

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

CHRISTOPHER J. CAREY,
Appellant

v.

D1-17-134

TOWN OF HOLDEN,
Respondent

Appearance for Appellant:

Timothy M. Burke, Esq.
Sheila E. McCravy, Esq.
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Appearance for Respondent:

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Commissioner:

Christopher C. Bowman

DECISION

On July 5, 2017, the Appellant, Christopher J. Carey (Lt. Carey), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Holden (Town) to discharge him from the Town’s Police Department (Department)

A pre-hearing conference was held on August 29, 2017 at the at the offices of the Commission. Two days of hearing were held at the same location on November 13, 2017 and November 14, 2017. A digital recording was created of the hearing and both parties were provided with a CD of the proceeding. The parties had the digital recording transcribed by a Certified Court Reporter and Notary Public and have filed the transcript with the Commission,

which will serve as the official record of the proceeding. The hearing was public, but the witnesses were sequestered with the exception of Lt. Carey. Following the close of the hearing, proposed decisions were submitted by both parties on February 9, 2018. After reviewing the entire record, including the transcripts, exhibits and post-hearing briefs, I had additional questions for some witnesses. For that reason, I re-opened the record, held an additional day of hearing, and heard additional testimony from Lt. Carey, the Police Chief, AP and CN.¹

FINDINGS OF FACT

Forty-three (43) joint exhibits were entered into evidence at the hearing. I also left the record open for various documents which have been submitted and marked as Supplemental Exhibits 1-11. Based upon the documents admitted into evidence and the testimony of:

Called by the Town:

- MB, Internet/Intranet Specialist, New England State Police Information Network;
- David A. Armstrong, Chief of Police, Holden Police Department;
- JA, Department Administrator, Holden Police Department;
- RH, Sergeant, Holden Police Department;
- MB, Officer, Holden Police Department; and
- CN, Sergeant/Provisional Lieutenant, Holden Police Department.

Called at the request of the Commission:

- AP, Detective Sergeant/Provisional Lieutenant, Holden Police Department.

Called by the Appellant:

- Christopher J. Carey, Appellant.

I make the following findings of fact:

¹ I am not certain if the parties had the third day of hearing transcribed. If not, a party filing a judicial appeal would be responsible for using the CD provided to the parties and having it transcribed for the Court.

1. The Town of Holden, located in Central Massachusetts, has a population of approximately 18,000. (Testimony of RH; <http://www.city-data.com/city/Holden-Massachusetts.html>)
2. Prior to Lt. Carey's termination, the Holden Police Department consisted of the Police Chief; one (1) Lieutenant; four (4) sergeants; approximately nine (9) patrol officers; and approximately twelve (12) civilian dispatchers. (Testimony of RH)
3. Lt. Carey is forty-eight (48) years old; is married; and has worked for the Holden Police Department for approximately twenty-seven (27) years. During his twenty-seven (27) years of employment, he rose through the ranks from dispatcher, part-time police officer, police officer and sergeant to lieutenant. He was promoted to lieutenant in 2013 or 2014 and was simultaneously put in charge of internal affairs for the Department. His role overseeing internal affairs ended approximately six (6) to twelve (12) months prior to his termination in June 2017. The change was made to give another officer experience in internal affairs. (Testimony of Lt. Carey)
4. At some point, while he was a police officer and president of the local union, then-Officer Carey received a one-day suspension for a matter related to him having a conversation with a member of the Board of Selectmen while on duty. (Testimony of Lt. Carey)
5. The parties stipulated that any prior discipline against Lt. Carey was not considered as part of the decision to terminate his employment. (Stipulated Fact)

Prior interactions between Lt. Carey, Officer JB and her family

6. Among the police officers in the Town of Holden are Officer JB and her brother, with the same initials (JB's brother). Their father (AB) is a former Holden police officer. (Testimony of Lt. Carey)

7. Several years ago, Lt. Carey questioned whether AB had returned \$300 that AB had received in “drug-buy money” for a drug buy that did not go forward. After Lt. Carey’s inquiry, AB repaid the money. Lt. Carey served as AB’s supervisor in the detective bureau for a period of time. AB did not appreciate the fact that Lt. Carey would hold him accountable for all hours worked and duties performed. (Testimony of Lt. Carey)
8. While in charge of internal affairs, Lt. Carey was asked by Chief Armstrong to investigate a matter involving JB’s brother. As part of Lt. Carey’s investigation, he determined that JB’s brother had parked in a restricted lot in another town and had his car towed to a tow lot. JB’s brother, who was intoxicated, went to the tow lot and engaged in a verbal dispute with the dispatcher at the tow lot, prompting a call to the Worcester Police. Lt. Carey recommended a 3-5 day suspension of JB’s brother or mandatory attendance in a counseling program. The Police Chief issued a written reprimand instead. (Testimony of Lt. Carey)
9. In May 2014, Lt. Carey was asked by Chief Armstrong to investigate an incident in which Officer JB was in an off-duty automobile accident. (Testimony of Lt. Carey)
10. In a memo to Chief Armstrong regarding this incident, Lt. Carey reported that Police Officer JB, after leaving a sports bar in Worcester around midnight, struck a concrete barrier in Worcester, requiring her vehicle to be towed. According to the memo, Police Officer JB did not report the accident to Worcester Police. (Supplemental Exhibit 7)
11. In or around January 2016, Lt. Carey questioned why Officer JB, while working a shift funded by a federal Traffic Safety Grant geared toward “OUIs”, let a motorist get a ride home and had his car towed instead of arresting him. After reviewing the matter, Lt. Carey wrote a “to/from” memo to Chief Armstrong, stating that he didn’t think Officer JB was comfortable conducting field sobriety tests and asked for sit-down with the Police Chief and

