

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

PAUL N. CODERRE, JR.,
Appellant

v.

CITY OF NEW BEDFORD,
Respondent

D1-22-010

Appearance for Appellant:

Joseph G. Donnellan, Esq.
Rogal & Donnellan, P.C.
100 River Ridge Drive, Suite 203
Norwood, Massachusetts 02062

Appearance for Respondent:

Erik T. McKenna, Esq.
Valerio Dominello & Hillman, LLC
One University Avenue, Suite 300B
Westwood, Massachusetts 02090

Commissioners:

Paul M. Stein
Shawn C. Dooley

Summary of Decision

The Commission overturned the termination of a New Bedford deputy fire chief after finding that New Bedford failed to prove that he had misrepresented his physical abilities to avoid returning to duty or otherwise abused the fire department's injury leave policy. Although the Appellant has retired and may not now be likely to return to duty, his unlawful termination in violation of his civil service rights also affects his entitlement to other post-retirement compensation that he was denied as a consequence of the unlawful termination.

DECISION

On January 30, 2022, the Appellant appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 43, contesting the decision of the City of New Bedford (New Bedford) to discharge him from his position as the Deputy Fire Chief with the New Bedford Fire Department

(NBFD), effective January 25, 2022.¹ The Commission held a remote pre-hearing (Webex) on February 22, 2022 but deferred the full hearing due to a dispute before the New Bedford Retirement Board (NBRB) that could affect the Commission's disposition of this appeal.

On December 1, 2021, the Appellant filed for accidental disability retirement and, with that application pending, applied for a superannuation (regular) retirement, which the NBRB had initially approved, effective as of the date of his application on January 10, 2022. In addition to disputing the Appellant's disability, however, New Bedford opposed the approval of his regular retirement, arguing, *inter alia*, that the Appellant was guilty of "moral turpitude" that disqualified him from retirement benefits, putting in dispute the validity and effective date of the Appellant's retirement that possibly could have mooted this appeal. (*Exhs.23, 40 & 43*)²

On August 23, 2022, the NBRB adopted a hearing officer's Recommended Decision that found that the Appellant was not disqualified from receiving retirement benefits for "moral turpitude" and that his retirement application was not effective as a resignation because it was not accepted by New Bedford prior to the decision to terminate the Appellant's employment. Accordingly, the effective date of the Appellant's retirement was adjusted to January 25, 2025, the last date of his active service with the NBFD. (*Exh.43*)

After the NBRB rendered its decision, New Bedford filed a Motion for Summary Decision in this appeal, which the Appellant opposed. The Motion for Summary Decision was denied on October 7, 2022, based on the conclusion that the findings of the NBRB were preclusive and that, as the Appellant had not resigned and his retirement date came after his termination date, the

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

² So far as the Commission is informed, the Appellant's disability retirement application is pending.

Commission was properly vested with jurisdiction to adjudicate the just cause for the termination. The Commission held a full hearing on January 27, 2023 at the UMass School of Law in Dartmouth, which was digitally recorded, and two additional days of hearing by remote videoconference (Webex), which were audio and video recorded.³ The hearings were declared private. Each party submitted a proposed decision on July 21, 2023. For the reason stated below, the Appellant's appeal is allowed.

FINDINGS OF FACT

The Commission received into evidence 45 exhibits (*Jt.Exhs.* 1-34, 6-38, 40-45; *App.Exh.* 39; *Resp.Exh.* 5). Based on the documents submitted and the testimony of the following witnesses:

Called by the City of New Bedford:

- Judith Keating, New Bedford Human Resources Director
- Lisa Presby, New Bedford Program Director
- Darren Pace, A&R Investigations, Inc.
- Scott Kruger, Chief, Nbfd
- George B. McManama, M.D.

Called by the Appellant:

- Paul N. Coderre Jr.

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

Background

1. The Appellant, Paul N. Coderre, Jr., (Appellant or Chief Coderre) began his career with the Nbfd in February 1993. He rose through the ranks and became acting Deputy Fire Chief in

³ Copies of the digital recording and a link to the Webex recordings were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with the official written transcripts to the extent that the plaintiff challenges the decision as unsupported by substantial evidence, arbitrary and capricious, or an abuse of discretion.

2011 and permanent Deputy Fire Chief in 2012, the position he held at the time of his termination. He served as the Nbfd provisional fire chief from December 2018 until January 6, 2022, when Scott Kruger became the permanent Fire Chief. (*Testimony of Appellant & Chief Kruger*)

2. Chief Coderre's termination is the first time that he had been disciplined at any time during his 23-year career with the Nbfd. (*Pre-Hearing Conference Stipulation*)

3. At all times relevant to the issues presented in this appeal, Jonathan Mitchell, the Mayor of New Bedford, served as the Appointing Authority for the Nbfd. (*J.Exhs.24 & 30*)

4. The Nbfd is commanded by a Fire Chief with two Deputy Fire Chiefs who report directly to the Fire Chief and act as Fire Chief in his absence. (*J. Exhs.3 &4; Testimony of Appellant & Chief Kruger*)

5. All Nbfd superior officers, and especially the Fire Chief and Deputy Chiefs, are expected to set an example for the entire department and to comply with the Nbfd's Code of Conduct which requires, among other things, that they always conduct themselves "in a positive, productive and mature way" so as "to reflect credit on the Fire Department". (*J.Exh.31; Testimony of Chief Kruger*)

6. The essential duties of a Fire Chief incorporate all the fire suppression activities required of any firefighter, including operation of hoses and ladders, building entry and search and rescue. (*J.Exhs.2 & 38; Testimony of Appellant*)

7. During larger structural fire incidents, one Deputy Fire Chief typically serves as the interior commander within the structure while the other Deputy Fire Chief serves as operations chief outside the building. (*Testimony of Appellant*)

8. When dispatched to a fire scene, firefighters must don protective "turnout gear" which weighs approximately 40 pounds, although a Deputy Fire Chief who is stationed at an outside

command post may not always be required to wear that gear depending on circumstances and the proximity to the fire scene. (*J.Exhs.2 & 3; Testimony of Appellant*)

