

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

MICHAEL E. COACH  
Appellant

v.

D-09-259

CITY OF WESTFIELD,  
Respondent

Appellant's Attorney:

Michael P. Clancy, Esq.  
NAGE / IBPO  
1299 Page Blvd.  
Springfield, MA 01104

Respondent's Attorney:

Kathleen E. Degnan, Esq.  
Assistant City Solicitor  
City of Westfield  
59 Court Street  
Westfield, MA 01085

Commissioner:

Christopher C. Bowman

**DECISION**

The Appellant, Michael Coach (hereinafter "Coach" or "Appellant"), pursuant to G.L. c. 31, § 43, is appealing the decision of the City of Westfield (hereinafter "City" or "Appointing Authority") to suspend him for two (2) days for conduct unbecoming an officer and for violating rules related to "duty status" and off-duty use of alcohol during the early morning hours of January 1, 2009.

The Appellant filed a timely appeal with the Civil Service Commission (hereinafter "Commission") on May 11, 2009. A pre-hearing conference was conducted on June 25,

2009 and a full hearing was conducted on August 12, 2009 at the Springfield State Building in Springfield, MA. The hearing was declared private and was digitally recorded. The parties submitted post-hearing briefs on September 18, 2009.

**FINDINGS OF FACT:**

Sixteen (16) exhibits were entered into evidence at the hearing. Based on the documents submitted and the testimony of the following witnesses:

For the Appointing Authority:

- Jeffrey Baillargeon, Westfield police officer;
- Michael McCabe, Westfield police officer;
- John Camerota, Westfield Police Chief;
- Karl W. Hupfer, Chairman, Westfield Police Commission;

For the Appellant:

- Michael E. Coach, Appellant

I make the following findings of fact:

1. The Appellant, Michael Coach, has been employed as a full-time police officer with the City of Westfield since January 27, 1986. (Stipulated Fact)
2. There is no applicable prior discipline. (Stipulated Fact)
3. On December 31, 2008, the Appellant worked his regular shift as a police officer. (Testimony of Appellant)
4. At approximately 8:30 P.M. on December 31<sup>st</sup> (New Year's Eve), the Appellant and his girlfriend decided to go out to the Sons of Erin in Westfield. The Appellant

testified that he had “a couple drinks” while at the Sons of Erin. (Testimony of Appellant)

5. The Appellant and his girlfriend eventually left the Sons of Erin and arrived at the Maple Leaf Inn in Westfield at approximately 10:00 P.M. (Testimony of Appellant)
6. The Appellant testified that while at the Maple Leaf Inn, he had 1 “vodka and ginger ale” and 1 beer. Asked if he consumed any other alcohol at the Maple Leaf Inn, the Appellant stated, “not that I recall”. (Testimony of Appellant)
7. At approximately 1:00 A.M. (January 1<sup>st</sup>), Westfield Police Officer Jeffrey Baillargeon was dispatched to the Maple Leaf Inn as a result of a call indicating that Officer Coach was “down and out”. (Testimony of Baillargeon)
8. Officer Baillargeon was a good witness and I credit his testimony. He offered straightforward answers to the questions posed to him and never sought to overreach in his testimony. He did not appear to have any ulterior motive for testifying against the Appellant. (Testimony, demeanor of Baillargeon)
9. Upon entering the Maple Leaf Inn, Officer Baillargeon saw the Appellant laying on his back on the floor of the establishment. After touching the Appellant on his shoulder and getting no response, Officer Baillargeon called for an ambulance. (Testimony of Baillargeon)
10. When the Appellant eventually awoke, Officer Baillargeon observed that the Appellant had a strong odor of alcohol, bloodshot eyes, slurred speech and when standing was unsteady. (Testimony of Baillargeon)
11. Officer Baillargeon testified that he could not give the Appellant a breathalyzer test because he did not have the device in his possession at the time and the Appellant’s

condition was such that Officer Baillargeon could not have performed the test properly. (Testimony of Baillargeon)

12. In the opinion of Officer Baillargeon, the Appellant was highly intoxicated to the point where he could not care for himself. (Testimony of Baillargeon)
13. The Appellant was transported to Noble Hospital and released. (Testimony of Baillargeon)
14. The Appellant testified that he has been taking a prescription medicine since 2007. He testified that he read the warnings on the prescription and that he was aware that the prescription may cause drowsiness when mixed with alcohol. (Testimony of Appellant)
15. The Appellant struck me as a genuinely good, decent individual. However, my observations of him during his testimony before the Commission were troubling. His answers were often disjointed and he appeared to have trouble hearing and/or comprehending the questions posed to him. (Testimony, demeanor of Appellant)
16. Westfield Police Chief John Camarotta testified before the Commission that he has counseled the Appellant several times regarding his use of alcohol. (Testimony of Chief Camarotta)
17. Chief Camarotta was a good witness and I credit his testimony in its entirety. He appeared to have genuine concern for the well-being of the Appellant, having urged the Appellant to take advantage of the Department's Employee Assistance Program and even offering to let the Appellant use vacation time during the two-day suspension. (Testimony, demeanor of Chief Camoratta)

