

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

KARL BAPTISTE,

Appellant

v.

WAREHAM POLICE DEPARTMENT,

Respondent

Docket Number:

D-23-244

Appearance for Appellant:

Casey E. Berkowitz, Esq.
Sandulli Grace, P.C.
44 School Street, Suite 1100
Boston, MA 02108

Appearance for Respondent:

Joseph A. Emerson, Jr., Esq.
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Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission upheld the one-day suspension of a Wareham Police Officer who engaged in rude and discourteous verbal behavior toward a superior officer and the Wareham Assistant Town Administrator and who also had a history of reprimands for prior discourteous behavior toward his superior officers and members of the public.

DECISION

On December 5, 2023, the Appellant, Karl Baptiste, appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 43, contesting the decision of the Wareham Police Department (WPD) to suspend him for one day from his position as WPD Police Officer.¹ The

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

Commission held a remote pre-hearing (via Webex) on January 23, 2024 and an in-person full hearing at the UMass School of Law at Dartmouth which was digitally recorded.² As neither party requested a public hearing, the hearing was declared private. Each party submitted a proposed decision on May 31, 2024. For the reason stated below, the Appellant's appeal is ***denied***.

FINDINGS OF FACT

The Commission received into evidence 15 exhibits (*Jt. Exhs. 1 through 11; Resp. Exh. 1; App. Exhs. 1 through 3*). Based on the documents submitted and the testimony of the following witnesses:

Called by the WPD:

- Walter Correia, WPD Chief of Police
- Dorene Allen-England, Assistant Town Administrator/Director Human Resources, Town of Wareham

Called by the Appellant:

- Karl Baptiste, WPD Officer, Appellant

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

1. The Appellant, Karl Baptiste, is a tenured civil service WPD Police Officer with approximately 30 years of service with the WPD. He currently holds the functional title of Juvenile Detective. (*Stipulated Facts; Testimony of Appellant*)

2. Prior to the incidents that gave rise to the present discipline and this appeal, the Appellant had received the following discipline:

² A copy of the 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.

April 9, 2008 – Verbal warning for discourteous behavior to a former Police Chief

March 4, 2009 – Letter of Reprimand for verbal argument with a fellow officer

August 9, 2016 – Letter of Reprimand for verbal argument with fellow officer over police radio

September 9, 2020 – Loss of Vacation Day for disrespectful remarks about a fellow officer in the presence of member of the public

(Jt.Exhs. 8 through 11)

3. On or about February 24, 2023, WPD Lieutenant JG noticed that the Appellant had reported to work wearing sneakers, rather than polished shoes required by WPD regulations. He emailed his observations to command staff with a request that the Appellant be spoken to about this out-of-uniform incident. *(Jt.Exh.4)*³

4. The Appellant had worn sneakers on duty for some time but had never been called out about it. When he was spoken to sometime after February 24, 2023, the Appellant informed his superiors that he was wearing sneakers due to a medical condition and that other officers had been permitted to wear sneakers without repercussions. *(Jt.Exhs. 3 & 4)*

5. On March 1, 2023, the Appellant showed up at the office of Dorene Allen-England, Assistant Town Administrator/Director Human Resources to “file a complaint” about Lieutenant JG, whom he alleged “has been out to get him” for some time and, most recently, was harassing and discriminating against him by singling him out for wearing sneakers to work. The Appellant also made allegations that Lieutenant JG and Lieutenant PF had been involved in various other nefarious schemes and was trying to make the new Police Chief “look bad” because Lieutenant JG wanted to

³ Lieutenant JG and the Appellant had a long-standing dislike for each other dating back many years. Due to this negative history between them, Chief Correia suggested to Lieutenant JG that someone else should deal with the issue. *(Jt.Exhs. 3 through 5; Testimony of Appellant & Chief Correia)*

be Police Chief. (*Jt.Exh.3; Testimony of Allen-England*)⁴

6. After listening to the Appellant's grievances, Assistant Town Manager/Director Allen-England informed the Appellant that she would hire an outside investigator to look into his claims. (*Jt.Exh.3; Testimony of Appellant & Allen-England*)

