

#50

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT

DOCKET NO. 2373CV860

---

CITY OF NEW BEDFORD,

Plaintiff

VS.

CIVIL SERVICE COMMISSION and JANE  
CODERRE as PERSONAL REPRESENTATIVE  
of the ESTATE of PAUL N. CODERRE, JR.,  
Defendants

BRISTOL SUPERIOR COURT  
FILED

JUN 24 2025

JENNIFER A. SULLIVAN, ESQ  
CLERK/MAGISTRATE

---

**MEMORANDUM OF DECISION AND ORDER ON CROSS MOTIONS FOR  
JUDGMENT ON THE PLEADINGS**

**INTRODUCTION**

Following a decision by the Civil Service Commission (hereinafter "CSC") ordering reinstatement of Deputy Fire Chief Paul N. Coderre, Jr. to his position with the New Bedford Fire Department without loss of compensation or other benefits, the City of New Bedford (hereinafter "the City") filed its Complaint seeking either a reversal or a modification of the decision of the CSC. The Complaint was filed on December 28, 2023 and amended on September 12, 2024. The parties have filed cross motions for judgment on the pleadings pursuant to Mass. R. Civ. P. Rule 12(c).

A hearing on the cross motions was held on May 22, 2025. Based upon the written submissions of the parties, oral argument, and review of the CSC administrative record, the City's motion for judgment on the pleadings is **DENIED** and the defendant Jane Coderre as

Personal Representative of the Estate of Paul N. Corderre, Jr.'s motion for judgment on the pleadings is **ALLOWED**.

### **ADMINISTRATIVE RECORD**

CSC Commissioners Paul M. Stein and Shawn C. Dooley (hereinafter “the Commissioners”) conducted a hearing to review the decision of the City to terminate provisional fire chief Paul Corderre, Jr. (hereinafter “Corderre”). A full hearing took place on January 27, 2023, with two additional days of hearing conducted remotely on February 2, 2023 and May 10, 2023. The Commissioners heard the testimony of New Bedford Human Resources Director Judith Keating, New Bedford Program Director Lisa Presby, investigator Darren Pace, Fire Chief Scott Kruger, George B. McManama, M.D., and Corderre. The Commissioners accepted 162 exhibits, including Corderre’s medical records, the IME report and supplements thereto of Dr. McManama, and surveillance video depicting Corderre in June, 2021 and August 2021. The Commissioners assessed the credibility of the six witnesses as well as the reliability and significance of the exhibits. Following is a summary of the findings of fact:

Corderre first became an employee of the New Bedford Fire Department in 1993. He rose through the ranks to the position of deputy fire chief, assumed in 2012 and held until his termination in January, 2022. He also served as provisional fire chief from December 2018 until January 6, 2022 when Scott Kruger was appointed fire chief by the mayor of New Bedford. Throughout a distinguished career with the New Bedford Fire Department Corderre had no infractions and did not face discipline until his termination in January 2022.

At all relevant times, Corderre held a supervisory position at the fire department. As the provisional fire chief, he held the highest position in the department. The New Bedford Fire Department Code of Conduct for Firefighters requires “(e)very member of the Fire

Department...to operate in a highly self-disciplined manner and...regulate his or her own conduct in a positive, productive, and mature way.” (Exhibit 31). All firefighters are further required to “(a)lways conduct themselves to reflect credit on the Fire Department” and “in a manner that creates good order inside the department”, and not “(e)ngage in any activity that is detrimental to the Fire Department” or “(a)buse their sick leave.” (Exhibit 31). One serving as the fire chief must be able to perform all essential function of a fire chief, which include donning the heavy gear required at active fire scenes and participating in all activities that may be necessary to extinguish a fire and respond to emergency situations. (Exhibit2). While all the potentially necessary tasks may not be required on a daily basis, the fire chief must be capable of performing all of the tasks when necessary. At no time during Corderre’s tenure with the New Bedford Fire Department was light duty available, although Corderre did provide administrative assistance on several occasions when he was recovering from injuries and surgery.

