

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

RANDOLPH BLAKE,
Appellant

v.

D-15-63

SPRINGFIELD FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Joseph G. Donnellan, Esq.
100 River Ridge Drive; Suite 203
Norwood, MA 02062

Appearance for Respondent:

Maite Parsi, Esq.
City of Springfield
36 Court Street: Room 5
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

DECISION

On March 30, 2015, the Appellant, Randolph Blake (Lt. Blake), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Springfield Fire Department (SFD) to suspend him from his position of Fire Lieutenant for one (1) tour of duty.

On April 22, 2015, I held a pre-hearing conference at the Springfield State Building in Springfield, MA and a full hearing was held at the same location on June 10, 2015. At the pre-hearing conference, the SFD filed a Motion to Dismiss Lt. Blake's appeal, arguing that it was not filed timely with the Commission. As there was a factual dispute as to when Mr. Blake received the suspension decision from the SFD, I took the motion

under advisement and advised the parties that I would consider it in conjunction with the full hearing. CDs were made of the digitally-recording hearing. A copy was retained by the Commission and both parties were provided with copies as well.¹ The parties made closing arguments at the conclusion of the full hearing.

FINDINGS OF FACT:

Ten (10) exhibits were accepted into evidence during the hearing.²

Based upon the documents entered into evidence, the testimony of:

Called by the SFD:

- Drew Piemonte, Fire Lieutenant, SFD;
- Glenn Guyer; Provisional Deputy Fire Chief, SFD;

Called by Mr. Blake:

- Randolph Blake, Fire Lieutenant, SFD (Appellant);

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Lt. Blake has been employed by the SFD since 1989 and has served as a Fire Lieutenant since 2010. (Testimony of Lt. Blake and Stipulated Facts)
2. Prior to the discipline imposed here, Lt. Blake has no prior record of discipline. (Stipulated Fact)

¹ 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 he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

² Consistent with Massachusetts Statewide Retention Schedule 02-11, Sections B5 2(b) and/or B5 3(g), these exhibits, and the entire case record, will be retained, either at the offices of the Commission, or at the State Records Center, for six (6) years after final case activity / case closure. After such time period

3. Lt. Blake is a member of the Professional Fire Fighters of Massachusetts (PFFM) Local 648 (the Union).
4. Although Lt. Blake has been “very active” in union business during his career with the SFD, he never served as an officer or as a member of the Executive Board of the local union until December 2013 when he was elected as the union President.

(Testimony of Lt. Blake)
5. According to the Collective Bargaining Agreement (CBA) between the union and the SFD, “The Union’s President and its Secretary-Treasurer only shall be granted tours of duty without loss of compensation in order to permit them, or either of them, to attend regular meetings ... of the [PFFM].” (Exhibit 6)
6. The PFFM has statewide meetings on a monthly basis, with the exception of July, August and December. (Testimony of Lt. Piemonte)³
7. Prior to the beginning of the calendar year, the union’s Recording Secretary provides the SFD with a list of PFFM statewide meetings which will occur on the same day that the Union President or Treasurer are scheduled to work. Upon receipt, the SFD enters those days in the “TeleStaff” system as “UB” for union business. (Testimony of Lt. Piemonte and Deputy Guyer; Exhibits 1 & 2)
8. On December 30, 2013, the union’s Recording Secretary sent correspondence to the SFD Fire Commissioner stating: “As per the collective bargaining agreement time off is requested for Randolph Blake ... on the following dates so that he may

expires, the entire case file will be destroyed. A copy of this decision, however, will be retained permanently by the Commission.

³ I have also taken administrative notice of the PFFM website, which as of the date of the hearing before the Commission, stated, in relevant part, “There are no monthly meetings held in the months of December, July or August.”

attend the regular monthly meeting of the [PFFM]. The meetings are scheduled for the following Fridays: January 17, March 21, May 16, October 17 and December 19, all in 2014.” (emphasis added) (Exhibit 7)

9. But for the union leave, Lt. Blake was scheduled to report to work for a fourteen (14)-hour shift, beginning at 6:00 P.M. on December 19th. (Testimony of Deputy Guyer and Lt. Blake)
10. It is undisputed that the Recording Secretary erred by listing December 19th as a date that Lt. Blake would need paid time off as there was no scheduled meeting in December.
11. The Recording Secretary made the same error in regard to Lt. Piemonte, requesting that he too be given paid time off to attend a meeting on December 19th. (Exhibit 7)
12. If, on any calendar day, the SFD does not meet minimum staffing levels, fire fighters must be called in to work and paid overtime. (Testimony of Deputy Guyer)
13. Sometime at or shortly before the beginning of December 2014, Lt. Piemonte accessed his schedule and noticed that he was scheduled to receive paid time off to attend a December 19th PFFM meeting. (Testimony of Lt. Piemonte)
14. Lt. Piemonte is a member of PFFM and, in addition to serving as Union Treasurer in 2014, has held several positions in the local union, including Steward and Vice President. He was also a member of the union’s governing board (E-Board) for approximately ten (10) years.
15. Approximately one (1) week prior to December 19th, Lt. Piemonte, as part of the annual local union election, defeated Lt. Blake for the position of local union