Officer JB to discuss the matter. Chief Armstrong agreed and a meeting was scheduled to occur on a Friday. One (1) day before the scheduled meeting, Officer JB told Lt. Carey that she had already met with the Police Chief. She then told Lt. Carey that she was upset that Lt. Carey told Chief Armstrong that she was unfit for duty, which Lt. Carey denied every saying. (Testimony of Lt. Carey)

12. Lt. Carey penned another undated memo to Chief Armstrong regarding a February 28, 2016 incident involving Officer JB. Based on the dates in the memo, it appears that it was written on or shortly after March 31, 2016. (Supplemental Exhibit 8)²
13. In the memo, Lt. Carey provides a summary of his investigation regarding an incident on February 28, 2016 at 11:23 P.M. in which a citizen called into dispatch to report that “she [the citizen] was behind a drunk driver headed toward Hubbardston ...” The suspected drunk driver’s car, according to Lt. Carey’s memo, was registered to Officer JB, who was off duty at the time. (Supplemental Exhibit 8)
14. According to the memo, Officer RM was dispatched to respond to the call. At or around the same time, Officer JB’s brother, whose shift had ended at 11:00 P.M., was driving his cruiser in the same area and pulled over his sister. Officer JB’s brother eventually cleared the call and told Officer RM that he was “all set”. (Supplemental Exhibit 8)
15. Lt. Carey’s memo outlines the steps he took to investigate this incident, including speaking to Officer JB and Officer JB’s brother. According to the memo, Officer JB, after first refusing to cooperate, acknowledged that, before driving home from a restaurant and a friend’s house

² Supplemental Exhibits 7&8 were provided by the Town, at my request, after the hearing was completed. The Town’s cover letter stated in part: “The undated reports produced as items 7 & 8 were located on a printed from the hard drive of Lt. Carey’s computer. No hard copy of either report was found in Ofc. [JB]’s personnel file.

that night, she had a “few sips” of a “scorpion bowl” at a restaurant and had taken “nyquil”.

(Supplemental Exhibit 8)

16. Although Lt. Carey’s memo ultimately concluded that Officer JB “.. was impaired that night due to being sick and taking medicine. There is no indication that she was impaired by alcohol ...” his memo also referenced conflicting statements that he received from Officer JB, her brother and Officer RM. The memo also questions why the dispatcher failed to follow proper procedures by failing to enter any information regarding the private citizen who made the call that night. (Supplemental Exhibit 8)

Officer JB raises allegations against Lt. Carey

17. Weeks later, on May 16, 2016, Detective TV advised Detective Sergeant AP that there was a rumor originating from Officer JB that Lt. Carey engaged in criminal behavior over twenty years ago. (Testimony of AP)
18. Detective Sergeant AP did not initially put much stock in the story and his investigation was initially directed at Officer JB. (Testimony of AP)
19. Within approximately one (1) week, Detective Sergeant AP had spoken with Officer JB and obtained additional information regarding the allegations. (Testimony of AP)
20. The Holden Police Department then turned the matter over to the State Police. (Testimony of AP)
21. No criminal charges have ever been filed against Lt. Carey regarding these allegations. (Testimony of Lt. Carey)
22. No evidence has been presented to the Commission that would substantiate these allegations.
23. No disciplinary charges have been filed against Lt. Carey related to these allegations. (Testimony of Lt. Carey)

24. On June 23, 2016, after the Department referred these allegations to the State Police, Chief Armstrong called Lt. Carey into his office, with Sgt. AP present, and placed Lt. Carey on “administrative restriction.” (Testimony of Chief Armstrong, Sgt. AP and Lt. Carey) Most relevant to this appeal is whether, during this June 23rd meeting, Lt. Carey was ordered not to go into the evidence room while on administrative restriction.

25. Under the policies and procedures of the Department, the Executive Officer (who was Lt. Carey at the time) and the Evidence Sergeant have the authority to enter the Evidence Room and to remove and/or return evidence and custodial property to the Evidence Room.

(Exhibits 22-24)

26. Shortly after the June 23rd meeting, Chief Armstrong penned a file memo, which he did not give to Lt. Carey, memorializing his recollection of the June 23rd meeting. In the file memo, Chief Armstrong wrote, in relevant part:

“On June 23, 2016 I gave the following orders to Lt. Carey in regards to being placed on administrative restrictions

1. No use of unmarked take home cruiser.
2. No overtime or details until further notice.
3. No command. All orders are to go through the Chief.
4. You are restricted to working on the 911 West Boylston transition.
5. If necessary any further orders will directed by the Chief on a daily basis.” (Exhibit 3)

27. Chief Armstrong acknowledges that the memorandum does not reference giving Lt. Carey an explicit order not to enter the evidence room. Rather, Chief Armstrong believed that his

statements to Lt. Carey, including “no command” sufficiently put him on notice that he was not to enter the evidence room. (Testimony of Chief Armstrong)

28. No steps were taken, on or around June 23rd, to deactivate Lt. Carey’s “FOB” that allows access to the evidence room area and/or retrieve the hard key that allows access to the “cage” within the evidence room area. (Testimony of Lt. Carey)
29. Lt. Carey never understood the above-referenced orders as prohibiting him from entering the evidence room. (Testimony of Lt. Carey)
30. Between June 23, 2016 and September 13, 2016, Lt. Carey entered the evidence room on multiple occasions, including to retrieve caps for cadets, blank keys and, in one instance discussed in more detail below, to retrieve a firearm that was being stored for safe keeping. (Testimony of Lt. Carey)
31. An audit completed by the Holden Police Department for the time period June 23rd to September 13th showed that no logged evidence property was found to be missing during that audit. (See Town’s post-hearing letter to Commission dated February 7, 2018)
32. As of June 23, 2016, Lt. Carey’s authority to enter the evidence room had not been revoked by the Police Chief and entering the evidence room, standing alone, during this time period, did not constitute insubordination.
33. On July 11, 2016, Detective Sergeant AP, who serves as the evidence sergeant, was on vacation. On that date, Officer MB approached Lt. Carey and told him that a woman had called to make arrangements to pick-up her semi-automatic handgun which the Department was holding for safekeeping as custodial property. Officer MB, who does not have the authority or the fob or access code necessary to enter the Evidence Room, asked Lt. Carey if he would retrieve the handgun from the Evidence Room. Lt. Carey did remove the handgun

from the Evidence Room, placed it in a temporary locker in the hallway outside of Officer MB's office, and gave Officer MB the key to the locker. Lt. Carey did not document his removal of the handgun from the Evidence Room and instead told Officer MB to fill out the tracking paperwork. (Testimony of Officer MB; Joint Exhibit 26)