7. On March 5, 2023, not having heard from Assistant Town Manager/Director Allen-England, the Appellant emailed her for an update on the status of his complaint. (*Jt.Exh.2; Testimony of Appellant*)

8. On March 6, 2023, Assistant Town Manager/Director Allen-England spoke by telephone with Police Chief Correia. She informed him of the Appellant's complaints against Lieutenant JG and Lieutenant PF and that she would be hiring an outside investigator to look into the allegations. They discussed whether to inform the Lieutenants. Chief Correia said he would do it. (*Jt.Exh.3; Testimony of Allen-England*)

9. Later in the day on March 6, 2023, Lieutenant JG came to see Assistant Town Manager/Director Allen-England. She explained that the Appellant alleged that Lieutenant JG had been harassing him for years and discussed the recent sneakers incident in detail as well as several other of the Appellant's allegations. At the conclusion of the meeting, Lieutenant JG told her he was "glad" that she will investigate this, as he has done nothing wrong. (*Jt.Exh.3*)

10. On March 8, 2023, the Appellant again went to meet with Assistant Town Manager/Director Allen-England. He complained that he had to decline working a shift for another officer and had told the officer: "No, [JG] is f***ing with me about my sneakers". She said it was up to the Police Chief to decide the "sneaker issue" and it was not Lieutenant JG who was holding him up from working.

⁴ The Appellant identifies as a black male and Lt. JG and Lt. PF identify as white males, but at no time did the Appellant allege that racial animus was involved in any of the present complaints. (*Jt.Exhs.3 &4; Testimony of Appellant & Allen-England*)

The Appellant became agitated and raised his voice. He began pacing around the office and then “stormed out”. (*Jt.Exh.3; Testimony of Allen-England*)

11. About 15 minutes after the Appellant left her office, Assistant Town Manager/Director Allen-England spoke with Chief Correia and they agreed to allow the Appellant an accommodation to wear sneakers. (*Jr.Exh.3*)

12. At 10:50 a.m., the Appellant emailed Assistant Town Manager/Director Allen-England to “follow up on my complaint that I sat and spoke to you about on 3/1/23 . . . [and] this morning, when I again went into your office to file another complaint regarding [JG] question[ing] another officer about a personal text that I replied to about the reason I was no[t] taking anymore midnight shifts. . . . After speaking to you about this complaint this morning [y]ou told me that I was unprofessional and it was disrespectful to speak to other officers about [JG] in the manner I had. . . . I have First Amendment rights. I may not have used the best verbiage in replying to the personal text, but . . . I have been and can no longer put up with this treatment” (*Jt.Exh.2*)

13. On March 9, 2023, Assistant Town Manager/Director Allen-England emailed a reply to the Appellant in which she informed him that Wareham had retained the services of a law firm to conduct a full investigation into his allegations against JG and PF. She also reminded him that “you and every Officer at WPD must abide by WPD’s Policy & Procedures and act professionally and in a courtesy [sic] manner to fellow officers, to superior officer and to members of the public.” (*Jt.Exh.2*)

14. After interviewing the Appellant and five other witnesses, as well as reviewing the Appellant’s emails, the investigator issued a 13-page report (undated) which addressed each of the various claims of misconduct by JG and PF. The report concluded that there was insufficient credible evidence to support the allegations made by the Appellant that he had been targeted, discriminated or retaliated against or held to a different standard than other officers. (*Jt.Exh.4; App.Exhs.1 & 2*)

15. During the course of the investigation, the law firm investigator obtained a copy of the email that the Appellant had sent to a fellow officer and had mentioned in his meeting and email on March 8, 2023 with Assistant Town Manager/Director Allen-England. The text of that message stated:

“[JG] f***ing with me because I wear sneakers so now I won’t work and people can get ordered and not get the night off. You guys had a good thing but that mother*****er likes f***ing with me.”