9. When working inside a structure, firefighters also carry self-contained breathing apparatus (SCBA) gear. Over the ten-year period he served as Deputy Chief or provisional Fire Chief, Chief Coderre wore SCBA gear approximately 12 to 20 times. (*J.Exhs.2 & 3; Testimony of Appellant*)

10. Although, as Deputy Fire Chief, the Appellant was expected to climb a ladder if necessary, generally other firefighters would perform that duty if available. The Appellant recalls personally climbing a ladder about six times in his capacity as a Deputy Fire Chief. (*J.Exhs 2 & 3; Testimony of Appellant*)

11. Prior to 2022, the Nbfd did not have procedures to make light duty available to Nbfd fire service personnel. (*J.Exh.38; Testimony of Appellant & Chief Kruger*)

Nbfd Injured Leave Policy and Procedure

12. New Bedford is self-insured for work-related injuries and utilizes a third-party administrator (TPA) to administer those claims, including so-called “111F” injured on-duty claims by Nbfd personnel covered by G.L. c. 41, § 111F. (*Testimony of Presley & Chief Kruger*)

13. Guardian Claims Services (Guardian) became the TPA for New Bedford in or about 2019, replacing the TPA previously used by New Bedford for the prior 20 years. (*Testimony of Presley*)

14. Once an employee files a notice of injury, Guardian opens a claim file and monitors the employee’s treatment, including requiring its prior approvals for service and payments to medical and rehabilitation providers. (*J.Exhs.5, 6 & 10; Testimony of Appellant, Keating, & Chief Kruger*)

15. The New Bedford Office of the City Solicitor (City Solicitor) acts as the liaison with Guardian as to workers’ compensation claims involving most New Bedford employees and assists

New Bedford department heads with arranging accommodations for injured employees with medical restrictions related to return to work. (*Testimony of Presley & Kruger*)

16. In the case of “111F claims” for injured fire (and police) personnel, however, the Nbfd works directly with Guardian, acting through its Chief and/or Deputy Chief. The City Solicitor takes responsibility for fire and police injury claims only under special circumstances and when requested. (*Testimony of Appellant, Presley & Chief Kruger*)

Appellant’s History of Work-Related Injury

17. On April 21, 2016, Chief Coderre was hit broadside while driving a Nbfd vehicle to a second alarm fire. (*J.Exh.38; Testimony of Appellant*)

18. As a result of the accident, Chief Coderre suffered a disc protrusion at L5. He remained on duty while receiving physical therapy, chiropractic treatments and pain injections until December 1, 2016 when he underwent back surgery. (*J.Exh.38; Testimony of Appellant*)

19. At the request of Fire Chief Gomes, commencing December 8, 2016, Chief Coderre agreed to report to work for three to four hours a day, two to three days a week, to attend to administrative matters with which he was more experienced than (then Deputy Chief) Kruger, while pursuing outpatient chiropractic and physical therapy. He returned to full duty in February 2017 and remained on full duty status until August 2020, when he was placed on injured leave to undergo surgery on his back. (*J.Exhs.38 & 40; Testimony of Appellant*)

20. On March 28, 2019, while putting a hose back on the fire truck at a structure fire, while serving as Acting Fire Chief, the Appellant felt a strain in his back, but he did not report it. (*J.Exh.38; Testimony of Appellant*)

21. A week later, on April 3, 2019, while working to advance a charged line (fire hose) at another structure fire (then Acting Fire Chief) Coderre felt a painful pop in his back. He reported

that injury, to which (then Deputy Fire Chief) Scott Kruger attested, and returned to duty. He pursued a regimen of chiropractic treatment, physical therapy, and pain injections while he remained on full duty until August 5, 2020, which turned out to be his last day of active service, when he was admitted to the hospital for a second back surgery that was performed on August 8, 2020. (*J.Exhs.5, 6, 38 & 40; Testimony of Appellant*)

22. After recuperating from his surgery, Chief Coderre followed the strict regimen of physical therapy prescribed for him, but he continued to experience a lot of pain. An MRI performed on December 2, 2020 confirmed that “his chronic low back pain” was attributable to “degenerative endplate changes at L4-L5.” (*J.Exhs.5, 10 & 38; Testimony of Appellant*)

23. In December 2020, Chief Coderre also was diagnosed with a severe degeneration of his right hip. A total right hip replacement was performed on January 11, 2021, followed by several months of compliance with a prescribed regimen of physical therapy. (*J.Exhs.7, 11, 20 & 38; Testimony of Appellant*)

24. The orthopedic surgeon who performed the hip surgery concluded that Chief Coderre’s hip was healing well, but also concluded that Deputy Fire Chief Coderre still suffered from “lumbar spine pain with radiculopathy. I do feel he needs to see a Neurosurgeon. Given his past two surgeries, I do feel this is the best action moving forward. . . . As far as his hip is concerned, I feel he could return to work, but given his back pain, he will remain out of work until a Neurosurgeon clears him. He understands my recommendations” (*J.Exh.7*)

25. Chief Coderre’s primary care physician recommended a Board-certified neurosurgeon, Dr. Paul J. Houle and the Appellant was first seen by Dr. Houle’s Physician’s Assistant, Jennifer Cook, in March 2021. (*J.Exh.7, 20 & 38; App.Exh.39; Testimony of Appellant*)

26. Upon PA Cook's examination, Chief Coderre presented with bilateral lower back pain radiating down his legs to his ankles and "static pain" into his lower back. He also presented with "admitted weakness in his lower extremities. L>R" and "a possible left foot drop." EMG imaging confirmed "a chronic inactive L5 radiculopathy involving the left lower extremity." (*J.Exhs.8, 12, 13 & 38*)

