespectful to his company officer. (*R. Ex. 24*)

37. On September 19, 2012, the Appellant received a one-tour suspension for being AWOL. (*R. Ex. 23*)

38. On June 27, 2013, the Appellant received a four-tour suspension for disrespect or insolence toward a superior officer. (*R. Ex. 22*)

39. On February 19, 2015, the Appellant received a four-tour suspension for conduct unbecoming a member and untruthfulness. (*R. Ex. 21*)

40. On May 17, 2017, the Appellant received a 30-day suspension for violating the Drug and Alcohol Free Workplace Policy. (R. Ex. 20)
41. On July 7, 2017, the Appellant received a four-tour suspension for being AWOL. (R. Ex. 19)
42. On May 5, 2021, the Appellant received a 16-tour suspension for being AWOL, disrespect or insolence to a superior, conduct unbecoming a member, failing to obey an order from a superior, and conduct prejudicial to good order. (R. Ex. 18)⁵
43. On June 15, 2021, the Appellant received an eight-tour suspension for untruthfulness. (R. Ex. 17)
44. On April 29, 2022, the Appellant received a four-tour suspension and a written reprimand for conduct unbecoming a member and uniform violations.⁶ (R. Ex. 16)

APPLICABLE CIVIL SERVICE LAW

A person aggrieved by a disciplinary action of an appointing authority made pursuant to G.L. c. 31, § 41 may appeal to the Commission under section 43, which states in part: “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” The Commission determines justification for discipline by inquiring whether the employee engaged in misconduct which adversely affects the public interest by impairing the efficiency of public service. Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 370, rev. den., 398 Mass. 1103 (1986).

⁵ The Commission overturned the eight-tour suspension due to two instances of AWOL but upheld the other eight-tour suspension for multiple infractions.

⁶ The Commission reduced this discipline from a four-day suspension to a two-day suspension as the BFD was only able to prove one of the three charges.

The Appointing Authority satisfies the preponderance of the evidence standard if its evidence on disputed facts appears more likely or probable to be true. Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). It is the purview of the hearing officer to determine the credibility of testimony presented to the Commission. Dion v. New Bedford School Department, 23 MCSR 517, 519 (2010), citing Leominster v. Stratton, 58 Mass. App. Ct. 726, 729 (2003); see also Department of Correction, 22 MCSR at 374 (“It is the function of the hearing officer to determine the credibility of the testimony presented . . .”). The Commission must take account of all credible evidence in the record, including whatever would fairly detract from the weight of any particular supporting evidence. Otero v. City of Lowell, 29 MSCR 512, 516 (2016); see also O’Leary v. Salem Fire Department, 26 MCSR 559, 571 (2013) (termination upheld after Commission weighed appellant’s credibility). The Courts defer to the Commission’s determinations on matters of credibility. Mayor of Beverly v. First District Court of Essex, 327 Mass. 56, 61 (1951).

The Commission conducts a *de novo* hearing for the purpose of finding facts. Sullivan v. Municipal Court of the Roxbury District, 322 Mass. 566, 572 (1948). After making its *de novo* findings of fact, the Commission must pass judgment on the penalty imposed by the appointing authority. Town of Falmouth v. Civil Service Commission, 447 Mass. 814, 823 (2006). In so doing, the Commission must uphold the appointing authority’s action if the Commission finds “there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” Id. at 824; City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728, rev. den. 440 Mass. 1108 (2003); Watertown v. Aria, 16 Mass. App. Ct. 331, 334, rev. den. 390 Mass. 1102 (1983).

The Commission reviews the penalty imposed in light of the underlying purpose of the civil service system: to guard against political considerations, favoritism, and bias in governmental employment decisions. Town of Falmouth, 447 Mass. at 824. The Commission is not charged with a duty to fine-tune employee discipline. See Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000); Caira v. City of Waltham, 28 MCSR 574, 578 (2015); Blake v. Springfield Fire Department, 28 MCSR 313, 317 (2015). “Unless the commission’s findings of fact differ significantly from those reported by the town . . . the absence of political considerations, favoritism, or bias would warrant essentially the same penalty.” Town of Falmouth, 447 Mass. at 824 (held: Commission improperly substituted its judgment for town’s where factual findings did not differ significantly). The Commission may not modify a penalty without a reasoned explanation. Police Commissioner of Boston v. Civil Service Commission, 39 Mass. App. Ct. 594, 600 (1996); Faria v. Third Bristol Div. of the Dist. Ct. Dept., 14 Mass. App. Ct. 985, 986 (1982).

ANALYSIS

The Boston Fire Department was justified in suspending the Appellant for untruthfulness or willful misrepresentation in matters affecting the department or its employees. Further, the 60-day suspension is appropriate given the severity of the offense, especially when taking into account prior discipline.

I found Trooper O’Brien’s testimony to be extremely credible. He was able to give a detailed description of the event in question, positively identified the Appellant as well as his vehicle, and he described the unique sound of the siren and the fact that the Appellant’s vehicle was splitting lanes of traffic. He stated he was at a complete stop when the Appellant approached and was only a few feet away when he passed his cruiser and thus, as a trained observer, he was able to affirmatively identify the Appellant. Trooper O’Brien was able to clearly and concisely

relay the process he undertook while investigating and reporting the incident in question to BFD, RMV, and his superior officer in the State Police.