34. Officer MB did not have the computer authorizations necessary to document the removal of the handgun from the Evidence Room in the IMC tracking system. (Testimony of Officer MB). The removal of the handgun from the Evidence Room and placement in the temporary locker was not documented. (Testimony of Sgt. CN)

35. Despite her call, the women in question did not show up to pick-up her handgun. When Detective Sergeant AP returned from vacation, Officer MB asked him to return the handgun to the Evidence Room. (Testimony of Officer MB)

36. As a result of the failure to document the removal of the handgun from the Evidence Room, any query of the evidence tracking system while the weapon was in the temporary locker would have inaccurately indicated that the handgun was still in the Evidence Room. (Testimony of Lt. Carey; Testimony of CN; Exhibit 9)

37. All property taken into the Evidence Room, whether classified as found property, confiscated property, custodial property or evidence of a crime is treated as "evidence" and inventoried and tracked the same way. (Testimony of Christopher CN)

38. Policy & Procedure PP 32 – Storage & Impoundment of Property provides, in pertinent part, as follows:

32.1 POLICY

Whenever evidence or property comes into the possession of the Department, strict accountability is required. To meet that obligation, the Services Division shall be responsible for the custody, control, and disposition of all evidence and

property. **It will be the policy of this Department that no property or evidence shall be stored or released without a proper report or signature.**

...

32.2.3 Examining or Removing Evidence from Evidence and Supply:

Authorized employees checking out property shall sign their name on the Evidence Card. This procedure shall be adhered to by ALL personnel.

...

32.3.8 Whether evidence is to be held for court or merely confiscated for destruction it should be handled in the same manner.

...

32.3.10 Anytime evidence is removed from the evidence room, it will be signed for by the officer requesting the evidence, and also the reason the evidence is being removed.

32.2.11 When the evidence is returned to the evidence room by the officer who signed it out, it will be signed back in by the officer receiving it.

32.8 IMPOUNDING PROPERTY FOR SAFEKEEPING

At times it is necessary for property to be taken into police custody under the classification of safekeeping. ...

(Exhibit 24 (emphasis added))

39. Policy & Procedure PP16 – Collection and preservation of Evidence provides, in pertinent part, as follows:

16.2.14.2.2 **The Evidence Sergeant or Lieutenant shall ensure that the proper entry is made in the computer system signifying the change in location of the evidence.**

...

16.2.14.2.3 The Evidence Sergeant or Lieutenant shall also ensure that the evidence shall be transported to the proper destination for analysis and/or examination as needed (i.e. crime lab, drug lab, etc.) to ensure evidence is properly evaluated. **If the evidence is removed or replaced from any secure room, safe, or locker for evaluation, examination or Court, the Evidence**

Sergeant or Lieutenant shall ensure the proper entry is logged into the computer system indicating such removal or replacement at the time of transfer.

...

16.2.14.4 All property seized or confiscated, once placed in the Property Room, shall be under the control of the Evidence Sergeant, who shall maintain a uniform manner of tagging and labelling each piece of property held. Only the Evidence Sergeant and the Lieutenant shall have access to the Property Room.

...

16.2.14.7 Anytime property is removed from the Property Room, both the Officer receiving the property and the Supervisor releasing the property shall sign the Property Room Log, indicating why the property was being released. The Property Room Log shall also be signed when the property is being returned to the Property Room. The Evidence Sergeant shall maintain the Property Room Log in his office. When the property is to be permanently removed from the Property Room, the Property Room Log shall so indicate the reasons why and the Releasing Supervisor shall indicate the reason for the permanent removal of the property in the appropriate property section of the computer.

16.2.14.8 When the evidence is returned to the evidence room by the Officer who signed it out, it will be signed back in by the Officer Receiving it.

...

16.2.17 No officer shall take any property of any person for safekeeping, unless instructed or allowed by the Shift Commander, and of which a complete Incident Report and a signed receipt shall be completed.

(Exhibit 23 (emphasis added))

40. By failing to log into the computer system and document that he moved a firearm from the evidence room to a locker, Lt. Carey violated the Department's Rules related to Storage & Impoundment of Property.
41. On September 12, 2016, Detective Sergeant AP accompanied Officer JB to a State Police interview in connection with criminal allegations against Lt. Carey. Two (2) State Police detectives, in addition to Detective Sergeant AP, were present at the interview. The

interview lasted approximately forty-five (45) minutes. During that interview, Officer JB “went over some of the details” regarding the allegations. Officer JB also stated that Lt. Carey had been “liking” the photographs of female employees on Facebook. During this interview, Officer JB also recounted an alleged incident from many years ago in which, at a private residence, Lt. Carey engaged in inappropriate behavior toward her. (Testimony of Sergeant AP)

42. After returning from that interview, Detective Sergeant AP advised Chief Armstrong of what Officer JB told the State Police. Chief Armstrong told Detective Sergeant AP that he wanted all female employees interviewed to determine if Lt. Carey engaged in any inappropriate behavior toward them. (Testimony of Sergeant AP and Chief Armstrong)