27. At a follow-up visit on May 24, 2021, Dr. Houle explained that he believed Chief Coderre's chronic back pain was probably attributable to nerve damage and discussed the treatment options, the preferred option being what he called an "ablation". Pending surgery, however, Dr. Houle opined that "he is not fit to return to work." (*J.Exh.9*)

28. On June 28, 2021, Dr. Houle requested Guardian's approval to perform an "intraosseous ablation of the basivertebral [sic] nerve (BVN) . . . with the Intracept Procedure". He explained:

"My patient's primary problem is chronic low back pain (CLBP) that is due to degenerative disc disease that has resulted in the development of vertebrogenic pain identified by Modic type changes on their MRI. Modic changes may also be described on an MRI as endplate changes or faulty bone marrow changes. Modic changes have approximately 93% specificity for identifying appropriate patients for BVN ablation. Having considered all available treatment options for my patient I consider this procedure to be the most appropriate treatment The Intracept procedure received FDA clearance in 2016 and is supported by two Level 1 studies with more than 5 years of follow up post-treatment."

. . .

"Given the [patient's] history, physical examination, the incapacitating nature of his axial pain and radiologic findings, I believe the Intracept Procedure is medically necessary and appropriate for my patient. . . ."

(*J.Exh.10*)

29. In a medical note dated July 20, 2021, after a follow-up visit, the orthopedic surgeon who performed Chief Coderre's hip replacement in January 2021 reported: "Patient has had multiple hard falls since we last saw him [in April 2021]." (*J.Exhs.7 & 11*).

30. In a medical note dated September 28, 2021, PA Miller reported: “Patient has chronic left foot weakness with dorsiflexion with partial left foot drop on exam and he has been tripping on his foot frequently and he has fallen a couple times. . . .” (*J.Exh.12*)

31. On October 4, 2021, after receiving Guardian’s approval, Dr. Houle performed the Intercept procedure. The immediate post-operative instructions included “no bending, lifting >10 lbs, or twisting” as well as “avoid prolonged sitting”. (*J.Exhs.12 &13*)

32. Chief Coderre saw PA Miller on October 20, 2021 for a post-operative follow-up. Her medical report states:

“[N]o improvement yet of his preop symptoms of low back pain [which] is actually slightly worsened compared to preop. He still has the chronic intermittent pain radiating down bilateral lower extremities, left greater than right . . . intermittent numbness and tingling in is bilateral extremities. He has a chronic left foot drop [for] which he has been prescribed an AFO . . . but he has not obtained the AFO yet. I explained to patient that it may take 3-6 months to really know the affect [sic] of the procedure. I recommended for patient to try to do some walking and to let pain guide hm at this time. He will follow-up in 2 months to check on his progress. . . . He is starting the process of retirement disability.”

(*J.Exh.13*)

33. On December 3, 2021, Chief Coderre had a follow-up appointment with Dr. Houle. Dr. Houle’s medical note states:

“[Patient] returns for his 2nd postoperative visit He reports that his low back pain is approximately a 3 on a scale of 1-10. He feels that is a little bit improved. What has not improved is . . . constant radicular symptoms in his left leg as well as sharp back pain when he has to carry anything heavy . . . such as a box of any weight whatsoever.

“At this point he would like to continue to see how his back improves. . . . [G]oing to see him back in three month[’]s time. If he continues to have the same amount of pain especially with activity then I suspect he will require a lumbar spine fusion.

In the meantime, I do not think he will ever be able to go back to being a firefighter. He has a permanent neurological deficit in the form of a left-sided footdrop for which he wears an ankle-foot orthosis. He has severe debilitating pain with lifting any heavy objects . . . [H]e is not in any way safe to perform his duties as a firefighter. I would consider him totally and permanently disabled.”

(*J.Exh.14*)

34. In a medical note dated January 11, 2022, after a follow-up visit with Chief Coderre, the orthopedic surgeon who performed the January 2021 right hip replacement reported a “well-aligned hip implant” and noted that “X-rays do show mild-to-moderate osteoarthritis of the left hip” and the “left hip will eventually need some attention.” He also noted: “On examination, the patient does have significant pain along the trochanteric bursa”, “pain in his lumbar spine” and “stiffness.” (*J.Exh.15*)

Events Leading to the Appellant’s Termination

35. Chief Coderre maintained a Facebook account entitled “Paul Coderre” in which he identified himself as the Nbfd Fire Chief. Several pictures posted on his Facebook page were introduced in evidence. Two photos were taken over the July 4th weekend in 2020. One photo shows a sunset scene with the caption: “Perfect night for cocktails and a fire on the dock”; a second photo shows the Appellant holding a seven-pound bass that he had just caught. A photo dated June 10, 2020 shows a dinner platter and is captioned: “Tonight’s dinner. Simply awesome.” Other posts reference his engagement in December 2020 or show patriotic symbols, philosophical quotations, sporting events and Nbfd apparatus. (*J.Exh.1*)

36. In March 2021, New Bedford Mayor Mitchell noticed Chief Coderre’s Facebook postings, which appeared to him to show boating and vacation activity at a beach setting, possibly in Florida, that suggested Chief Coderre’s injury was not as severe as he claimed. (*Testimony of Keating*)⁴

37. On March 19, 2021, at the Mayor’s request, Judith Keating, New Bedford Human Resources Director, spoke with Chief Coderre by telephone. She counseled him about the negative impression his Facebook posting created, his leadership role as Chief while he was on injured

⁴ (Then Deputy Chief) Kruger had been aware of Chief Coderre’s Facebook postings at least several months earlier and was also very familiar with his injuries and limitations. (*Testimony of Appellant & Chief Kruger*)

leave, especially during COVID and told him: “[H]e could recuperate however he wanted but optics were not good.” (*J.Exh.41; Testimony of Appellant & Keating*)

38. Ms. Keating found Chief Coderre “quite angry with the inquiry” and a “fishy” overreaction, specifically noting that Chief Coderre had retorted something to the effect that, surely, the Mayor took a vacation during COVID. (*Testimony of Keating*)⁵