President. His term was effective as of January 2015. (Testimony of Lt. Piemonte and Lt. Blake)

16. Lt. Blake described his year as President as “tumultuous”, pointing to several factors, including an email that he penned to various officials that was critical of the Fire Commissioner and Deputy Guyer. (Testimony of Lt. Blake and Exhibit 10)
17. A day or two prior to December 19th, Lt. Piemonte contacted his Acting District Fire Chief and informed him that, since there was no PFFM meeting on December 19th, he (Piemonte) was available to work that day and should not receive paid time off. (Testimony of Lt. Piemonte) As result, the “UB” code was removed from the “TeleStaff” system and Lt. Piemonte worked on December 19th.
18. On or around Friday, December 19th, Deputy Guyer, based on his normal review of the Telestaff system, which is part of his normal duties, noticed that the UB code had been removed for Lt. Piemonte. Deputy Guyer found this “odd” and put it in his “mental hard drive” until Monday, December 22nd. (Testimony of Deputy Guyer)
19. It is undisputed that Lt. Blake did not work a fourteen (14)-hour shift, beginning at 6:00 P.M. on December 19th.
20. Since the SFD was below minimum staffing levels during that December 19th – 20th shift, additional personnel was called in and paid at an overtime rate. (Testimony of Deputy Guyer)
21. On or around Monday, December 22nd, Deputy Guyer contacted Lt. Piemonte and asked him why the UB code had been removed for December 19th. In response, Lt. Piemonte stated that there was no PFFM meeting on December 19th. During that conversation, Deputy Guyer stated to Lt. Piemonte words to the effect, “Well, are you

aware that Lt. Blake received paid time off for that day?” Lt. Piemonte told Deputy Guyer that he could only speak for himself. (Testimony of Deputy Guyer)

22. After speaking with Lt. Piemonte, Deputy Guyer asked SFD Deputy Fire Chief Jerrold Prendergast to contact Lt. Blake and get an explanation as to why he received paid time off on December 19th if there was no union meeting. (Testimony of Deputy Guyer)

23. Via an email to Deputy Guyer dated Tuesday, December 23rd at 2:43 P.M., Lt. Blake wrote:

“Per your request through Deputy Prendergast I am submitting the circumstances of my Union Business Leave on 12/19.

My understanding / misunderstanding was that there was a PFFM State Meeting in Southbridge.

I took the same steps to travel to meeting. My belief was that the meeting was cancelled and I was not apprised. Did not understand till much later that there was no meeting in December at all.

I learned only on Monday that Drew Piemonte cancelled his Leave. I was not contacted by anyone prior to this (District Chief etc.) as this communication would have provided clarity and actions to be taken in kind.” (Exhibits 9 and 10)

24. Via an email reply one (1) minute later, Deputy Guyer asked Lt. Blake: “What time was the meeting you went to on the 19th of December?” to which Lt. Blake replied, “State Meetings start for 10am.” (Exhibit 10)

25. On or after December 29th, Lt. Blake penned an undated letter to Deputy Guyer “for clarification and expansion of facts so there is no ambiguity.” (Exhibit 8)

26. Among the statements in the above-referenced letter by Lt. Blake were:

- “I wholeheartedly and truthfully believed there was a State Meeting on 12/19. Home at 1330 I laid down from weariness. Honestly I thought no further of the Meeting nor cared why the Meeting was cancelled until Monday, when apprised by Deputy Prendergast of your concerns, when I called a Union President in Fall River and

asked did he receive email or notification of the meeting being cancelled. He apprised me there was no meeting in December.”

- “I then went to the website and saw I mistakenly thought the meeting for January and its location was for December. I had earlier in month looked at website and saw the information apparently incorrect. The time of the State Meeting and its length varies according to the agenda and the distances. The fact that the meeting is well over before the beginning of the night shift tour doesn’t negate that Union Business give the President and or the Secretary the tour off.”
- “I stated and will restate that I made this error in part due to my inexperience and was not purposeful. The error on my part upon reflection was also a culmination of stress due to various factors.” Lt. Blake listed various factors, including the death of a Springfield fire fighter, the injury of a Springfield fire fighter and “the bullying, harassment, and retaliation I have had to endure most of this year perpetuated by this Administration.”
- “The facts are that I believed there was a meeting in December. That you, Drew Piemonte and the District Chief, who you stated Drew called, were well informed in advance there was not. But yet NO ONE contacted me. Still as of this date I am in WebStaff APPROVED for Union Business. You stated to me that it is not your job to call you. I wholeheartedly disagree that is exactly your job.”
- I have been honest and forthright not only this year as Union President but throughout my career. I take ownership of my mistakes and errors. As I did in this case as well. The weariness I felt on December 19, 2014 is the same I feel now having to explain I am human and make mistakes. Weary of snide looks, innuendo and words that say you are a liar, when I simply erred. Weary of threats of discipline and that there will be repercussions for something that was, after taking into account all factors, a mistake on numerous people’s part. If they were not mistakes then what were they?” (Exhibit 8)