On April 21, 2016, Corderre was involved in a motor vehicle accident while in the line of duty. He suffered an L5 disc herniation that required surgery in December 2016. Following the surgery and before he was able to return to full duty, Corderre came to the fire department 2 – 3 days per week for 3 – 4 hours at a time to assist with administrative matters. Following his full recuperation from surgery he returned to full duty with the New Bedford Fire Department.

In March 2019 Corderre strained his back while pulling a hose at a fire scene. He continued working and on April 3, 2019, while maneuvering an active fire hose at another fire, he felt a painful pop in his back. He reported the incident to Deputy Fire Chief Kruger and continued working. Thereafter he tried chiropractic treatment, physical therapy, and pain injections while continuing to work full time until August 5, 2020 when he left work for his second back surgery on August 8, 2020.

Following the August 2020 surgery Corderre participated in prescribed physical therapy, but his back pain continued. An MRI confirmed the presence of degenerative endplate changes at L4-L5. In January 2021 Corderre underwent a total right hip replacement followed by physical therapy. While Corderre recovered well as to his right hip, his orthopedic surgeon recommended he see a neurosurgeon for ongoing lumbar pain with radiculopathy. Corderre sought treatment with neurosurgeon Paul Houle, M.D. The physician's assistant at Dr. Houle's office noted bilateral low back pain radiating down both legs and weakness in the lower extremities, left greater than right. A concern of left foot drop was noted. An EMG study was ordered and confirmed a chronic, inactive L5 radiculopathy involving the left lower extremity. Dr. Houle recommended an ablation procedure to deaden the nerves in the lower back, with a goal of reducing Corderre's chronic pain. As required, on June 28, 2021, Dr. Houle provided his recommendation for the procedure to the third-party administrator for the City, seeking the necessary approval to proceed with the ablation procedure.

When Corderre saw his orthopedic surgeon for a follow up visit on July 20, 2021, the doctor noted that Corderre had experienced multiple falls since his last visit in April. On September 28, 2021 it was noted that Corderre had chronic left foot weakness with dorsiflexion and a partial left foot drop, causing him to trip frequently with some falls.

Guardian, the third-party administrator for the City, gave approval for Dr. Houle to conduct the ablation procedure for Corderre. The procedure was performed on October 4, 2021. Corderre was instructed to limit his activities for a period of time following the ablation, including no bending, lifting greater than 10 pounds, twisting, or prolonged sitting. Corderre's symptoms had not improved by his first post-operative visit on October 20, 2021 and if anything, were slightly worse. He was advised that it could take 3 – 6 months for any improvement, and

he should utilize a prescribed foot brace. Corderre told the physician's assistant that he was starting the process of disability retirement.

At a second follow up visit with Dr. Houle on December 3, 2021 Corderre's low back pain was slightly improved, however, the radiculopathy into his left leg remained. Dr. Houle informed Corderre that without additional improvement a spinal fusion surgery would be necessary. Dr. Houle also advised his patient that he would not be able to return to his position as a firefighter.

Corderre left work and began receiving disability benefits in August 2020 when he underwent back surgery. He never returned to active duty. During this time, he maintained a Facebook account where he posted pictures and personal information. In later 2020, early 2021, Corderre posted some pictures that appeared to have been taken at a vacation spot, perhaps in Florida. These postings came to the attention of the mayor in March 2021, and it was decided that the Director of Human Resources, Judith Keating, would contact Corderre to discuss the poor "optics" of his vacation photos while he was out on disability. Keating felt that Corderre responded with hostility and anger, which suggested to her he was overly defensive and likely feigning his disability. It was agreed that going forward Corderre's disability claim would be monitored by the City Solicitor's office, and that surveillance would be arranged through the third-party administrator.

An investigator hired by the third-party administrator conducted surveillance of Corderre on four separate occasions, June 10, 2021, June 15, 2021, June 22, 2021, and August 30, 2021. Corderre was not observed on June 10, 2021. On June 15, 2021, he was observed traveling to the New Bedford Fire Department, where he remained for over one hour. He testified at the hearing that he was assisting Chief Kruger with an administrative matter. He then stopped

briefly at Lowe's before returning home. Later that day Corderre traveled to Home Depot where he assisted a worker in loading a smoker into the back of his pickup truck. He then transported the smoker back to his home where he removed it from the bed of the truck by shimmying the box to the edge until it could be lowered to the ground with the assistance of gravity. Then, with great effort and difficulty, he maneuvered the smoker onto a hand dolly and pulled it to the backyard of the property, out of sight of the investigator.