39. Ms. Keating met with the Mayor on April 6, 2021 and recommended that a private investigator be hired to conduct surveillance on Chief Coderre. She also arranged for the City Solicitor to assume oversight of Chief Coderre’s injury claim and interface with Guardian about the ensuing investigation. The Mayor agreed. (*Testimony of Keating & Pressley*)⁶

40. On or about June 8, 2021, Guardian engaged A & R Investigations, Inc. (A&R) to conduct eight to ten hours of investigation of Chief Coderre’s “daily activities” for the purpose of ascertaining whether Chief Coderre’s activities were consistent with his injuries and whether they precluded a return to work. (*J.Exh.16; Testimony of Presley & Pace*)⁷

41. A&R’s investigation included a check of social media (Facebook), an internet check, an RMV check, and video-taped surveillance of Chief Coderre and his girlfriend on June 10, 15 and 22, 2021 and on August 30, 2021. (*J. Exhs.16 thru 19 & 38; Testimony of Pace*)

⁵ At the Commission hearing, the Appellant agreed that he was upset for being called out but had no idea why Ms. Keating would have seen his behavior as suspicious. (*Testimony of Appellant*)

⁶ The justification for transferring responsibility for Chief Coderre’s injury claim was attributed to the additional facts that he was still officially the acting Fire Chief, that (then Deputy Fire Chief) Kruger was, technically, Chief Coderre’s subordinate, and they both were in the running for appointment as the permanent Fire Chief, so it was considered inappropriate for Deputy Chief Kruger to continue managing Chief Coderre’s injury claim. (*Testimony of Presley*)

⁷ The owner of A&R is an experienced investigator who has worked on previous investigations for Guardian and for New Bedford’s prior TPA, Cook & Company. A&R Investigations communicated directly with Guardian and did not contact any New Bedford officials in connection with the investigation of Chief Coderre. (*Testimony of Pace*)

42. After viewing and reviewing the recordings of the video surveillance, I make the following findings based on my observations:

- June 10, 2021 – surveillance at Chief Coderre’s residence from 6:00 am until 4:00 pm. He was not observed and his vehicles were not seen leaving the residence.
- June 15, 2021 – surveillance at the residence of Chief Coderre’s girlfriend from 6:00 am until 4:00 pm. At 9:38 am, he departed the residence and drove to the Nbfd Headquarters on Pleasant Street, New Bedford where he remained until 10:47 am.⁸ He then stopped at Lowe’s in Dartmouth and returned to the girlfriend’s residence. That afternoon, he drove to Home Depot in Dartmouth where, with the assistance of a store employee, he lifted a box containing a 176 lb. smoker onto the bed of his pickup truck. He then drove back to the girlfriend’s residence and removed the box from the truck by rocking and manipulating it onto a hand truck and, with apparent difficulty, tilted the hand truck and pulled it backwards out of sight.
- June 22, 2021 – surveillance at the residence of Chief Coderre’s girlfriend from 6:00 am until 4:00 pm. His vehicles were observed but he was not seen until 2:52 pm when he is seen for about 30 seconds walking to the garage, picking up a black plastic trash bag (partially filled with unknown contents) which he carried thru a fence gate and out of sight. No other observations were noted for the rest of the surveillance.
- August 30, 2021 - surveillance at the residence of Chief Coderre’s girlfriend from 6:30 am until 3:30 pm. His pickup truck and a camper were in the driveway. At 1:43 pm, he arrived in a Jeep and spent about 15 minutes unloading it. He removed a plastic cover from a rack at the back of the Jeep and then moved a partially filled trash bag to the garage, returned to the truck and moved two gasoline jugs and a propane tank to the bed of his nearby pickup truck (the latter items being the only ones he lifted above waist level). He proceeded to make another six trips moving items, one or two at a time, from the back of the Jeep to the garage, a distance of about 20 paces, including three coolers, a laundry basket, hand tools, several plastic sheets, a water bottle, a metal carrying case and a canvas handbag.⁹

(J. Exhs.16 thru 19 & 38; Testimony of Pace)

⁸ Chief Coderre had traveled to Nbfd Headquarters on June 15, 2021 at Deputy Fire Chief Kruger’s request to discuss the Nbfd military leave policy. Although the Nbfd did not then have official limited or light duty, as he had done in 2016, Chief Coderre made himself available on request while recovering from his 2020 and 2021 surgeries. He was in frequent contact with subordinates, including Deputy Fire Chief Kruger, to discuss everyday issues as well as contract, disciplinary and other administrative matters with which he had more experience than Kruger. He participated in meetings with the Mayor, the Mayor’s Chief of Staff and others on COVID-related, budget and other issues. *(J.Exh.38; Testimony of Appellant)*

⁹ The surveillance investigator did not know the contents or weight of the items. At the Commission hearing, the Appellant testified that the propane tank was empty. The rack attached to the rear of the Jeep appears to be the heaviest item, which the Appellant estimated to weigh about 32 lbs. *(Testimony of Appellant & Pace)*

43. On September 1, 2021, Chief Coderre was informed that he had been ordered to appear before Dr. George McManama on September 21, 2021 and submit to an Independent Medical Examination (IME). (*J.Exhs.20 & 40; Testimony of Presley & McManama*)

44. Dr. McManama, a semi-retired Board-certified orthopedic surgeon, performs about eight IMEs per week. He last performed surgery in 2003. (*J.Exh.45; Testimony of McManama*)

45. Dr. McManama saw Chief Coderre, as scheduled, on September 21, 2021 and issued his IME report to Guardian on September 28, 2021. His report noted Chief Coderre's prior August 2020 back surgery and January 2021 hip replacement surgery. He also noted Dr. Houle's diagnosis of chronic left L5 radiculopathy as confirmed by EMG testing, which was to be addressed by the pending ablation procedure (performed by Dr. Houle on October 4, 2021.). He did not take note of Chief Coderre's "foot drop" as diagnosed by PA Miller and Dr. Houle; he did not mention the July 2021 medical report from the orthopedic surgeon who performed the hip replacement that Chief Coderre had reported "multiple hard falls" since his hip surgery; and he did not have PA September 28, 2021 medical report to the same effect. (*J.Exh.20; Testimony of McManama*)