43. At approximately 7:00 a.m. on September 13, 2016, Sergeant RH went to Lt. Carey’s office and asked him to come down to the Chief’s Conference Room. (Testimony of RH). When Lt. Carey and Sergeant RH arrived, Chief Armstrong, Detective Sergeant AP and a police sergeant, who is also a union vice president, were waiting in the conference room. Chief Armstrong told Lt. Carey that he was being placed on administrative leave, asked for Lt. Carey’s keys, fob, cellphone, weapon and badge. Lt. Carey placed those items on the conference room table. (Testimony of Richard RH; Joint Exhibit 4) Chief Armstrong then asked for the passwords to Lt. Carey’s Department issued cell phone³ and laptop. (Testimony of RH; Testimony of David Armstrong; Testimony of AP; Testimony of Christopher Carey). Lt. Carey failed to provide Chief Armstrong with the

³ Lt. Carey actually had two Department issued cell phones at the time he was placed on paid administrative leave. A newer iPhone 5S which was not password protected and contained almost no data and an older iPhone 4S which was password protected and which did contain data including a browser search history. (Testimony of Michael Breton; Exhibit 2; Exhibit 32).

passcodes to his town-issued cell phone. Rather, he told Chief Armstrong that he wanted to consult with an attorney regarding the request. (Testimony of Lt. Carey)

44. Lt. Carey's refusal to comply with the Police Chief's order to provide the pass code to this Town-issued cell phone constituted insubordination.
45. A data extraction from the iPhone 4S revealed that Lt. Carey had regularly searched for and viewed pornography on his Department owned and issued cell phone. (Testimony of Christopher CN; Testimony of Christopher Carey; Exhibit 32; Exhibit 33; Exhibit 39).
46. It is undisputed that Lt. Carey searched for and viewed pornography on his Department owned and issued cell phone, including while on duty. (Testimony of Christopher Carey; Exhibit 31; Exhibit 32)
47. Department Policy and Procedure 1.24 - Communications Systems provides, in relevant part, as follows:

124.3.1 Electronic communications, as defined in this policy, include, but are not limited to, the Department's electronic mail and information technology, website and internet, cell phone, telephones, pagers, and radio. **Electronic communications are Department-owned resources and are provided as communication tools. There can be no guarantee of privacy for electronic communications.**

...

124.3.2.2 Use of electronic communications, including the internet, to access, send or download abusive, offensive or discriminatory messages or materials is prohibited. Among those which are considered offensive are any messages or **materials which contain overt sexual language or images**, sexual implications or innuendo or comments that inappropriately address someone's age, gender, race, sexual orientation, religious beliefs, national origin or disability.

...

124.3.2.4 Departmental employees with access to the World Wide Web are responsible for all content of all text, audio or images that they place or send over the internet and for ensuring that the internet is used in an effective, ethical

and lawful manner. All messages created, sent or retrieved over the internet are property of the Department and should be considered public information.

...

124.3.2.5 The Department reserves the right to review all electronic records and communications, access and monitor all messages and files as it deems necessary and appropriate and delete items from electronic communications systems.

(Exhibit 34 (emphasis added)).

48. By accessing pornographic websites on his Town-issued cell phone, including while on duty, Lt. Carey violated the above-referenced Department Rules.

49. At or around the same time, the Police Chief had the two (2) sergeants in the investigation check their own Department-issued cell phones and “self-report” whether any pornographic sites appeared in their browser history. They both told the Chief that no such sites were found. The Police Chief was told by these sergeants that other supervisors’ cell phones were checked and those browser histories showed no evidence of pornographic websites. The Chief is unaware of how that review was conducted.

(Testimony of Police Chief)

50. When Officer MB pulled up Lt. Carey’s license-to-carry (LTC) information on or about the time Lt. Carey was placed on administrative leave, he noticed a recently filed identity fraud complaint for which Lt. Carey was the victim and he looked at it out of curiosity. When Officer MB pulled up the incident report, he saw that he had been listed as the reporting officer for the incident. Officer MB, however, was not the reporting officer, did not investigate the incident, did not participate in the drafting of the report, was completely unaware of the identity theft situation until he pulled up the report and had never spoken to Lt. Carey about the situation or the report. (Testimony of Officer MB)

51. During his Internal Affairs interview on December 27, 2016, Lt. Carey was asked twice whether he assigned the incident number for his identity fraud complaint and he denied it both times. (Exhibit 26, pp. 3-4) Instead, Lt. Carey asserted that the incident number was assigned by “[o]ne of the dispatchers.” (Exhibit 26, p. 4) Lt. Carey also stated twice that he told Officer MB that he was assigning him as the reporting officer. (Exhibit 26, pp. 4-5)
52. The electronic records of the Department indicate that Lt. Carey assigned a call number on May 4, 2016 at 7:07 a.m. (Exhibit 14; Testimony of Christopher CN) The electronic records indicate that Lt. Carey assigned the incident number for 1601-371-OF on May 4, 2016 at 7:24 a.m. (Joint Exhibit 12; Joint Exhibit 42; Joint Exhibit 43; Testimony of Christopher CN) The electronic records indicate that Lt. Carey drafted the report narrative on May 4, 2016 at 10:09 a.m. and then modified the narrative at 10:16 a.m. (Joint Exhibit 13; Joint Exhibit 42; Testimony of Christopher CN). Lt. Carey conceded that he assigned the incident number and drafted the narrative in his testimony at the hearing. (Testimony of Christopher Carey)
53. Lt. Carey disobeyed Chief Armstrong’s direct order “to answer all questions posed to you truthfully, accurately, and completely” when he stated, inaccurately, that a dispatcher assigned the incident number for 1601-371-OF. (Joint Exhibit 8; Joint Exhibit 26)
54. Lt. Carey never told Officer MB that he had been assigned as the reporting officer. (Testimony of Officer MB)⁴
55. Lt. Carey disobeyed Chief Armstrong’s direct order “to answer all questions posed to you truthfully, accurately, and completely” when he stated inaccurately that he told Officer

⁴ Lt. Carey and Officer MB offered conflicting testimony regarding whether Lt. Carey ever told Officer MB that he had listed him as the reporting officer. I credit the testimony of Officer MB.