(Jt.Exhs.2 through 4; Testimony of Appellant)

16. As to the allegations against the Appellant, the investigation report concluded that there was sufficient credible evidence to conclude that the Appellant’s conduct on March 8, 2023 violated the WPD Policy regarding Discourtesy, and that, in addition, he also violated the Policy regarding Discourtesy and Lawful Orders/Chain of Command in April 2023 for “intentionally ignore[ing]” a superior officer who had asked him a question about the K-9 comfort dogs then visiting the WPD.

(Jt.Exh.4)

17. The WPD Rules and Regulations include the following rule under Prohibited Conduct (Rule 26.1.1):

Discourtesy – Being rude, impolite, contemptuous or insolent to a superior officer, to a fellow officer or to a member of the public.

(Jt.Exh.1)

18. On October 19, 2023, Police Chief Correia conducted a “Weingarten” interview with the Appellant and his counsel. The Appellant claimed that he did not intend to raise his voice at Assistant Town Manager/Director Allen-England, but he was an “emotional person” and his “passion” caused him to do so. The Appellant also denied that he ever made any derogatory remarks about Lieutenant JG in public and he was entitled to express his opinions on his own time. *(Jt.Exh.6; Testimony of Chief Correia)*

19. By letter dated November 7, 2023, Police Chief Correia informed the Appellant that, after review of the investigator’s report and the information provided at the October 19, 2023 meeting, he

concluded that the Appellant's behavior toward Assistant Town Manager/Director Allen England and his obscene statement about Lieutenant JG in the Appellant's email to another WPD officer violated the WPD Discourtesy Policy.⁵ Taking into account the Appellant's prior disciplinary history, Chief Correia imposed a one-day suspension with an admonition that future discourteous behavior toward a superior officer, fellow officer, member of the public or Town official will result in his dismissal. (*Jt.Exh.6*)

20. The Appellant appealed his suspension to the Wareham Town Administrator, the Appointing Authority for the WPD, who conducted a hearing on November 16, 2023 at which the Appellant appeared and was represented by counsel but did not testify. (*Jt.Exh.7*)

21. By Decision dated November 27, 2023, the Wareham Town Administrator, concluded that the Appellant had been disrespectful and contemptuous to a fellow officer by referring to him in a text message with the vulgar term of "mother***er" and that he was discourteous to the Assistant Town Administrator in "your tone, your behavior and your words" on March 9, 2023. The Town Administrator found that this conduct violated the Rule 26.1.1 of the WPD's Rules and Regulations and found just cause to uphold the one-day suspension imposed by Chief Correia. (*Jt.Exh.7*)

22. In upholding the discipline imposed on the Appellant, the Town Manager expressly rejected the Appellant's defenses that: (1) he was just being "passionate" and (2) regarding the WPD's requirement to be courteous, he did not violate the WPD Rules because the Town Administrator was not a member of "public" or an WPD employee. (*Jt.Exh.7*)

⁵ Chief Correia rejected the investigator's conclusion that the April 2023 incident also involved a violation of WPD Policy as he concluded, after his own investigation, that the Appellant had a reasonable basis to believe that Lieutenant JG's question about the status of the comfort dog visit was directed to another officer who responded to the question. Chief Correia did admonish the Appellant for the "tone" of his response in stating that "He's [the other officer] answering you" was not the proper way to address a superior officer. (*Jt.Exh.6*)

23. At the Commission hearing, the Appellant agreed that he had been “animated” in his interactions with the Assistant Town Manager but denied that he had “raised his voice” or “intended” to be rude or discourteous. He did not contest the fact that he had used the vulgar term “mother****er” to refer to his superior officer in a text message to another officer, but claimed that the message was sent off-duty and it was within his “First Amendment” rights. (*Jt.Exhs.2 through 4: Testimony of Appellant*)

APPLICABLE CIVIL SERVICE LAW

A tenured civil service employee may be disciplined for “just cause” after due notice and hearing upon written decision “which shall state fully and specifically the reasons therefore.” G.L. c. 31, § 41. An employee aggrieved by the decision may appeal to the Commission. G.L. c. 31, § 43. Under section 43, the appointing authority carries the burden to prove “just cause” for the action taken by a “preponderance of the evidence.” *Id.* See, e.g., Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006); Police Dep’t of Boston v. Collins, 48 Mass. App. Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000).