46. Although he did not mention it in his IME report, as part of his examination routine, Dr. McManama tested Chief Coderre for "Waddell signs", which are indicators to an examining physician that a someone is faking, malingering, or exaggerating their injury. Chief Coderre tested negative for any Waddell signs and, as of the date of his IME report, Dr. McManama concluded that Chief Coderre had made no effort to mislead him. (*J.Exh.20; Testimony of McManama*)

47. Dr. McManama's IME report concluded:

"At this time, Mr. Coderre is incapacitated from being able to perform his regular duties. . . . This firefighter is capable of desk duties. . . . He is unable to do any repetitive bending, stooping, twisting, or turning activities referable to his lumbar spine. He has

a lifting limit of 20 pounds.¹⁰ He is unable to do any climbing activities. He is unable to stand . . . [or] sit for any longer than one hour at a time.

“Overall, prognosis is guarded. I believe that the proposed surgery (i.e. nerve ablation) is medically necessary and related to the April 3, 2019, work-related incident. I would expect the claimant to be at maximum medical end four to six months following his ablation procedure.”

(*J.Exh.20*)

48. After receiving Dr. McManama’s IME report, Guardian sent him copies of A&R’s surveillance videos taken of Chief Coderre in June and August 2021. After viewing the videos, on October 14, 2021, Dr. McManama issued an “Addendum” to his IME report. He altered his opinions, stating that “Mr. Coderre had greater physical capabilities than he admitted to at the time of the [IME]. . . . Mr. Coderre has resolved his low back sprain while working as a fire chief . . . back to his baseline status . . . able to resume his regular duties. He is clearly capable of more work than sedentary desk duty. I feel he is able to lift 50 pounds to eye level. . . . [H]e is able to do climbing activities [and] repetitive bending and stooping.” (*J.Exhs.21 & 40*)

49. On December 22, 2021, Dr. McManama executed an Affidavit under the penalty of perjury in which he stated that “Mr. Coderre was putting on an act during his September 21, 2021 examination. I believe he was trying to affect my medical opinion as to his level of disability. . . . [A]fter reviewing the video surveillance footage of Mr. Coderre taken on June 15, 2021, June 22, 2021 and August 30, 2021, I believe that Mr. Coderre’s statements and actions during his September 21 2021 examination . . . were not truthful.” (*J.Exh.22*)¹¹

¹⁰ Dr. McManama did not explain his 20-pound lifting restriction in the IME report; it was his own professional assessment, not based on anything he learned from Chief Coderre. (*J.Exh.20; Testimony of McManama*) At the time of the IME, none of Chief Coderre’s treating physicians had put him under any weight-lifting restrictions. (*J.Exhs.7 through 13*)

¹¹ Dr. McManama’s December 22, 2021 Affidavit was prepared by the New Bedford City Solicitor. At the Commission hearing, Dr. McManama testified that the statement that Chief Coderre was “putting on an act” was not his. (*Exh.22; Testimony of McManama*)

50. At the Commission hearing, Dr. McManama was cross-examined about his IME, Addendum and Affidavit. He acknowledged that his IME opinion is limited to functional capacity only on the date of his examination and that someone with back issues can have good days and bad days. He acknowledged that his Addendum showed Chief Coderre was limping in the videos “slightly bent over at the waist, with a slight left-sided analgia.”¹² He acknowledged that he was not informed of the duties of a fire chief and assumed they were administrative in nature. He had practiced as an orthopedic surgeon, not a neurosurgeon. Although his IME report had found it to be “medically necessary”, he had never performed and was not familiar with the intraosseous ablation procedure performed by Dr. Houle, Chief Coderre’s treating neurosurgeon shortly after conducting the IME. Dr. McManama did not take into account the post-operative recovery period from that surgery or any events after the date of the IME on September 21, 2021 in opining that he deemed Chief Coderre fit to return to duty. (*J.Exhs.20, 21 & 40; Testimony of McManama*)

51. Dr. Houle also was provided a copy of the surveillance videos. On May 22, 2022, Dr. Houle prepared his own attested medical opinion, which states:

“I have reviewed the Commonwealth of Massachusetts Fire Fighter Task List, and have also reviewed the videos that demonstrate Mr. Coderre lifting a grill into his truck and walking outside of what I presume to be his garage.

While helping another person lifting a grill into his truck is certainly an activity that we would all consider to be contrary to someone claiming a disability due to back pain, my observation from these videos is that he walks with a limp. Performing a single act in the context of a non-life-threatening situation at a single point in time is not definitive evidence that he does not experience pain. In my 20 years of experience as a spine surgeon, it is not uncommon for people to experience severe back pain several days after lifting something heavy rather than while immediately performing the action.¹³

¹² “Antalgic gait is one of the most common forms of altered gait in patients presenting to the emergency department and primary care offices. It refers to an abnormal pattern of walking secondary to pain that ultimately causes a limp, whereby the stance phase is shortened relative to the swing phase.” See, e.g., <https://www.ncbi.nlm.nih.gov/books/NBK559243/>

¹³ Dr. McManama expected that Chief Coderre probably felt some pain at some point after moving the smoker and he did not dispute Chief Coderre’s statement that he did. (*J.Exh.38; Testimony of Appellant & McManama*)

Regardless, his medical record reveals that he has had weakness of his left leg, called a foot drop, which was present before his first surgery and has persisted since. In fact, at his August 21, 2020 first post-operative visit, the physician assistant noted “residual weakness LLE.” He has EMG evidence of a chronic and inactive L5 radiculopathy. What this means in layman’s terms is that he has severe nerve damage that is no longer in the process of healing and is unlikely to heal given its duration. It is the presence of a permanent neurologic deficit that is the basis for my opinion that Mr. Coderre is unable to perform his duties.