MB that he had assigned him as the reporting officer for incident number 1601-371-OF.
(Joint Exhibit 8; Joint Exhibit 26)

56. One of the employees interviewed during that investigation was JA (JA).
57. Shortly after JA began working at the Department in April 2004, then-Patrolman Carey assigned JA a project creating a spreadsheet from a thick printout of telephone numbers provided by Verizon which he contended was not available from Verizon in electronic form. The assignment involved significant work creating macros and entering data and took several days to complete. When JA returned with the completed spreadsheet and turned it over to then-Patrolmen Carey on a three-and-one-half inch diskette, he asked “What’s this?” JA responded “This is the spreadsheet of the phone numbers you wanted.” Patrolmen Carey took the diskette from her, looked at her, and then threw it in the trash. JA was offended and humiliated by Carey’s behavior. JA testified that Carey’s conduct had affected her morale because she had not expected to be hazed. (Testimony of JA)
58. In September 2005, when JA was hired full time as Computer Project Coordinator, she was approached by Carey who asked about the position. When JA told Carey what her title was, he chuckled and said “You’re a secretary.” When JA explained that the Chief created the position for her and brought her on full time to do a lot of Department’s computer work, Carey again said “You’re a secretary.” JA said “No. Chris, I’m not. Marie is our secretary” to which Carey, again, replied “You’re a secretary.” JA was offended, felt demeaned and disrespected and felt that Carey was trying to put her in her place. (Testimony of JA)

59. In approximately 2008 or 2009, Police Chief Sherill offered JA a voucher for a class at Anna Maria College which had been provided to the Department for taking on one of Anna Maria's students as an intern. JA used the voucher to take a class on cyber-crime at Anna Maria. After learning that JA was taking a class on cyber-crime, Patrolmen Carey asked JA "Why would you take a cyber-crime course? It doesn't have anything to do with the work you are going to do, it's not like you would ever make a contribution to the police work that's done here." Lt. Carey said that it was a waste of the voucher. JA was insulted by his comments, felt disrespected and ridiculed and it adversely affected her morale. (Testimony of JA)
60. Sometime between 2006 and 2010, JA was involved in another incident with Lt. Carey. As part of her job duties, JA provided first level computer hardware and software support for the Department. On a particular day, one of the printers was not responding. The printer was hooked up behind Lt. Carey's desk and when JA got down on her hands and knees to examine the cables, she partially turned her head and Lt. Carey was behind her chuckling and gesturing to another male employee with his hands to indicate that JA had a big back side. JA was offended because she believed that Lt. Carey clearly meant to body shame and ridicule her. (Testimony of JA)
61. On yet another occasion, while Lt. Carey and JA were alone in the office they shared at the old police station, Lt. Carey asked JA "Have you ever heard the phrase once you go black, you'll never go back?" JA responded "Yes," hesitatingly. Lt. Carey then asked "Do you know what it means?" JA said "Yes, Chris, I know what it means." Lt. Carey asked "How do you know what it means?" JA responded "Because I went to college, I live in society, I work here, I watch TV, I don't know why, I just know what it means."

Lt. Carey then asked “Well, what does it mean?” JA said “Chris, you know what it means.” Lt. Carey pressed saying “I want to know what you think it means.” JA said “Fine, It’s my understanding that it means a black man is better endowed than a white man.” Lt. Carey then asked “Do you know that firsthand?” JA responded “No, Chris, I don’t.” (Testimony of JA)

62. JA was offended. She felt that she had been bullied into answering questions that she wasn’t comfortable answering because she was alone with him in the office. JA felt that the conversation was completely inappropriate and directed at her because she was a female. (Testimony of JA)
63. Lt. Carey also repeatedly and consistently referred to JA in conversations with others when he knew she could hear him as “the secretary” or words to that effect. JA has never held that position at the Department and, in fact, the vast majority of her duties have always been in information technology. That behavior has continued in the new building located at 1370 Main Street and up until shortly before Lt. Carey was placed on paid administrative leave on September 13, 2016. (Testimony of JA)
64. Lt. Carey also had a practice of asking JA questions, acting as though he really didn’t know the answer and as if he really wanted her help, and then when she would respond, Lt. Carey would invariably say “No, that’s not right,” the answer is something else. The most recent of those incidents was within three months of Lt. Carey being placed on paid administrative leave. (Testimony of JA)
65. Lt. Carey’s behavior prevented JA from coming to work at times. She took half a dozen “mental health days” and went home on two other occasions because of Lt. Carey’s behavior. There were other times she came to work and her morale was so low that she

didn't work as hard as she would have had the circumstances been otherwise. (Testimony of JA)

The Town's Sexual Harassment Policy defines sexual harassment, in part, as:

"conversation ... with sexual overtones;" "obscene or suggestive gestures;" "sexually-oriented teasing;" "inquiries into one's sexual experiences;" "discussion of one's sexual activities;" "staring at parts of a person's body," and "sexually suggestive gestures, [and] leering." (Joint Exhibit 17, pp. 1-2)

66. The Town's Sexual Harassment Policy expressly provides that "[a]ny individual violating this policy will be subject to appropriate discipline, including possible discharge." (Joint Exhibit 17, p. 4)

67. Although the Town's Sexual Harassment Policy designates a Sexual Harassment Grievance Officer, it also specifically provides that "[i]f an employee prefers to discuss a possible sexual harassment problem with his or her supervisor, the employee may always do so..." (Exhibit 17, p. 4)

68. The Town's Sexual Harassment Policy provides, in part, that:

If the Town finds that the allegations of the complaint have been established by the investigation, the Town will initiate discipline of the charged individual. Discipline will be appropriate to the offense and employees involved, and may include discharge ...