In performing its review. . . the commission hears evidence and finds facts anew. Examining an earlier but substantially similar version of the same statute, the Appeals Court reiterated: “‘We interpret this as providing for a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer.’” Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

The Commission determines just cause for discipline by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” School Comm. v. Civil Serv. Comm’n, 43 Mass. App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983). It is also

a basic tenet of merit principles, which govern civil service law, that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “[only] separating employees whose inadequate performance cannot be corrected.” G.L. c. 31, § 1.

The Commission must take account of all credible evidence in the entire administrative record, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law, including whatever would fairly detract from the weight of any particular supporting evidence. See Comm’rs of Civ. Serv. v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” Leominster v. Stratton, 58 Mass. App. Ct. at 729. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997).

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. Civ. Serv. Comm’n, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; Falmouth v. Civ. Serv. 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, 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, 447 Mass. at 824.

ANALYSIS

Wareham has proved by a preponderance of the evidence that it had just cause to discipline the Appellant for his discourteous behavior toward a superior officer and the Assistant Town Administrator. A one-day suspension was an appropriate level of discipline for this misconduct.

First, there is no dispute that the Appellant sent a text message to a colleague in which he referred to his superior officer [JG] as a “mother****er”. Wareham is rightly entitled to mandate that a WPD police officer may not use such vulgar language in speaking about a fellow officer – on-duty or off-duty.

Second, I agree with Wareham that the Appellant’s vulgar language is not protected by his “First Amendment” rights, as it clearly relates to statements made by the Appellant in his capacity as a WPD employee, not “as a citizen upon matters of public concern”, and does not even meet the first “prong” of the so-called “Pickering Test” used to distinguish public statements that are constitutionally protected speech from private conversations that are not constitutionally protected. See Pereira v. Commissioner of Social Services, 432 Mass. 251, 252 n.2, 257 n.15 (2000), *citing* Pickering v. Board of Educ., 391 U.S. 463 (1968); Connick v. Myers, 461 U.S. 138 (1983); Decotiis v. Whittemore, 635 F.3d 22, 29-30 (1st Cir. 2011).

Third, I credit the testimony and the contemporaneous notes of the Assistant Town Administrator who credibly proved that the Appellant’s tone of voice and language was unreasonably offensive to her. I give less weight to the Appellant’s testimony that he was merely “passionate” and agitated and did not “intend” to offend the Assistant Town Manager. The Appellant’s purported subjective self-assessment of his behavior, in fact, demonstrates that the prior

reprimands and admonitions he had received to control his intemperate behavior were not sufficient to remediate his conduct.

Fourth, I agree with the Town Administrator that the Appellant does not deserve a pass for being rude to the Assistant Town Administrator on account of the fact that she is not a member of the public or the WPD covered by the WPD rules requiring courteous behavior. In fact, as the deputy to the Town Administrator, the Assistant Town Administrator's authority includes the power to act as the WPD's Appointing Authority. Moreover, I also agree that the Town Administrator and the Assistant Town Administrator deserve no less courtesy toward them (or any other Wareham employee) than any WPD officer or other member of the "public". It does not require a WPD rule to explicitly spell out that common sense principle.

Fifth, the Appellant's argument that his suspension is excessive because it will result in a POST (Police Officers Standards and Training Commission) record, as opposed to a reprimand, is not persuasive. To ensure clarity, any new POST reporting requirements have no bearing on whether discipline imposed on a police officer is excessive.

In sum, as the Appointing Authority has established just cause to discipline the Appellant with a one-day suspension, and the facts found by the Commission do not materially differ from those relied upon by the Appointing Authority, the Commission has no basis on which to overturn or modify that discipline.

CONCLUSION

For all the above reasons, the appeal of Karl Baptiste, Docket No. D-23-244 is hereby ***denied***.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on September 5, 2024.

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 the 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:

Casey E. Berkowitz, Esq. (for Appellant)

Joseph A. Emerson, Esq. (for Respondent)