In my opinion, Mr. Coderre is a liability to his co-firefighters, since they rely on each other to perform their duties without limitations. The weakness of his left foot causes an inability to lift his foot properly, hence the limp. This puts him at risk of tripping, especially when wearing fire fighting gear. This could lead to injury to himself, his co-workers and people he might be called upon to rescue.”

Given Mr. Coderre’s current physical limitations due to his permanent neurological deficit . . . that is unlikely to recover, I consider him a danger and a liability to his co-firefighters and victims should he be required to engage in life saving activities.”

(App.Exh.39)

The Appellant’s Termination

52. By letter dated January 6, 2022, Mayor Mitchell informed Chief Coderre that he was “contemplating” discharging him from employment with the NBFD. The letter then proceeded to recite the reasons for this “contemplated” discharge, citing “alleged” work related injuries, the surveillance videos that were “at variance with what you told Dr. McManama on September 21, 2021, regarding your level of physical disability”, having made “no effort to return to duty” following his October 4, 2021 surgery, and noting that, on December 13, 2021, New Bedford had received notice that he had filed for accidental disability retirement. The letter concluded:

“Your conduct to provide complete and truthful information during the Independent Medical Examination, your failure to perform your duties as a leader and role model in the Fire Department, and your failure to comply with Department policies and procedures is incompatible with your continued employment with the New Bedford Fire Department.

“Your conduct clearly constitutes ‘just cause’ for discharge under Civil Service Law [A] hearing will be provided to you on the contemplated discharge concerning the reason for the discharge. . . . on January 13, 2022”

(J.Exhs.24, 25 & 40)

53. Also on January 6, 2022, Mayor Mitchell appointed Scott Kruger to be the next Nbfd Fire Chief. (*Administrative Notice* [<https://www.newbedfordguide.com/scott-kruger-appointed-new-bedford-fire-department-chief/2022/01/06>])

54. At some point in January 2022, prior to issuing the January 6, 2022 letter, Mayor Mitchell informed Deputy Fire Chief Kruger that he had decided to appoint Kruger as permanent Fire Chief and that Chief Coderre would be fired. (*Testimony of Chief Kruger*)

55. On January 12, 2022, Chief Coderre's legal counsel informed the Mayor that, on January 10, 2022, Chief Coderre filed for superannuation retirement, and that "there appears to be no continuing reason for the . . . termination hearing" on January 13, 2022 but, if New Bedford intended to proceed with a hearing, counsel requested that Chief Coderre be afforded additional time to prepare. (*J.Exhs.26 & 40*)

56. New Bedford proceeded with the January 13, 2022 hearing via Zoom, as scheduled, before a hearing officer designated by the Mayor. The Appointing Authority called no witness and relied primarily on the video surveillance and Dr. McManama's reports. Neither Chief Coderre nor his legal counsel attended. The hearing officer left the record open and, on January 18, 2022, accepted documentary evidence (mainly reports from Chief Coderre's treating physicians) provided by legal counsel in support of Chief Coderre's defense, but rejected Chief Coderre's contention that his January 10, 2022 retirement mooted the termination proceeding. (*J. Exhs.24 through 29 & 40*)

57. By report dated January 19, 2022, the hearing officer noted that Chief Coderre had filed for accidental disability and superannuation retirement and stated:

"It is probable that Deputy Chief Coderre's current physical condition is such that retirement is in his best interest., However, it clearly appears . . . that the alleged injury on April 3, 2019 was not the cause of any disability. Supporting this view is the false Employee Incident Report submitted on April 3, 2019 . . . his putting on an act during the September 21, 2021 IME . . . and his false statement to Dr. Houle that "carrying anything . . . of any weight whatsoever causes him to have severe back pain and . . . that

he avoids any lifting”.¹⁴ It is probable that Deputy Chief Coderre’s prior activities over years in lifting weights, gardening, camping, kayaking and perhaps others, along with his age have caused his physical problems. . . . [A] second job. . . is quite common (and understandable) with firefighters everywhere given their unique work schedule, that could have been causative in any actual back issues.”

The hearing officer concluded that Deputy Chief Coderre’s actions were “dishonest” and it “would not be a surprise if they lead to very serious disrespect for superior officers by some and attempts at similar dishonest behavior . . . by others. . . . Deputy Chief Coderre’s actions likely will adversely impact good order inside the . . . Fire Department. He engaged in a conflict of interest to use his position for personal gain. He abused department injury leave policy.” (*J.Exh.29 & 40*)

58. By letter dated January 24, 2022, the Mayor adopted the hearing officer’s report “in full” and immediately discharged Deputy Chief Coderre from his employment with the Nbfd “for all the reasons set forth in my January 6, 2022 Notice and the reasons set forth in the January 20, 2022 [sic] Hearing Officer recommendation.” (*J.Exh.30 & 40*)

59. At no time after he began his injured leave in August 2020 and prior to his discharge, did the Mayor or anyone at the Nbfd order Deputy Chief Coderre to report for duty, either full duty or modified duty. When asked prior to the IME in September 2021 by Deputy Chief Kruger: “Well, when you go to the IME, what happens if they tell you . . to do light duty?”, Chief Coderre replied: “I’ll come back on light duty. . . . I’ve always obeyed an order, and I’m not disobeying an order.” (*J.Exh.43; Testimony of Appellant*)

¹⁴ To put the excerpt quoted by the hearing officer in context, Dr. Houle’s December 3, 2021 medical note (quoted at Finding No. 33) stated that Chief Coderre reported his “low back pain . . . is a little bit improved. What has not improved is a constant radicular symptom in his left leg as well as sharp pain when he has to carry anything heavy . . . He has a permanent neurological deficit in the form of a left-sided foot drop for which he wears an ankle-foot orthosis. He has severe debilitating pain with lifting any heavy objects . . .” (*J.Exh.14*) (*emphasis added*)

APPLICABLE CIVIL SERVICE LAW

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

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

The Commission determines just cause for discipline by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” School Comm. v. Civ. Serv. Comm’n, 43 Mass. App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983). It is also a basic tenet of merit principles, which govern civil service law, that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “[only] separating employees whose inadequate performance cannot be corrected.” G.L. c. 31, § 1.