On June 22, 2021, Corderre was recorded carrying a black trash bag. No information was available as to the contents, and thus the weight of the bag. Finally, on August 20, 2021, Corderre was recorded unloading a Jeep. He removed multiple items, including two propane tanks, a laundry basket, three coolers, and various tools. He carried one or two items at a time, and as he progressed through the job a left-sided limp became more and more obvious. Once again, the investigator did not have information as to the weight of the items Corderre was observed removing and transporting. Corderre testified that the propane tanks were empty, and the laundry basket contained only sheets. Corderre removed a rack from the back of the Jeep which he testified weighed about 32 pounds. Some of the recorded tasks including bending and twisting by Corderre.

The City arranged for an independent medical examination (hereinafter "IME") of Corderre to be conducted by George McManama, M.D. on September 21, 2021. Although the City Solicitor's office and the third-party administrator were in possession of the surveillance videos when they arranged the IME, they did not provide either the videos or the investigator's reports to Dr. McManama. The doctor took a history from Corderre, reviewed his medical records and imaging studies, and conducted a physical examination. He also watched for Waddell signs, that is, indications of symptom exaggeration and malingering. He saw none.

Based upon his observations and review of the medical records, Dr. McManama opined that Corderre was incapacitated from being able to perform his regular duties. He could perform desk duties, but was able to do any repetitive bending, stooping, twisting, or turning activities involving his lumbar spine. Dr. McManama also noted a maximum lifting capacity of 20 pounds, which he testified was completely arbitrary as none of Corderre's treating physicians had imposed any lifting limitation. Dr. McManama felt that Corderre's prognosis was guarded, and that the ablation procedure proposed by Dr. Houle was medically necessary, although when testifying he admitted knowing nothing about the procedure.

After receipt of Dr. McManama's report, the third-party administrator sent the surveillance videos of Corderre to the doctor. After reviewing the videos, he created an addendum to his report opining that Corderre could return to regular duty and was able to climb ladders and engage in repetitive bending and stooping. He increased the lifting restriction to 50 pounds, but once again, in his testimony admitted this was also completely arbitrary. On December 2, 2021, Dr. McManama received and signed an Affidavit prepared by the City Solicitor's office. The Affidavit stated that "Mr. Corderre was putting on an act during his September 21, 2021 examination" for the purpose of influencing the doctor's medical opinion as to his level of disability, and further that Corderre's actions and statements during the examination were not truthful.

At the hearing Dr. McManama admitted that he did not draft the Affidavit, and thus never said Corderre was "putting on an act". His opinions pertained only to his findings at the time of the examination, and he agreed that people with back pain have good days and bad days. He admitted to observing Corderre limping in the videos, bending slightly at the waist and listing to

the left. He never reviewed the official duties of a fire chief, but assumed the job was administrative and did not involve actual firefighting.

Dr. Houle, Corderre's treating neurosurgeon, reviewed the surveillance videos and prepared a written opinion. He also reviewed and relied upon the Massachusetts Firefighter Task List in preparation of his report. Dr. Houle, like Dr. McManama, observed Corderre to be limping in the videos. He opined that "(p)erforming a single act in the context of a non-life-threatening situation at a single point in time is not definitive evidence that (Corderre) does not experience pain." Dr. Houle cited to EMG evidence of a chronic and inactive L5 radiculopathy and other documented medical findings to support his opinion that Corderre is unable to work as a firefighter without putting himself, his co-workers, and people he might be called upon to rescue at risk.

