

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108

JORDAN BLAIR,
Appellant

v.

D1-19-026

QUINCY HOUSING AUTHORITY,
Respondent

Appearance for Mr. Blair:

Joseph McArdle
Massachusetts & Northern New England
Laborers' District Council
7 Laborers' Way
Hopkinton, MA 01748

Appearance for Quincy Housing Authority:

Kier Wachterhauser, Esq.
Murphy, Hesse, Toomey & Lehane, LLP
300 Crown Colony Drive, Suite 410
Quincy, MA 02169

Commissioner:

Christopher C. Bowman

DECISION

On January 23, 2019, Jordan Blair (Mr. Blair), pursuant to G.L. c. 31, §§ 41-43 and G.L. c. 121B, § 29, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Quincy Housing Authority (QHA) to terminate his employment as laborer. On March 5, 2019, I held a pre-hearing conference at the offices of the Commission. On May 1, 2019, I held a full hearing at the QHA's Maintenance Building at 15 Bicknell Street in Quincy, Massachusetts.¹ The QHA called four (4) witnesses. Mr. Blair testified on his own behalf and

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

called one (1) additional witness. Seven (7) exhibits were received into evidence. The hearing was digitally recorded.² The parties submitted Proposed Decisions on June 4, 2019.

FINDINGS OF FACT

Based on the seven (7) documents entered into evidence, my viewing of the spaces where the relevant conduct occurred, and the testimony of the following witnesses:

For the Quincy Housing Authority:

- James Marathas, Executive Director, Quincy Housing Authority
- BC, Maintenance Clerk, Quincy Housing Authority
- RW, Public Housing Inspector, Quincy Housing Authority
- WO, Maintenance General Foreman, Quincy Housing Authority

For Mr. Blair:

- Jordan Blair, Appellant
- HC, Laborer, Union Steward

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

1. Mr. Blair is an employee of the Quincy Housing Authority, and is a member of the Laborers' International Union of North America, AFL-CIO, Local 133 (Union). (Testimony of J. Marathas; Testimony of Appellant)
2. Mr. Blair began his employment with the QHA in 2008 through a grant-funded position to work on "modernization projects." (Testimony of Appellant)
3. In 2012, Mr. Blair was appointed as a permanent, full-time Laborer in the Maintenance Department, which is the position he held at all relevant times since. (Testimony of J. Marathas; Testimony of Appellant)

² The Commission subsequently had the recording transcribed into a written transcript.

4. James Marathas has been the Executive Director of the QHA since June of 2017. As Executive Director, Mr. Marathas oversees and operates all QHA departments. Prior to becoming Executive Director, Mr. Marathas was the Director of Facilities for the QHA for two years. Prior to that, Mr. Marathas was the Director of Facilities for the Massachusetts Department of Housing & Community Development. (Testimony of J. Marathas)
5. Mr. Marathas holds weekly staff meetings with all employees in the Maintenance Department. The weekly staff meetings typically occur at the Maintenance Building at 15 Bicknell Street in Quincy, Massachusetts. (Testimony of J. Marathas)
6. On December 13, 2018, Mr. Marathas held the weekly staff meeting in the kitchen area of the Maintenance Building. There were approximately thirty (30) employees present at the meeting. (Testimony of J. Marathas; Testimony of BC; Testimony of RW; Testimony of HC; Testimony of Appellant)
7. During most of the meeting, Mr. Blair was standing in front of the sink in the kitchen area. (Testimony of J. Marathas; Testimony of BC; Testimony of RW; Testimony of WO)
8. BC, a maintenance clerk for the QHA, had mistakenly posted a document in the administrative offices regarding a proposed change in vacation time. Instead of receiving all vacation hours at the beginning of the year, the QHA was discussing with the unions a proposal that would allot such time quarterly. (Testimony of BC)
9. HC, a Union Steward, raised this issue of potential changes to the vacation time policy at the meeting. Other employees also asked questions about the potential changes. (Testimony of J. Marathas; Testimony of BC; Testimony of WO; Testimony of Appellant; Testimony of HC)