The Commission must take account of all credible evidence in the entire administrative record, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law,

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

Experts' conclusions are not binding on the trier of fact, who may decline to adopt them in whole or in part. See, e.g., Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 694 (2012); Daniels v. Board of Registration in Medicine, 418 Mass. 380, 392 (1994), *quoting* Commonwealth v. DeMinico, 408 Mass.230, 235(1999) (“The law should not, and does not, give the opinions of experts . . .the benefit of conclusiveness”); Boston Gas Co. v. Assessors of Boston, 334 Mass. 549, 579 (1956) (“That a person qualifies as an expert does not endow his testimony with magic qualities”); Fourth Street Pub, Inc v. National Union Fire Ins. Co., 28 Mass. App. Ct. 935, 939 (Kass, J., dissenting), *rev. den.* 406 Mass. 1104 (1990) (“[I]t is also a familiar principle that testimony may not rest wholly on conjecture, and that is no less the case when the conjecture flows from the mouth of an expert. . . . Qualification as an expert does not confer a license to spout nonsense.”)

When presented with conflicting expert evidence, the fact-finder may accept or reject all or parts of the conflicting opinions offered. See, e.g., Ward v. Commonwealth, 407 Mass. 434, 438, (1990); New Boston Garden Corp. v. Board of Assessors, 383 Mass. 456, 467-73 (1981); Dewan

v. Dewan, 30 Mass. App. Ct. 133, 135, *rev. den.*, 409 Mass. 1104 (1991). If an expert did not know certain relevant facts or mistakes were made in some of the expert's assumptions, those flaws properly may be considered in deciding what weight, if any, that expert's opinion deserves. See Commonwealth v. DelValle, 443 Mass. 782, 792 (2005); Sullivan v. First Mass. Fin. Corp., 409 Mass. 783, 791-92 (1991); Board of Assessors v. Odgen Suffolk Downs, 398 Mass. 604, 606-607 (1986).

Section 43 of G.L. c. 31 also vests the Commission with the authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated "considerable discretion" in this regard, albeit "not without bounds" so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. See, e.g., Police Comm'r v. Civ. Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; Falmouth v. Civ. Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (2004); Faria v. Third Bristol Div., 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). However, in the absence of "political considerations, favoritism, or bias," the same penalty is warranted "unless the commission's findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way." Falmouth, 447 Mass. at 824.

ANALYSIS

New Bedford failed to establish by a preponderance of the evidence just cause to terminate the Appellant from his position as Nbfd Deputy Fire Chief. The Mayor's decision, in which he adopted "in full" a report of the hearing officer designated by the Mayor to conduct the appointing authority disciplinary hearing, is not supported by the credible evidence available to the appointing authority at the time of the decision.

Among other flaws, the decision is based, in substantial part, on the testimony of a physician whose opinions I find unreliable and discredited by the preponderance of the medical evidence provided by the numerous surgeons and other health care professionals who treated the Appellant for his injuries. Even more problematic, the decision relies on unfounded speculation, unsupported by the credible evidence, that it was the Appellant's prior activities over the years "lifting weights, gardening, camping, kayaking", his age, and/or employment in a second job that were the true probable causes for his physical condition and he never actually suffered an on-duty injury. The Appellant's termination must be vacated, and he must be restored to his position without loss of compensation or other benefits to which he may be entitled.

First, the conclusion in the New Bedford hearing officer's report that the Appellant was never really injured while on duty is discredited by the evidence in this record. The Appellant's back problems began in 2016 when the Nbfd vehicle he was driving to a second alarm fire was hit broadside and he suffered an injury to his spine (at L5). He reinjured his back again on two occasions in 2019 while on duty at structure fires. He submitted to back surgery for this spinal injury in 2016, and, again in 2020 and 2021. He also submitted to hip surgery in 2020. All these procedures were approved as medically necessary by Guardian, the New Bedford third party administrator, and covered as "111F" injured on duty claims. The hearing officer's conclusion that the Appellant's prior outside activities was the probable cause for these injuries is not supported by evidence and is mere speculation. Similarly, the suggestion that the Appellant was a conscious malingerer who manipulated his health care provider to avoid returning to duty is also without merit. Even though the Nbfd had no provision for "limited duty" assignments, following every surgery, the Appellant made himself available to the Nbfd even while he was undergoing rehabilitation (covered by 111F). When asked if he would return to limited duty if ordered to do

so, he stated that he would not disobey an order. At no time, however, did the Nbfd order him to return to duty. New Bedford's assertion that the Appellant abused his position as the Acting Fire Chief to perpetuate a fraud that would keep him from returning to duty, or even lead others to perpetrate such an alleged fraud, is inconsistent with the dedication to the NBPD that the Appellant displayed throughout his distinguished, unblemished career as well as the continued work ethic he demonstrated even after his injuries.

Second, I do not credit the statement in Dr. McManama's December 22, 2021 Affidavit that the Appellant was "putting on an act" intended to "affect my medical opinion as to his level of disability" and that the Appellant's "statements and actions during his September 21 2021 [IME] . . . were not truthful." Dr. McManama was cross-examined thoroughly about his initial IME report and his subsequent Addendum and Affidavit. He acknowledged that the Affidavit was prepared by the City's attorney and that the statement that the Appellant was "putting on an act" was not his. He acknowledged that his IME opinion is limited to functional capacity on the date of the IME only and that someone with back issues can have good days and bad days. He

acknowledged that on the date of the IME, the Appellant tested negative for "Waddell signs", which are indicators to an examining physician that someone is faking, malingering, or exaggerating their injury and, as of the date of his IME report, Dr. McManama concluded that the Appellant had made no effort to mislead him. He acknowledged that he was not informed of the duties of a fire chief and assumed they were administrative in nature. He practiced orthopedic surgery, not neurosurgery. He had never performed and was not familiar with the intraosseous ablation procedure performed by Dr. Houle and did not take into account the post-operative recovery period from that surgery (which Dr. McManama estimated would take four to six months)

or any events after the date of the IME on September 21, 2021 in opining that he deemed the Appellant fit to return to duty.