#### **STANDARD OF REVIEW**

Pursuant to G.L. c. 30A, § 14(7), this court may reverse, remand, or modify an agency decision if "the substantial rights of any party may have been prejudiced" because the agency decision is based on an error of law or on unlawful procedure, arbitrary and capricious, or unwarranted by facts found by the agency and not supported by substantial evidence. The plaintiff bears the burden of demonstrating the invalidity of the Board's decision. *Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989). In reviewing an agency decision, the Court is required to "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it" by statute. G.L. 30A, § 14(7) (1997); *Flint v. Commissioner of Pub. Welfare*, 412 Mass. 416, 420 (1992); *Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n*, 401 Mass. 713, 721 (1988). The reviewing court may not substitute its judgment for



that of the agency. *Southern Worcester County Regional Vocational Sch. v. Labor Relations Comm'n*, 386 Mass. 414, 420-21 (1982), citing *Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm'n*, 372 Mass. 152, 154 (1977). Nor may a court reject an administrative agency's choice between two conflicting views, even though the court justifiably would have made a different choice had the matter been presented de novo. *Zoning Bd. of Appeals v. Housing Appeals Comm'n*, 385 Mass. 651, 657 (1982) (citations omitted).

### **DISCUSSION**

The City's motion for judgment on the pleadings relies heavily, if not completely, on video surveillance that the Hearing Officer appointed by the mayor never viewed. The City contends the movements of Corderre captured by the investigator on video preclude any reasonable person from deciding anything other than that Corderre was untruthful regarding the extent of his disability. Upon review of the entire administrative record, including the videos depicting Corderre, I find there is ample evidence to support the CSC decision, which therefore must be upheld.

Dr. Houle, Corderre's treating neurosurgeon, and Dr. McManama, the IME doctor engaged on behalf of the City, both agree that Corderre can be seen limping in the videos. Dr. Houle provided his treatment notes and a report addressing the video surveillance. He put the surveillance in context with Corderre's medical history and expected future treatment. In formulating his opinions, Dr. Houle reviewed the physical demands for a fire chief (Exhibits 2 and 3) and based his opinion regarding Corderre's fitness for duty on the actual demands of the job, not what he guessed they might be.

Dr. McManama testified that “there’s no question there’s a condition in the back. There’s no question that he has degenerative disc disease in the back. There’s no question that he has some left lumbar radiculopathy.” (Transcript for February 2, 2023, p. 2-28, ll. 10-13). During his examination of Corderre, Dr. McManama did not observe anything to suggest Corderre was engaging in symptom magnification or malingering. (Transcript for February 2, 2023, p. 2-33, ll. 3-16). Dr. McManama acknowledged that Corderre had permanent nerve damage effecting his left foot (Transcription for February 2, 2023, p. 2-42, l. 22 – p. 2-43, l. 3) and that he had a visible limp due to the damaged left L5 nerve root (Transcript for February 2, 2023, p. 2-69, ll. 6-17). At no time prior to the CSC hearing did Dr. McManama review the physical requirements for the job of fire chief; he simply presumed the position to be administrative. (Transcript for February 2, 2023, p. 2-24 – 2-46). The affidavit signed by Dr. McManama was not prepared by him and contained words that were not his. (Transcript for February 2, 2023, p. 2-34). Overall, Dr. McManama was not a credible witness, and the Commissioners were entitled to such an assessment. See *Ducharme v. Holyoke S. R. Co.*, 203 Mass. 384, 397 (1909) (“It is true that we do not adopt the maxim falsus in uno falsus in omnibus, as a rule of law. But it is also true that a (factfinder) may apply it so as to disregard entirely the testimony of any particular witness if they are convinced that they ought so to do.”)

““In reviewing (the commission’s) action under G. L. c. 30A, §14(7), it (is) not open the Superior Court judge to substitute (her) judgment for that of the commission.” (internal citation omitted) Instead, the judge (is) required by § 14(7) to “give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.”” *Mass. Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 263-264 (2001), quoting *Iodice v. Architectural Access Bd.*, 424 Mass. 370, 375-376,

676 N.E.2d 1130 (1997). The Commissioners were entitled to credit the testimony of Corderre and the records of Dr. Houle while finding Dr. McManama's opinions to be unsupported. The medical records, coupled with the surveillance videos and the job description for a fire chief amount to substantial evidence supporting the decision of the CSC. It was appropriate for the Commissioners to consider the records of Dr. Houle, including the report prepared by him after viewing the surveillance videos (Exit 39). "In performing its §43 review...the commission hears evidence and finds facts anew." *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726,727 (2003). "For the commission, the question is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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.* at page 727-728, quoting *Sullivan v. Municipal Ct. of the Roxbury Dist.*, 322 Mass. 566, 572, 78 N.E.2d 618 (1948). The letter of Dr. Houle, supported by his familiarity with Corderre as his treating neurosurgeon, was established to be significantly more reliable than the reports and affidavit of Dr. McManama. Dr. Houle's correspondence dated May 31, 2022 (Exhibit 39) is certified by him pursuant to G. L. c. 233, § 79G<sup>1</sup>, and is "such evidence as a reasonable mind might accept as adequate to support conclusion." G. L. c. 30A, § 1(6).