10. Mr. Marathas responded to the employees' questions by advising them that he was still in the process of discussing the policy with the relevant unions, and therefore it was premature to discuss the vacation policy at that time. (Testimony of J. Marathas; Testimony of BC; Testimony of RW; Testimony of WO; Testimony of HC)
11. Subsequently, Mr. Blair asked Mr. Marathas about the vacation policy, specifically whether the issue was "personal" for Mr. Marathas. Mr. Marathas told Mr. Blair that the issue was not personal and that it was not to be discussed. (Testimony of J. Marathas; Testimony of BC; Testimony of WO)³
12. As the meeting concluded and employees were exiting the room, Mr. Blair walked up to where Mr. Marathas was seated in the front of the room and again asked Mr. Marathas about the potential changes to the vacation policy and again asked whether the issue was "personal." Mr. Marathas advised Mr. Blair that the meeting was over and they were not going to discuss the matter further.⁴ (Testimony of J. Marathas)
13. From there, Mr. Marathas went into the Maintenance Clerk's Office, which is located a short distance down the hall from the kitchen area where the staff meeting occurred. Inside the Maintenance Clerk's Office, Mr. Marathas was talking to Maintenance Clerk BC, who was seated at her desk, and Public Housing Inspector RW who was standing at BC's desk along with Mr. Marathas. (Testimony of J. Marathas; Testimony of BC; Testimony of RW)

³ Mr. Blair testified that he never asked whether the issue was "personal." Rather, Mr. Blair testified that he asked if there was "precedence" for the proposed change. For reasons discussed in the analysis, I did not credit Mr. Blair's testimony in this regard.

⁴ I have not overlooked Mr. Marathas's testimony that Mr. Blair, when speaking to him at the conclusion of the meeting stood unusually close to him in a confrontational manner. No other witness who testified before the Commission saw or heard this interaction and, standing alone, I was unable to credit his version of events regarding these observations. I do, however, credit his testimony that Mr. Blair, once again, was asking if the proposed change in how vacation would be accrued was "personal." For reasons discussed in the analysis, I did not credit Mr. Blair's testimony that he approached Mr. Marathas to discuss an upcoming request for vacation time.

14. The door to the Maintenance Clerk's Office, which has a square glass window in the center of it, was closed. BC's desk is located immediately on the left inside the Maintenance Clerk's Office. (Testimony of J. Marathas; Testimony of BC; Testimony of RW)
15. Mr. Marathas looked out the window in the door and observed Mr. Blair standing up close to the door, seemingly leaning against it, with his cell phone out in his hand. Mr. Marathas did not observe Mr. Blair holding anything other than his phone out in front of him. Mr. Marathas believed that Mr. Blair was attempting to record him speaking to BC and RW. (Testimony of J. Marathas; Testimony of BC; Testimony of RW)
16. In a prior incident, Mr. Marathas had told Mr. Blair that recording conversations in the maintenance office without permission was not allowed. (Testimony of J. Marathas)
17. Mr. Marathas opened the door and asked Mr. Blair if he was recording their conversation. In response, Mr. Blair told Mr. Marathas to "relax" at least twice. (Testimony of J. Marathas; Testimony of BC; Testimony of RW)⁵
18. Mr. Marathas, speaking in a loud voice, told Mr. Blair not to tell him to relax. Mr. Marathas directed Mr. Blair to leave the building and get to work at his assigned building. (Testimony of J. Marathas; Testimony of BC; Testimony of RW)

Actions Taken by the Four (4) Percipient Witnesses Immediately After the Verbal Confrontation

19. BC remained at her desk in the Maintenance Clerk's Office. (Testimony of BC)
20. RW walked to a connecting room and sat down at his desk. (Testimony of RW)
21. Mr. Blair walked away from the door of the Maintenance Clerk's Office and entered a nearby conference room where HC, the union steward, was participating in an asbestos meeting.⁶

⁵ I did not credit Mr. Blair's testimony that Mr. Marathas was using profanity, including the f-word. He was, however, speaking in a loud voice, based on the credible testimony of BC.