18. After conducting an investigation, the Police Chief determined that the Appellant violated: a) Rule 8.4 of the Westfield Police Department (duty status) because he was not fit for duty if necessary; b) Rule 12.8 regarding the off-duty use of alcohol because the Appellant's overconsumption of alcohol discredited the Westfield Police Department; and c) Rule 2.3 (Conduct Unbecoming an Officer) because the Appellant's off-duty conduct placed the Department in a bad light. (Exhibit 9)
19. As a result of the above-referenced rule violations, the Police Chief suspended the Appellant for two days. (Stipulated Fact)
20. The Appellant appealed his suspension to the Westfield Police Commission, the Appointing Authority. (Stipulated Fact)
21. The Chairman of Westfield Police Commission testified before the Civil Service Commission that after hearing all of the evidence, he recommended a stiffer, 5-day penalty, but was overruled by the two other members of the board who favored the 2-day suspension. (Testimony of Hupfer)

## **CONCLUSION**

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, 268 N.E.2d 346 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, rev.den., 426 Mass. 1102, 687 N.E.2d 642 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427 (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, 684 N.E.2d 620, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514, 451 N.E.2d 408 (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, 133 N.E.2d 489 (1956).

"The 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, 857 N.E.2d 1053, 1059 (2006). See Watertown v. Arria, 16 Mass. App. Ct. 331, 334, 451 N.E.2d 443, rev.den., 390 Mass. 1102, 453 N.E.2d 1231 (1983) and cases cited.

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, 857 N.E.2d 1053, 1059 (2006) and cases cited. The role of the Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, rev.den., 426 Mass. 1102, 687 N.E.2d 642 (1997). See also Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, 792 N.E.2d 711, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, 721 N.E.2d 928, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm'n, 38 Mass App.Ct. 473, 477, 648 N.E.2d 1312 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, 451 N.E.2d 443, rev.den., 390 Mass. 1102, 453 N.E.2d 1231 (1983).

For all the reasons cited in the findings above, I conclude that the City has shown by a preponderance of the evidence that the Appellant violated various rules of the Westfield Police Department during the early morning hours of January 1, 2009 (New Year's Eve / Day). Specifically, the City has shown that the Appellant was not fit for duty if necessary; discredited the Westfield Police Department and placed the Department in a bad light through his overconsumption of alcohol.

I base this conclusion largely on the credible testimony of Westfield police officer Jeffrey Baillargeon, a percipient witness to the Appellant's condition and related behavior

on the night in question. It is the function of the hearing officer to determine the credibility of the testimony presented before him. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Department of Social Services, 439 Mass. 766, 787 (2003); (In cases where live witnesses giving different versions do testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing); Connor v. Connor, 77 A. 2d. 697 (1951) (the opportunity to observe the demeanor and appearance of witnesses becomes the touchstone of credibility).

The Appellant's contention that his condition was caused by mixing alcohol only reinforces my conclusion. If the Appellant was indeed taking prescription medicine on the night in question, then his consumption of at least 4 alcoholic drinks (according to his testimony) shows a grave error in judgment.

Having determined that it was appropriate to discipline the Appellant, the Commission must determine if the City was justified in the level of discipline imposed, which, in this case, was a 2-day suspension.

The Commission is 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. Civ. Serv. Comm'n, 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



employees' suspensions to ensure perfect uniformity. See Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

“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., Town of Falmouth v. Civ. Serv. Comm’n, 447 Mass. 814, 823 (2006).

There is no evidence the discipline imposed involved inappropriate motivations or objectives or any other factors that would warrant the Commission modifying the discipline. In light of the seriousness of the charges, I am dismayed that the City’s Police Commission did not accept the recommendation of its Chairman to impose a stiffer penalty.

For all of the above reasons, the Appellant’s appeal under Docket No. D-09-259 is hereby *dismissed*.

Civil Service Commission



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Christopher C. Bowman, Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on December 10, 2009.

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Michael Clancy, Esq. (for Appellant)

Kathleen Degnan, Esq. (for Appointing Authority)