The City's argument that the Commissioners missed the mark, focusing on the nature and extent of Corderre's disability rather than alleged untruthfulness, is unavailing. In speaking with his doctors and Dr. McManama, Corderre repeatedly stated that *pain* limited his activities. He

---

<sup>1</sup> G. L. c. 233, § 79G provides: "In any proceeding commenced in any court, commission or agency... reports, including hospital medical records, relating to medical...services,...or any report of any examination of said injured person...subscribed and sworn to under the penalties of perjury by the physician... shall be admissible as evidence of the...diagnosis of said physician..., the prognosis of such physician..., the opinion of such physician...as to proximate cause of the condition so diagnosed, the opinion of such physician...as to disability or incapacity, if any, proximately resulting from the condition so diagnosed..."

did not state that he was unable to do certain movements or lift certain amounts, but that doing so caused him pain, such that he avoided those activities. Dr. McManama did not ask Corderre if he ever attempted those movements or activities, nor did he inquire as to how he would feel after engaging in certain movements or activities if he did engage in them. Both Dr. Houle and Dr. McManama opined that Corderre likely experienced an increase in his back pain after moving the smoker onto and off the bed of his pickup truck as seen in the video surveillance. They agreed that if Corderre engaged in activities such as the bending involved in unloading his Jeep, he likely would pay the price with increased pain to follow. Dr. Houle encouraged Corderre to do what he could, and if his pain increased, then to stop. And Corderre testified about his frustration with the daily pain that limited his activities, and his desire to contribute in some way, despite the cost to him in the form of increased pain.

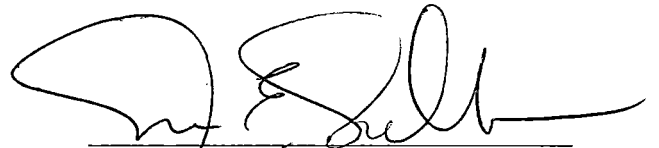
The Commissioners based their decision on substantial evidence that Corderre was not untruthful when speaking with his health care providers or with Dr. McManama. When asked, he truthfully reported the movements and activities that caused his pain. When Dr. McManama told him to bend over until he felt pain, Corderre demonstrated just how far he could go until the increase in pain began. But he never said he could not bend that far or farther, and Dr. McManama did not ask him to attempt movement beyond the point where his pain began to increase. (Transcript for February 2, 2023, p. 2-19, ll. 8-11; p. 2-22, ll. 17-22; 0. 2-53, I. 23 – p. 2-54, l. 14). In fact, during his testimony at the CSC hearing, Dr. McManama admitted that Corderre told him he could bend over, but was limited by pain as to how far he could bend, and that Corderre's ability to bend beyond 30° was not contrary to his description of his limitations. (Transcript for February 2, 2023, p. 2-54, ll. 12-14). Dr. McManama agreed that Corderre was not untruthful with him, acknowledged the objective evidence of Corderre's nerve damage, and

admitted that he actually had little to no information regarding Corderre's job description when he gave his opinions in this matter. There was substantial evidence before the CSC to support their finding that Corderre was not untruthful, that he did not engage in misconduct, that he did not submit a false injury report, that he did not abuse the leave policy, and that he did not exaggerate or misrepresent the extent of his disability.

### CONCLUSION

The decision of the Civil Service Commission is supported by substantial evidence and is not arbitrary or capricious. The decision stands. The plaintiff's motion for judgment on the pleadings is **DENIED** and the defendant's judgment on the pleadings is **ALLOWED**.

Date: June 24, 2025



---

Susan E. Sullivan  
Justice of the Superior Court