⁶ Although BC could not see Mr. Blair from her desk, she heard his voice trailing off and is certain that Mr. Blair briefly walked away from the office door. (Testimony of BC)

Mr. Blair told HC that he wanted to talk to HC about the incident that had just occurred with Mr. Marathas. (Testimony of Appellant) HC told Mr. Blair that he (HC) would come visit him at his work site after the asbestos meeting. (Testimony of HC)

22. Mr. Marathas stepped back into the Maintenance Clerk's Office and shut the door.
(Testimony of BC)

Subsequent Physical Interaction at Exit Door

23. Mr. Marathas walked to the connecting room where RW's desk is located in order to leave the building through the exit door that is next to or near RW's desk.
24. Mr. Blair entered the Maintenance Clerk's Office, put his vacation request slip in a folder in the office and walked toward the same door in the connecting room that Mr. Marathas was going to use as an exit. (Testimony of Appellant and RW⁷)
25. RW was sitting at his desk in the connecting room. His view of the door is partially obstructed by a vending machine and filing cabinet. (Testimony of RW)
26. RW saw Mr. Marathas open the exit door and hold it open with his back against the door at a ninety-degree angle. (Testimony of RW)
27. RW then saw Mr. Blair walk toward the door but, due to his obstructed view, could not see the physical interaction between Mr. Marathas and Mr. Blair. (Testimony of RW)
28. RW heard Mr. Marathas say words to the effect of "why did you hit me?" or "why did you bump me?". (Testimony of RW)
29. RW then heard Mr. Blair say words to the effect of "I didn't mean to" or "no big deal."
(Testimony of CW)

⁷ Although BC does not recall whether Mr. Blair dropped a vacation request slip in the office, RW does recall seeing him do this. I credit RW's testimony.

30. Mr. Marathas and Mr. Blair have divergent recollections regarding the physical interaction that occurred at the exit door. (Testimony of Appellant; Testimony of R. Marathas)
31. Mr. Marathas recalls walking toward the exit door with Mr. Blair walking behind him. Mr. Marathas then recalls “as we got to the door, I held open the door; and as [Mr. Blair] went through, his shoulder banged into me as he was going through the door.” Mr. Marathas viewed the contact as deliberate and recalls saying words to the effect of “why did you just hit me?” to Mr. Blair. (Testimony of R. Marathas)
32. Mr. Marathas recalls that he (Marathas) was holding the door completely open at a 90-degree angle with his back up against it, leaving plenty of room for Mr. Blair to exit without the need to make any physical contact with him. (Testimony of R. Marathas)
33. Mr. Blair recalls entering the Maintenance Clerk’s Office and dropping off the vacation request slip when Mr. Marathas entered from the connecting room and told Mr. Blair to “go down to your building and actually do some fucking work” pointing at the exit door near CW’s desk. (Testimony of Appellant)
34. Mr. Blair recalls being “escorted” to the exit door by Mr. Marathas at which time Mr. Marathas opened the door “a fraction of the way”⁸ with his back towards the door. Mr. Blair then recalls: a) “putting his (Blair’s) hands up; b) “saddling by him [Marathas]”; and c) saying “excuse me” Mr. Blair then recalls that: “... the first half of my body gets out fine, but when I leave, my pinky touched his hand, and that’s when he just got really animated, really loud and said, ‘Did you just shoulder barge me? What’s wrong with you? Did you just shoulder barge me?’” (Testimony of Appellant)
35. Mr. Blair jogged or ran away from the door and toward his car. He then left the Maintenance Building property. (Testimony of J. Marathas; Testimony of Appellant)

⁸ On cross-examination, Mr. Blair clarified that he believed the door was open “30%”.

36. On December 19, 2018, Mr. Blair submitted an unsolicited “sworn statement” to the QHA regarding the events of December 13th. (Ex. 2)

37. On January 2, 2019, Mr. Blair was issued a Memorandum indicating that the QHA was contemplating terminating his employment. The letter stated in part that:

“ ... The above matters, which include insubordination, disrespect, engaging in physical contact with a superior and lying, each constitute just cause for termination of your employment. The Housing Authority will not tolerate this type of behavior from any employee. This is especially true given your past discipline history, which unfortunately includes multiple similar incidents.”