(Joint Exhibit 17, pp. 4-5)

69. By his actions referenced above, Lt. Carey violated the Town's sexual harassment policy.

70. Over three (3) days in March and April 2017, a hearing officer designated by the Town conducted a hearing to determine whether Lt. Carey should be terminated. Lt. Carey did not testify at that hearing. (Exhibit 41)

71. On June 30, 2017, the Town terminated Lt. Carey from his employment. This appeal followed. (Stipulated Facts)

72. On July 1, 2017, Detective Sergeant AP and Sgt. CN were promoted to Provisional Lieutenant by Chief Armstrong. (Testimony of Sgt. CN)

Applicable Civil Service Law

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 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, 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’,” which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority; Id., quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

Analysis

By a preponderance of the evidence, The Town has shown that Lt. Carey engaged in substantial misconduct which adversely affects the public interest by:

1. Engaging in inappropriate behavior toward a female employee of the Department;
2. Accessing pornographic websites on his Town-issued cell phone while on duty;
3. Failing to follow the Police Chief’s order to provide the pass code to his Town phone;
4. Filing an inaccurate police report;
5. Failing to document the transfer of a firearm from the evidence room to a locker.

1. Engaging in inappropriate behavior toward a female employee of the Department

I listened carefully to the testimony of JA, a female employee of the Department. She was a good witness and I credit the entirety of her testimony. JA testified credibly that she did not report the litany of inappropriate behavior by Lt. Carey until interviewed by investigators in 2016 as she was concerned that filing a complaint against a uniformed member of the

Department could jeopardize her job, which, as a single parent, she relied upon to support her family.

JA testified, convincingly, that she was offended by Lt. Carey's conduct and that it adversely affected her morale. JA testified that although she no longer works in close proximity to Lt. Carey, he had referred to her as a "secretary" several times in the six months preceding his placement on paid administrative leave on September 13, 2016. Lt. Carey conceded in his testimony that "I could've said that. I mean that's something I would likely say . . ." In regard to commenting on her body when JA was down on the floor checking computer cables, Lt. Carey testified that "I could've done it". JA was offended because Lt. Carey clearly meant to poke at her for the size or shape of her body and because that conduct was directed at her because she was a female. As described in the findings, Lt. Carey also made inappropriate inquiries of JA concerning her familiarity with the phrase "once you go black, you never go back."

The conduct outlined above violates the Town's Sexual Harassment policy and constitutes conducting unbecoming an officer.

I reviewed the Appellant's arguments that he did not receive adequate notice of this charge; that the investigation regarding this allegation was a "fishing expedition" and did not follow the Town's procedures regarding sexual harassment allegations; that the Town failed to investigate "others" referenced by JA; that there was no evidence that he engaged in similar behavior toward other female employees; and that the allegations were stale, referencing the 300-day filing requirement by MCAD complainants.

The charge notice regarding this allegation was sufficiently specific to satisfy the requirements of the civil service law. When Officer JB made allegations regarding the workplace behavior of Lt. Carey, the Town was *required* to investigate. It was clear through

JA's testimony before the Commission that while "others" may have engaged in isolated incidents that she may have found offensive over the years, no officer engaged in the same type of repeated and inappropriate behavior as Lt. Carey. Finally, I don't believe the 300-day filing requirement with MCAD stands for the proposition that the Department could not investigate whether Lt. Carey violated the Town's sexual harassment policy that included a period of time more than 300 days prior to the reporting date. Even if it did, the Town also found that Lt. Carey's behavior, similar to the other offenses, also constituted the supportable charge of conducting unbecoming a police officer.

2. Accessing pornographic websites on his Town-issued cell phone while on duty

During his testimony before the hearing, Lt. Carey conceded that he regularly viewed pornography on his Town-owned and issued cell phone while on duty.

I did consider that the Town failed to conduct a similar search of the Town-issued cell phones of other police officers. To ensure clarity, it was clear to me that the alleged "search" of other officers' browser history was neither serious nor thorough. Rather, it was an (unsuccessful) attempt to show that Lt. Carey was not being singled out for a search of his phone, which included the unusual step of having data from an employee's Town-issued cell phone extracted and reviewed. That notwithstanding, the undisputed fact here is that Lt. Carey violated the Town's policies by using his Town-issued cell phone, including while on duty, to access pornographic websites. In regard to whether the Town's actions (or inaction) constituted disparate treatment against Lt. Carey, I considered that in my analysis (below) regarding whether a modification of the penalty is warranted here.

3. Failing to follow the Police Chief's order to provide the pass code to his Town phone

Lt. Carey was ordered, twice, to provide the password to his Department issued cell phone and he failed to do so. While there may be some disagreement as to the exact words spoken and whether Lt. Carey ever said, "No," there is no dispute that the request was made twice and that Chief Armstrong expressly stated that it was an order.

Pursuant to Section RR 2.18 of the Department's Rules and Regulations, all officers are required to abide by all Departmental Rules and Regulation both on and off duty. Section RR 2.22 of the Rules and Regulations of the Holden Police Department provides, in relevant part, that "[a]ll members shall perform any legal and lawful order given them by a Superior Officer or a Senior Officer." Moreover, the Policies and Procedures of the Department make it clear that no officer is guaranteed a right of privacy in his Department owned and issued cell phone, that all material sent or received over the internet is considered public information, and that Department reserves the right to inspect Department-owned and-issued communications equipment at any time and as it deems necessary and appropriate.

Lt. Carey has suggested that the fact that he used the same password for the Department security door and his cell phone and, therefore, the Department had that password in its electronic files as his security door password somehow mitigates his refusal to affirmatively disclose it. This is unavailing. As Lt. Carey conceded, he was not required to use the same password and it was his decision to use the same password for both purposes. He did not affirmatively disclose the password and but for the diligence of Detective Sergeant AP and Officer MB in checking to see whether he might have used the same code for both purposes, the Department would not have discovered the password or been able to extract the phone's data on November 16, 2016.