27. It is undisputed that Lt. Blake received compensation for the fourteen (14) hour shift, beginning on December 19th; that the SFD did not seek to recoup that money; and that Lt. Blake did not reimburse the SFD for those fourteen (14) hours of compensation.

28. On February 19, 2015, the Fire Commissioner issued a one-night suspension to Lt. Blake. In the suspension letter, the Fire Commissioner stated: “I find that your absence ... is unexcused due to there being no meeting scheduled. By your own

admission, you were aware of this by 1330 and should have made yourself available for the shift which began at 1800.” (Exhibit 3)

29. Lt. Blake appealed the one (1)-night suspension and a hearing was held by the City’s Collective Bargaining Agent, Karen Romano, on February 27, 2015, who recommended that the suspension be upheld. (Exhibit 4)

30. Exhibit 5 is correspondence dated March 9, 2015 from Commissioner Conant to Lt. Blake stating that his (local) appeal was denied and the suspension was upheld. (Exhibit 5)

31. On March 25, 2015, the Civil Service Commission received correspondence via mail, postmarked March 19, 2015, from Lt. Blake, seeking to appeal his suspension. No appeal form was included nor was there a \$50.00 filing fee. (Administrative Record)

32. The correspondence from Lt. Blake (a one-page letter), stated in relevant part, “On Sunday, March 15, 2015 I received (locker) the determination letter (dated 3/9/15) from Commissioner Conant denying my appeal and upholding the suspension.” (Administrative Record)

33. Per 812 CMR4.02, a \$50.00 filing fee must accompany disciplinary appeals filed with the Commission. (<http://www.mass.gov/anf/hearings-and-appeals/oversight-agencies/csc/appeal-filing-fees.html>)

34. Per Commission rule, no appeal is considered received and/or docketed unless it is accompanied by the required filing fee. (<http://www.mass.gov/anf/hearings-and-appeals/civil-service-appeals-process/filing-your-appeal/clarification-of-commission-policies.html>)

35. Also on March 25, 2015, the Commission returned Lt. Blake's letter to him noting that it was an incomplete appeal as there was no fee included. (Administrative Record)
36. On March 31, 2015, the Commission received, via correspondence postmarked March 30, 2015, an appeal form and filing fee from Lt. Blake. (Administrative Record)
37. In response to the question on the appeal form that asks "When did you receive the notice of decision regarding the discipline?", Lt. Blake hand-wrote something that is not decipherable because the Commission date-stamped over the response. (Administrative Response)
38. Lt. Blake received the (local) notice of decision regarding the discipline on March 18, 2015. He made an error when he wrote on his initial correspondence to the Commission that he received it on March 15th. (Testimony of Lt. Blake)⁴
39. Lt. Blake's appeal (with filing fee) was timely as it was postmarked within ten (10) business days of March 18, 2015, the date he received the local decision.

Legal Standard

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

⁴ I made this finding based solely on the testimony, taken under the pains and penalties of perjury, of Lt. Blake at the Commission hearing. No SFD witness testified as to when the notice was actually placed on Lt. Blake's locker.

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 Commission determines justification 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 Service Comm’n, 43 Mass. App. Ct. 486, 488 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

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, *op.cit.* 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’,” which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority, Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006), quoting internally from Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983) and cases cited.

Analysis

As a preliminary matter, the SFD’s Motion to Dismiss Lt. Blake’s appeal, based on the argument that his appeal to the Commission was untimely, is denied. The SFD did not provide any witness to state when the local decision was posted on Lt. Blake’s locker and I credited Lt. Blake’s testimony that he received the notice on March 18, 2015, not March 15th, which he mistakenly wrote in his first correspondence with the Commission. Going forward, the SFD may want to consider a more reliable – and verifiable – method of serving such documents on employees.

In regard to the more substantive issue, the SFD has shown, by a preponderance of the evidence, that there was just cause to discipline Lt. Blake for his unexcused absence from a fourteen (14)-hour shift, scheduled to begin on December 19, 2014.