Prior Discipline

38. Mr. Blair received a written warning for an incident that occurred on May 19, 2016 for engaging in aggressive, accusatory behavior and being insubordinate toward Mr. Marathas. (Ex. 6; Testimony of J. Marathas)

39. Mr. Blair grieved the written warning for the May 19, 2016 incident. After the QHA and the Union discussed the grievance, Mr. Blair agreed to accept the written warning provided that it was removed from his personnel file after six (6) months if no similar incidents occurred during that time. The written warning was subsequently removed from Mr. Blair’s file, in accordance with the parties’ agreement. (Testimony of J. Marathas)

40. On or about January 23, 2017, Mr. Blair received another written warning. That warning documented an incident in which Mr. Blair was disrespectful and insubordinate toward Maintenance General Foreman WO after he asked Mr. Blair to turn over a vacant unit on January 18, 2017. The written warning was also issued because Mr. Blair engaged in disrespectful, insubordinate, and distracting behavior toward Mr. Marathas based on where Mr. Blair positioned himself and how he conducted himself during weekly staff meetings, as described above. (Ex. 7; Testimony of J. Marathas; Testimony of WO)

41. The January 23, 2017 written warning further advised Mr. Blair that it is illegal to record audio of someone talking without permission from the party being recorded. That reminder was in response to Mr. Blair possessing an audio and video recording of a previous staff meeting. Mr. Blair denied making the recording, but refused to identify who did record it. (Ex. 7; Testimony of J. Marathas)
42. Mr. Blair submitted a written rebuttal and he grieved the warning. As he did before, Mr. Blair agreed to accept the written warning provided that it would be removed from his personnel file after six (6) months if no similar incidents occurred during that time. The January 23, 2017 written warning was subsequently removed from Mr. Blair's file. (Testimony of J. Marathas)
43. On January 8, 2019, the Appointing Authority held a hearing before Hearing Officer Terry Champion regarding the contemplated termination of Mr. Blair's employment, pursuant to G. L. c. 31, § 41. Mr. Blair attended the hearing, was represented by the Union, and testified on his own behalf. (Ex. 3)
44. On January 14, 2019, the Hearing Officer issued her findings of fact. (Ex. 3)
45. Based on the Hearing Officer's findings, Mr. Marathas recommended to the QHA's Board of Commissioners that Mr. Blair's employment be terminated. The Board of Commissioners accepted Mr. Marathas's recommendation and voted to terminate Mr. Blair's employment. (Ex. 4; Testimony of J. Marathas)
46. On or about January 23, 2019, Mr. Blair appealed his termination to the Commission.

Legal Standard

The Commission's authority in this matter is drawn from G.L. c. 121B, § 29 which provides, in relevant part, that:

“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)

G.L. c. 31, § 43 provides:

“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; provided, however, if the employee by a preponderance of 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.”

An action is “justified” if it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law,” Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).

The Appointing Authority's burden of proof by a preponderance of the evidence 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).

Under section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew," Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. However, "[t]he commission's task... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether '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., 823-24, quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

Analysis

This case required me to weigh the credibility of witnesses to resolve the following factual dispute: Did Mr. Blair intentionally make physical contact with Mr. Marathas while walking out of the QHA's maintenance facility in Quincy on December 13, 2018? As referenced in the findings, Mr. Blair and Mr. Marathas offered two conflicting accounts of what occurred.

I listened carefully to each of the witnesses that testified at the May 1, 2019 hearing, including Mr. Blair and Mr. Marathas and those in a position to corroborate or contradict them. Since the hearing took place at the QHA maintenance facility, I was aided by the ability to view the location where the events of December 13th occurred. I also carefully reviewed all of the exhibits submitted. Finally, given the divergent testimony provided, I had a transcript of the

hearing prepared to assist me in reviewing the testimony provided a second time. After a careful and thorough review, I credit the testimony of Mr. Marathas for the following reasons.