Based on the clear policies of the Department, Lt. Carey had no privacy rights in his Department issued cell phone or any of the electronic data contained in it including, without limitation, his browser history. All officers are charged with learning and abiding by all of the Departments Policies and Procedures. As such, the Order was lawful and unequivocal. The desire to consult with an attorney and/or a misplaced belief that a person could have any “privacy” rights in Town-owned communications equipment do not render the order unlawful and are not a valid basis for refusing to comply with a lawful order.

4. Filing an inaccurate Police Report

Lt. Carey violated Department Rules and Regulations by incorrectly listing Officer MB as the reporting officer on an incident report. Lt. Carey admits that he took out the incident number and drafted the narrative. Lt. Carey admits that Officer MB did not write the narrative. This establishes that Lt. Carey was the reporting officer. Thus, as Officer MB testified, credibly and without contradiction, the proper procedure would have been to list Lt. Carey, who drafted the report, as the reporting officer. It follows then that Lt. Carey’s listing of Officer MB as the reporting officer, who did not write the report and had no knowledge of the incident, was inaccurate and therefore violated those Department Rules and Regulations which provides, in relevant part, that “[n]o member or employee of the Department shall make false official reports, or knowingly enter or cause to be entered in any Department books or records, any inaccurate, false, or improper ‘bookings’ or registration of police information or matter.”

Lt. Carey initially denied that he assigned the incident case number and instead claimed that it was assigned by “[o]ne of the dispatchers.” This is contrary to Officer MB’s credible testimony and the call log which indicates that Lt. Carey assigned the incident number. Similarly, Lt. Carey asserted multiple times in his internal affairs interview that he notified Officer MB that he

had advised him (MB) that he had listed him as the reporting officer for that incident. Officer MB credibly testified that Lt. Carey did not approach him to notify him that he had been listed as the reporting officer for the incident and that he was wholly unaware of the report and underlying incident itself until he saw a reference to it during his check on the status of Lt. Carey's LTC on September 14, 2016.

5. Failing to document the transfer of a firearm from the evidence room to a locker.

Lt. Carey admitted both at the hearing and during his internal affairs interview that he removed a citizen's firearm from the Evidence Room which was being held as custodial property for safekeeping, gave it to Officer MB and did not document its removal or entrustment to Officer MB. Instead, Lt. Carey asked Officer MB to handle the paperwork. Officer MB lacked the computer credentials necessary to even document the removal of that custodial property from the Evidence Room in the tracking system. Further, Lt. Carey did not sign the property log and provide an explanation as to why the property was being released from the "Property Room." This is an express requirement anytime property is removed from the Evidence Room.

Thus, even though Lt. Carey, based on my findings, did have the authority to enter the Evidence Room to retrieve the firearm, he violated a number of procedural mandates concerning the record keeping requirements for the removal of property from the Evidence Room.

Just Cause for Termination

Having determined that Lt. Carey did engage in the alleged misconduct, I must determine whether the level of discipline (termination) was warranted.

As stated by the SJC in Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814, 823-825 (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.’ citing 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 town 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. at 572. (citations omitted).

My findings do not differ significantly from those reported by the Town. Similar to the Town, I have found that Lt. Carey engaged in misconduct by: engaging in inappropriate behavior toward a female employee of the Department; accessing pornographic websites on his Town-issued cell phone while on duty; failing to follow the Police Chief’s order to provide the pass code to his Town phone; filing an inaccurate police report; and failing to document the transfer of a firearm from the evidence room to a locker. While the Town did not adequately prove the charge of insubordination relating to accessing the evidence room, it is clear that the Town, based on the other charges which I found to be adequately supported, would have terminated Lt. Carey.

I considered the Appellant’s argument that the Town showed bias against him by initially launching an investigation based on uncorroborated criminal allegations and that the ensuing

investigations were not fair and impartial, but, rather “targeted and biased ... fishing expedition[s]” designed solely to “gather whatever potentially damaging information they could to justify ...” the Appellant’s termination.

The peculiar course of events here, including how the initial criminal allegations came about, and the domino-like nature of the ensuing charges and investigations, warrants a healthy degree of skepticism and careful review.

A uniformed Holden police officer, who only weeks earlier had apparently been questioned by Lt. Carey regarding potential allegations of OUI and a call that appears to have been “cleared” by an off-duty police officer who is her brother, accused Lt. Carey of criminal behavior from twenty (20) years ago. This police officer did not make these allegations by filing a police report and/or reporting the criminal allegations to one of her superiors (i.e. – the Police Chief), but, rather, apparently she leveled the charges during a casual conversation in the dispatch room of the Holden Police Department. It was only after a civilian dispatcher reported this conversation to a detective, who related the information to a sergeant, who conveyed the information to the Police Chief, that an investigation ensued. While this raises legitimate questions regarding the motivation of the “reporting” police officer, and why she failed to properly (and timely) report her knowledge of a crime that had allegedly been committed, the Police Department could not ignore these criminal allegations.

The Police Chief, after hearing of these allegations, was justified in asking a police sergeant to conduct an initial investigation, and then turning the matter over to the State Police. Similarly, the Police Chief’s decision to place “administrative restrictions” on Lt. Carey while the State Police investigation was pending appears to have been an appropriate attempt to balance the seriousness of the charges with the dearth of corroborating information.

Further, when the Department became aware of allegations (made by the same police officer who made the statements in the Dispatch Room) that Lt. Carey engaged in inappropriate behavior toward her several years ago, and that Lt. Carey had allegedly been “liking” photographs of female employees in bathing suits on Facebook, they were justified in conducting interviews of other female employees.⁵ While, consistent with the Town’s sexual harassment policy, the matter should have been investigated by the Town’s Sexual Harassment Officer (the Town Manager), that misstep does not alter the fact that, ultimately, a civilian female employee provided Department investigators with a litany of alleged incidents that, if true, would fall squarely under the definition of sexual harassment and conduct unbecoming a police officer. Those serious allegations, raised by an incumbent employee working in the same location as Lt. Carey, justified the Department’s decision, at that point, to place Lt. Carey on administrative leave and require the return of his Department-issued firearm and other equipment including his Department-issued cell phones.