Accordingly, I give no weight to Dr. McManama's altered medical opinion or his credibility assessment of the Appellant. I conclude that the diagnoses and opinions provided by the Appellant's treating physicians are more reliable and that the Appellant's actions were duly motivated in reliance on the reasonable medical judgment of those providers. It defies common sense to believe that board-certified surgeons would recommend, that the third-party administrator would approve, and that the Appellant would risk, multiple invasive procedures and arduous rehabilitation efforts, unless the medical provider believed, with reasonable medical certainty, that they were necessary and appropriate.

Third, I specifically credit Dr. Houle's opinion that, especially in the timeframe leading up to and following the October 2021 surgery through the date of his termination, the Appellant certainly could not be expected to perform the duties of his position as a Deputy Fire Chief. I credit the evidence presented by the Appellant that the job of Deputy Fire Chief was more than an administrative job; rather, it required the ability to perform, when needed, all the functions of a NBFDF firefighter, including the ability to wear 40 pounds of "turn out" gear, climb ladders, and enter burning structures with heavy SCBA breathing equipment. Dr. McManama had stated in his IME that the recovery period from the October 2021 surgery was expected to be four to six months (i.e., through March 2022 and well beyond the date New Bedford terminated him from his position). I also credit Dr. Houle's opinion that, long-term, due to the Appellant's "current physical limitations due to his permanent neurological deficit . . . that is unlikely to recover, I consider him a danger and a liability to his co-firefighters and victims should he be required to

engage in life saving activities.” I note that, prior to offering the foregoing opinion, unlike Dr. McManama, Dr. Houle had reviewed the Commonwealth [HRD] firefighter job description.

Fourth, I have carefully viewed and reviewed the surveillance evidence, including the video clips. Especially when played in a slow-motion mode, the videos clearly show that the Appellant walks with a discernable, deliberate and altered gait. I concur with the opinion provided by Dr. Houle, after he had viewed these videos, to the effect that the Appellant’s activities shown in these short videos provide no basis to believe that the Appellant is feigning a disability or that he is capable of regularly performing the duties of a firefighter.

“While helping another person lifting a grill into his truck is certainly an activity that we would all consider to be contrary to someone claiming a disability due to back pain, my observation from these videos is that he walks with a limp. Performing a single act in the context of a non-life-threatening situation at a single point in time is not definitive evidence that he does not experience pain. In my 20 years of experience as a spine surgeon, it is not uncommon for people to experience severe back pain several days after lifting something heavy rather than while immediately performing the action.

“Regardless, his medical record reveals that he has had weakness of his left leg, called a foot drop, which was present before his first surgery and has persisted since. In fact, at his August 21, 2020 first post-operative visit, the physician assistant noted “residual weakness LLE.” He has EMG evidence of a chronic and inactive L5 radiculopathy. What this means in layman’s terms is that he has severe nerve damage that is no longer in the process of healing and is unlikely to heal given its duration. It is the presence of a permanent neurologic deficit that is the basis for my opinion that Mr. Coderre is unable to perform his duties.

“In my opinion, Mr. Coderre is a liability to his co-firefighters, since they rely on each other to perform their duties without limitations. The weakness of his left foot causes an inability to lift his foot properly, hence the limp. This puts him at risk of tripping, especially when wearing fire fighting gear. This could lead to injury to himself, his co-workers and people he might be called upon to rescue.”

Even Dr. McManama acknowledged that the videos showed the Appellant “slightly bent over at the waist, with a slight left-sided analgia” [altered gait, or limp, secondary to pain] and agreed that the Appellant probably did feel pain at some point after moving the grill and he did not dispute the Appellant’s statement that he did.

Fifth, I agree that the Appellant has a point that some of the evidence suggests that the decision to terminate the Appellant was pre-determined and, possibly, attributable to an ulterior motive to pre-empt his effort to seek retirement benefits. The genesis of the focus on the Appellant, based on the “optics” of his Facetime posting of typical leisure-time activities, as well as the undisputed testimony from Chief Kruger that he knew the Mayor intended to terminate the Appellant even before the Appellant did, does raise an eyebrow. However, as the preponderance of the evidence on the merits, as described above, does not support the decision to terminate the Appellant, I do not need to make further definitive findings in this appeal on the issues of bias or procedural errors that may have contributed to New Bedford’s wrong-headed result.

In sum, there was no just cause shown to terminate the Appellant from his position as Nbfd Deputy Fire Chief. The preponderance of the evidence failed to show that the Appellant is responsible for substantial misconduct that has impaired the public service. He did not submit false injury reports; he did not abuse the Nbfd’s injured leave policy; he did not lie or misrepresent the nature of his disability. To the extent that Chief Coderre’s physical condition at a relevant point in time entirely precluded him from performing the essential functions of his position, this was not the basis on which the Nbfd expressly grounded its termination decision. With this Commission having found a lack of just cause for termination, “the civil service law requires [the Appellant’s] reinstatement[.]” Town of Brookline v. Alston, 487 Mass. 278, 306 & n.25 (2021).

CONCLUSION

For all of the above reasons, the appeal of Paul N. Coderre, Jr., Docket No. D1-22-010 is hereby ***allowed***.

The Appellant’s termination is vacated and, pursuant to G.L. c. 31, § 43, he shall be reinstated

to his position without loss of compensation or other benefits, subject to compliance with such requirements of law governing his reinstatement as are consistent with this Decision.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

/s/ Shawn C. Dooley

Shawn C. Dooley, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on November 30, 2023.

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)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his/her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Joseph G. Donnellan, Esq. (for Appellant)

Erik T. McKenna, Esq. (for Respondent)