Significant portions of Mr. Blair's testimony were contradicted by the testimony of other reliable witnesses and documentary evidence. For example, Mr. Blair testified that, during the staff meeting, he never asked if the proposed change was "personal." Rather, Mr. Blair testified that he asked if there was any "precedence" for the policy. In addition to Mr. Marathas, two other reliable witnesses (BC and WO) specifically recalled that Mr. Blair asked if the proposed policy change was "personal" and did not hear him use the word "precedence." The only support for Mr. Blair's testimony on this matter came from HC. Though stating that he heard the word "precedence" when asked, he testified that he could not remember any specific words Mr. Blair used. I did not find this testimony on this matter to be credible.

Mr. Blair's testimony regarding why he was standing outside the Maintenance Clerk's door with his phone in his hand was also contradicted by other reliable testimony, as well as documentary evidence. Mr. Blair claims that he was outside the door to the Maintenance Clerk's Office because he needed to write his days off on the calendar and take a picture of his vacation form. Mr. Marathas testified that when he looked out the window on the door, he observed Mr. Blair leaning against or near the door, holding his cell phone out in his hand, and not holding anything else near his phone. Based on his knowledge of Mr. Blair's past, Mr. Marathas believed that Mr. Blair was attempting to use his phone to record Mr. Marathas's conversation. Mr. Blair, by stark contrast, claims that he was holding his phone in one hand and the completed vacation form in his other hand, taking a picture of the form with his phone's camera. The credible evidence, however, undercuts Mr. Blair's account. Mr. Marathas testified that Mr. Blair was holding his phone out in front of him near the door, and that Mr. Blair was not holding a

form or anything else near his phone. That testimony was detailed and credible. Mr. Marathas and Mr. Blair were only a short distance apart when Mr. Marathas observed him through the window. There is no evidence suggesting that Mr. Marathas's view of Mr. Blair was obstructed. Had Mr. Blair actually been holding his phone out in front of him to take a picture of the vacation form, Mr. Marathas would have readily seen the form somewhere near the cell phone, and he would not have had reason to believe Mr. Blair was attempting to record Mr. Marathas's conversation as he did. Moreover, the photograph that Mr. Blair provided to the QHA from his cell phone directly contravenes his testimony about what he was doing while standing outside the door to the Maintenance Clerk's Office. The picture clearly shows that the form was resting on some brown surface, as the picture clearly shows a brown edge around each of the four sides of the picture. Moreover, the brown edge on the border clearly matches the color and even pattern of the tables in the kitchen area of the lunch room in the Maintenance Building. There was no similarly brown object in the hallway outside the Maintenance Clerk's Office. Mr. Blair was not able to explain the discrepancy between the picture and his account in his testimony and his account in his Sworn Statement. In short, Mr. Blair's testimony that he was holding his phone out in front of him at the Maintenance Clerk's door to take a photograph of the vacation request form was false.

Mr. Blair also testified that Mr. Marathas repeatedly threw the proverbial f-bomb at him during each of their encounters that morning. At least two (2) other credible witnesses corroborated Mr. Marathas's testimony that he did not.

All of the above-referenced misrepresentations by Mr. Blair cast significant doubt on his credibility as it relates to the nature and extent of physical contact that occurred at the exit door.

Even, however, if I did not consider Mr. Blair's untruthful testimony regarding the above-referenced events, Mr. Marathas's testimony regarding the physical interaction at the door is more plausible.

There is no dispute that some contact occurred between the two men at the exit door. What is disputed, however, is the nature and extent of that contact. Only Mr. Marathas and Mr. Blair witnessed the contact directly, yet their accounts of what transpired are substantially divergent.

The context in which this interaction occurred is important. Mr. Marathas, having suspected that Mr. Blair was secretly recording his conversation, had just ordered Mr. Blair to leave the maintenance facility and return to his work site. Mr. Blair, in turn, had just told the Executive Director to "relax" at least twice. Yet, after this order, and verbal confrontation, Mr. Blair chose to enter the Maintenance Clerk's Office; walk into a connecting administrative office; and then follow Mr. Marathas to the exit door in that connecting office. I was shown multiple other exit doors that would have provided Mr. Blair with a more direct and advisable route to his car that morning.⁹ Yet, he chose the one exit door which would cause him to come in close proximity to Mr. Marathas. I do not credit Mr. Blair's testimony that the door was open only "30%" of the way. Even, however, if this was true, having viewed the doorway at issue, Mr. Blair could have exited without making contact with Mr. Marathas. Finally, Mr. Blair's testimony that he recalls his "pinky" brushing up against Mr. Marathas came across as contrived – and absurd.