Throughout the hearing I did not find the Appellant credible. His attempts at shifting blame, coupled with his inability to articulate a coherent and consistent narrative throughout the process, created significant doubt in my mind as to his credibility.

The Appellant stated that he spent \$2,500 on custom emergency lights and sirens on his previous vehicle that he never—not even once—used. Then, when he purchased his new vehicle, he once again installed this comprehensive hidden system—spending an additional \$2,500. The Appellant insisted that he had never used the lights or sirens for any reason on this vehicle as well. It defies credulity that the Appellant would install lights at such significant personal expense that he would never use, not just once, but a second time. His rationale is that, even with the lights off, other vehicles would notice these hidden lights in his grille and would give his car a wider berth while he was parked at a detail. This makes no sense whatsoever.

The Appellant also stated that he had security cameras at his home but would only produce a still image showing his vehicle in the driveway at 4 pm on the day in question. He stated that the security system malfunctioned during the hours in question and therefore he did not have any evidence showing when he returned home, or reflecting the period when he claimed his car had been borrowed without his knowledge.

While it was not a determining factor in assessing the Appellant's credibility, evidence was produced that appears to show the Appellant driving with lights and sirens on in Boston's Ted Williams Tunnel (on a different day from the incident in question) as recorded by a family member. I gave the Appellant the opportunity to refute these videos, and he refused. I informed him that

his refusal would result in a negative inference, and I was informed by his counsel that he understood and was still unwilling to testify regarding these videos. Due to this refusal to testify, this information is noted for the record as further evidence as to the Appellant's lack of credibility and as being untruthful in his assertion that he has never turned on his emergency lights or siren.

Further, the Appellant's cousin testified that he borrowed the Appellant's car on the day in question without permission to do a catering job for his mother. I did not find his testimony credible.

On the day in question, the cousin and the Appellant testified that their only communication was when the cousin called the Appellant—with the Appellant not answering but texting back that he was at the bank. Despite the only communication between these two men showing that the Appellant was not at his home, the cousin purportedly had a friend drive him from Milton to the Appellant's home in Easton in order to borrow the Appellant's car for a specific catering job. This account is simply not credible.

In addition, the cousin's purported timeline surrounding his use of the vehicle on the day in question, and his tale of events, is wildly implausible. The cousin testified that he arrived at the Appellant's house between 1:20 and 1:45 in the afternoon and took his car without permission. While he was unable to recall what exactly he did that day, to the best of his recollection he went to his mother's restaurant on Norfolk Street in Dorchester, MA—a trip that would have taken him approximately 45 minutes. He then allegedly loaded up the catering supplies, as well as all the food, and possibly went to Harvard University to cater an event. This drive would take approximately 35 minutes—at which point he would then unload the food, set up the catering, collect payment, and reload the car before returning to the restaurant in Dorchester to unload. He then purportedly contacted his friend again to meet him at the Appellant's house in Easton. The

cousin testified that he then drove to Easton in traffic while stopping at some point to get a coffee. The tale gets even more implausible at this point. According to the cousin, while driving the Appellant's vehicle southbound on Route 24, he suddenly realized that other cars were moving out of his way and realized that the emergency lights were activated although he did not know this vehicle was equipped with emergency lights. He pulled over to check and said they turned off on their own. He stated that the siren was never on at any point during the drive. The cousin then recalls reaching the Appellant's home before 4:00 pm. If one were to consider even the most optimistic timeline, given these sets of facts it would be highly improbable for the cousin to be able to return the vehicle to Easton by 5:30 pm, let alone before 4 o'clock. Put simply, I don't believe any of this tall tale. Rather, I conclude that the cousin never borrowed the Appellant's vehicle that day and his testimony was meant to provide cover for the Appellant. The Appellant was the driver of the vehicle on November 9th, and he activated an unauthorized siren and lights on this personal vehicle for the non-work-related purpose of clearing traffic.

As the Boston Fire Commissioner noted: "Holding oneself out as a firefighter with purported authority to have emergency red lights and siren on one's own private vehicle conveys the message and implies that you are entitled and authorized to use those same lights to bypass compliance with traffic and RMV rules and regulations." The fact that the Appellant installed these lights and sirens into his personal vehicle without authorization paints a picture of someone who considers themselves above the law. Given past issues resulting in discipline, including using his deceased mother's handicapped placard to secure optimal parking, only adds to the picture of a person who is willing to ignore the rules for personal gain.

Throughout this entire process, the Appellant has expressed no remorse and no personal responsibility for his dangerous actions; he has deflected responsibility to others; and offered

divergent and quite implausible testimony. Based on his egregious act of misconduct, including untruthfulness, coupled with the Appellant's eyebrow-raising prior disciplinary history, the BFD indisputably had just cause to impose a 60-day suspension against him.

CONCLUSION

For all of the above reasons, the Commission affirms the decision of the Boston Fire Department (BFD) to discipline the Appellant by issuing a 60-day suspension and the Appellant's appeal filed under Docket No. D-24-037 is denied.

Civil Service Commission

/s/ Shawn C. Dooley
Shawn C. Dooley
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair, Dooley, Markey, McConney, and Stein, Commissioners) on February 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 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:
Steven R. Yormak, Esq. (for Appellant)
Robert J. Boyle, Jr., Esq. (for Respondent)