I carefully reviewed the parties’ arguments (and cases cited) regarding whether the Department’s decision to extract all data from the Appellant’s Department-issued cell phone was justified and/or whether it showed that the Appellant was being treated similarly to other police officers. While, as referenced above, I found the Police Chief’s purported review of the web browser histories of other officers to be perfunctory and lacking any seriousness, the fact is that none of these other officers were being placed on administrative leave due to serious allegations including sexual harassment. The decision to extract information from the Department-issued cell phone was permissible and, in light of the particular allegations raised by Officer JB (i.e. – Lt. Carey allegedly “liking” certain Facebook photos of female employees in bathing suits), the

⁵ While it is perplexing that the Department, or the Town, did not conduct an investigation of the further allegations by Officer JB, it does not have any impact on the outcome of this appeal.

decision to review the browser history of Lt. Carey's Department-issued cell phone appeared to be a natural extension of the investigation against him.

In summary, while the manner in which the initial and ensuing charges against Lt. Carey arose was both peculiar and unorthodox, the Department's response to these allegations, including the investigations into the matters referenced above, appear to have been reasonable and justified, as opposed to being a pretext for finding reasons to justify Lt. Carey's termination.

I also considered that two (2) of the sergeants who investigated Lt. Carey were promoted to Provisional Lieutenant one (1) day after Lt. Carey was terminated, raising the question of whether there was an inherent bias by those investigators. That was among the various reasons that I re-opened the hearing and took additional testimony from the two promoted individuals. I wanted to know if the findings of either of these individuals was influenced by the fact that Lt. Carey's termination would open up at least one (1) promotional opportunity for them. The evidence does not show that. While a better course of action here would have been to have an outside investigator, who was not a subordinate of Lt. Carey, conduct the investigation, I do not find that the sergeants that participated in the investigation of Lt. Carey were influenced by the potential vacancy that would be created from his termination. Rather, at least one (1) of the sergeants appeared somewhat reluctant during his second day of testimony to provide details that may paint Lt. Carey in a bad light.

Further, I considered that Lt. Carey had no prior disciplinary history that was considered by Town in making its determination to terminate Lt. Carey. While the Commission has long considered progressive discipline to be consistent with the basic merit principles enshrined in the civil service law, the number of offenses here, and the seriousness of those charges, justifies termination, even absent any prior formal discipline. "The Commission is mindful that 'police

officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens.” DeTerra v. New Bedford Police Dep’t, 29 MCSR 502, 508 (2016), quoting Attorney Gen. v. McHatton, 428 Mass. 790, 793 (1999).

Police officers must comport themselves in accordance with the laws that they are sworn to enforce *and* behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

Police Comm’r of Boston v. Civil Serv. Comm’n, 22 Mass.App.Ct. 364, 371 (1986). (Emphasis in original.)

Finally, while I would have reached the same conclusion here, I did consider that Lt. Carey failed to testify at the local hearing regarding his potential termination. “The Commission is permitted, but not required, to draw an adverse inference against an appellant who fails to testify at the hearing before the appointing authority. Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006).” Clark v. Boston Housing Authority, 24 MCSR 193 (2011), Clark v. Boston Housing Authority, Suffolk Superior Court, C.A. No. SUCV2011-2554E, *aff’d* (Feb. 13, 2015). In a civil case, the Massachusetts courts have held that even a party asserting his or her rights against self-incrimination under the U.S. or Massachusetts Constitutions “may be the subject of a negative inference by a fact finder where the opposing party ... has established a case adverse to the person invoking the privilege. Quintal v. Commissioner of the Dep’t of Employment & Training, 418 Mass. 855, 861 (1994), quoting Custody of Two Minors, 396 Mass. 610, 616 (1986).” Town of Falmouth, at 826-27 (citations omitted).

Conclusion

For all of the above reasons, Lt. Carey's appeal under Docket No. D1-17-134 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 November 8, 2018.

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:

Timothy Burke, Esq. (for Appellant)

Sheila McCravy, Esq. (for Appellant)

James Hoban, Esq. (for Respondent)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

CHRISTOPHER J. CAREY,
Appellant

v.

D1-17-134

TOWN OF HOLDEN,
Respondent

**CONCURRING OPINION OF COMMISSIONERS STEIN, ITTLEMAN,
CAMUSO & TIVNAN**

We concur with the Decision to uphold the termination of the Appellant, albeit with little contentment. We write to emphasize that the record established that the Town comes before the Commission tainted by problematic origin of the charges and the behavior of certain officers involved has not been overlooked, none of which has any proper place in a public safety organization, and must not be viewed as condoned by this Commission.

Nevertheless, the totality of the evidence of misconduct on the part of the Appellant, from his recent misuse of his department phone for improper personal use while on duty, insubordination and attempts to obstruct the investigation of those legitimate charges, taken together with a proven pattern of sexual harassment over an extended period, stand as just cause for the discipline imposed. Indeed, it would discredit the bedrock of civil service law merit principles to excuse such a history of behavior because of the unseemly way in which that history eventually came to light. The clear intent of merit principles is that a police officer's misconduct, no matter how long ago it may have occurred, may not be excused as too stale in circumstances such as those presented in this appeal. Indeed, once an officer has misbehaved in a manner such as

shown here, the very problem that creates is that he or she remains vulnerable to compromise by those with ulterior motives long after the behavior occurred. Thus, a municipality is entitled to demand that its public safety officers maintain the highest standard of conduct at all times, and that, when discipline is considered, it is quite often fair to examine the officer's behavior through his or her entire career, both positive and negative, in weighing the decision as to whether and what discipline is warranted. Here, that paradigm supports the termination decision.

For Concurring Commissioners:

/s/Paul M. Stein

Paul M. Stein
Commissioner