I did consider those factors that could call into question the testimony of Mr. Marathas. The words used by Mr. Marathas to describe what happened at the door have ranged from being brushed, bumped and hit. Further, there is no doubt that Mr. Marathas was agitated that day, which could cause him to have heightened sensitivity regarding the degree of physical contact

⁹ Mr. Blair's revisionist tale that he was being "escorted" to this particular exit by Mr. Marathas is not believable.

that occurred between the two men. Even after considering those factors, I found Mr. Marathas's version of events to be more plausible and his overall testimony to be credible.

After considering all of the above factors, I have concluded that Mr. Blair made deliberate and avoidable contact with Mr. Marathas while exiting the maintenance facility on December 13, 2018. This constitutes substantial misconduct which adversely affects the public interest and warrants discipline against Mr. Blair.

Having determined that Mr. Blair did engage in some misconduct, I must determine whether the level of discipline here (termination) was warranted.

As stated by the SJC in Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814 (2006):

“After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly. G.L. c. [31], s. § 43 (‘The commission may also modify any penalty imposed by the appointing authority.’) Here the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘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. citing Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

“Such authority to review and amend the penalties of the many disparate appointing authorities subject to its jurisdiction inherently promotes the principle 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). However, in promoting these principles, the commission cannot detach itself from the underlying purpose of the civil service system— ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” Id. (citations omitted).

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“Unless the commission's findings of fact differ significantly from those reported by the [appointing authority] or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty. The commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation.” Id. (citations omitted).

First, my findings of fact do not differ from those reported by the QHA. As stated above, after a de novo hearing, the preponderance of the evidence does support the QHA's conclusion that Mr. Blair made deliberate and avoidable physical contact with Mr. Marathas while exiting the maintenance facility on December 13th. Further, Mr. Blair, as part of an affidavit that he submitted to the QHA, was untruthful regarding key events that occurred that morning.

The Commission has consistently held that progressive discipline is consistent with the basic merit principles of the civil service law. In that respect, I must consider any prior discipline against Mr. Blair.

Mr. Blair objects to consideration of his prior discipline, arguing that written warnings issued in 2016 and 2017 were eventually removed from his QHA personnel file. That argument, however, fails. "While time limitations contained in the reprimands or discipline may apply with regard to the CBA and the grievance process, the Commission is not barred from considering prior reprimands or discipline." Paone v. City of Lynn, 26 MCSR 61 (2013). It is undisputed that written warnings were issued and that although Mr. Blair initially contested the warnings, he eventually agreed to accept the discipline. Moreover, there is no evidence indicating that the parties' agreements resolving Mr. Blair's grievances prohibited consideration of the circumstances underlying the discipline in future disciplinary proceedings involving Mr. Blair. Accordingly, the Commission's analysis of this matter includes the 2016 and 2017 written warnings.

The incidents underlying the 2016 and 2017 written warnings both involved Mr. Blair being insubordinate and aggressive toward his supervisors, including Mr. Marathas on more than one occasion. Despite those warnings, Mr. Blair's insubordination toward Mr. Marathas has escalated to the point of making physical contact. Furthermore, Mr. Blair was warned in

connection with both of those written warnings that future conduct of a similar nature could result in his termination. It is indisputable that Mr. Blair was on notice of the QHA's expectations. In light of those clear and relatively recent warnings, and Mr. Blair's most recent serious misconduct, the Quincy Housing Authority's decision to terminate Mr. Blair for the substantial misconduct outlined above is consistent with progressive discipline.

Conclusion

Mr. Blair's appeal under Docket No. D1-19-026 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 5, 2019.

Any 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 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:
Joseph McArdle (for Appellant)
Kier Wachterhauser, Esq. (for Respondent)