As the local Union President at the time, Lt. Blake was entitled to receive paid time off to attend statewide PFFM meetings if said meeting occurred on the day of his scheduled shift. These PFFM meetings occur monthly, with the exception of July, August and December. It is undisputed that, because of an error by the union’s Recording Secretary, the SFD was initially told, in December 2013, that there would be a PFFM meeting in December 2014 which would conflict with the schedule of Lt. Blake and the union’s Treasurer, Lt. Piemonte. That bad information was then entered into the SFD’s

scheduling and payroll software program.

It is undisputed however, that there was no PFFM meeting in December 2014. Lt. Blake testified that: 1) As of December 19th, he was unaware that no PFFM meetings occurred in December; 2) he looked at the PFFM website and mistakenly mistook the information regarding a January 2015 meeting (which, according to him was scheduled to be held in Southbridge); and 3) he drove to that location in Southbridge unaware that there was no such meeting.

I asked Mr. Blake some straight-forward questions to test the veracity of these statements, including whether he could describe the location that he allegedly drove to in Southbridge on December 19th. He could not. I asked him if he had inquired about an agenda for this meeting before traveling to Southbridge. He said that agendas were not provided in advance. A review of the PFFM website, viewed on the day of the hearing, appears to contradict that statement. I asked Lt. Blake how he knew not to travel to a meeting in June or July. He initially stated that a motion was made at the May meeting to cancel those meetings, but then seemed to retract that statement. When asked about a posting on the PFFM website (as of the day of the hearing) which supports Lt. Piemonte's testimony that PFFM statewide meetings never occur in December, Lt. Blake said he never saw such a posting.

Based on these responses, and guided by commonsense, I am (highly) skeptical of Lt. Blake's assertion that he believed that there was a PFFM meeting in Southbridge on December 19th and/or that he actually drove to Southbridge that day.

However, regardless of whether Lt. Blake's testimony is credible regarding his mistaken assumption about the meeting and his purported commute that day, it is

undisputed that *no meeting actually took place*. Despite the fact that no union meeting took place, Lt. Blake failed to notify any member of the SFD command staff of this; he did not work the fourteen (14) hour shift; and he received compensation for this time based on language in the CBA that allows for wages to be paid *while attending monthly PFFM meetings*.

Remarkably, Lt. Blake, in a written response, places the blame for this on Deputy Guyer, stating that it “absolutely” was Deputy Guyer’s responsibility to notify him that there was no PFFM December meeting after Lt. Piemonte notified the SFD that he would be working on December 19th, as opposed to receiving paid time off for union leave. Regardless of the motivation that Lt. Piemonte may have had in waiting until the last minute to notify the SFD of the status change, it was Lt. Blake’s sole responsibility to notify the SFD that *he* was not eligible for paid time off to attend a union meeting that never took place. This is particularly true given that additional personnel were required to be called in on that day and paid an overtime rate to meet minimum staffing requirements. Lt. Blake’s actions constituted substantial misconduct which adversely affected the public interest by impairing the efficiency of public service. As such, there was just cause for the SFD to impose discipline against him.

Having determined that it was appropriate to discipline Mr. Blake for his misconduct, I must determine if the SFD was justified in the level of discipline imposed here – a one night (or 14-hour) suspension.

“The ... power accorded the commission to modify penalties must not be confused with the power to impose penalties *ab initio*, which is a power accorded the appointing authority.” Falmouth v. Civ. Serv. Comm’n, 61 Mass. App. Ct. 796, 800 (2004) quoting

Police Comm'r v. Civ. Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (1996). 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 commission is not free to "substitute its judgment" for that of the appointing authority, and "cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation." E.g., Falmouth v. Civil Service Commn, 447 Mass. 814, 823 (2006).

The Commission is also guided by "the principle of uniformity and the equitable treatment of similarly situated individuals" [both within and across different appointing authorities] as well as the "underlying purpose of the civil service system ... to guard against political considerations, favoritism and bias in governmental employment decisions." Falmouth v. Civil Service Commission, 447 Mass. 814, 823 (2006) and cases cited.

Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune an employee's discipline to ensure perfect uniformity. See Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

Accepting paid time off to attend a union meeting that never took place is a serious offense. The discipline imposed here is modest. In terms of compensation, the fourteen (14)-hour suspension effectively only reimburses the SFD for compensation that never should have been paid to Lt. Blake to begin with. Finally, the modest discipline imposed here has sufficiently convinced me that no political or personal bias was in the SFD's actions here.

Conclusion

Lt. Blake's appeal under Docket No. D-15-63 is hereby *denied*.

Civil Service Commission

Christopher Bowman

Christopher C. Bowman

Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on June 25, 2015.

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.

Notice to:

Joseph Donnellan, Esq. (for Appellant)

Maite Parsi, Esq. (for Respondent)