

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

Decision mailed: 5/17/13  
Civil Service Commission

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

**JOSEPH CONRAN,**  
*Appellant*

v.

**BOSTON  
REDEVELOPMENT  
AUTHORITY,**  
*Respondent*

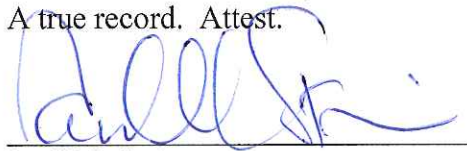
**Case No.: D1-12-197**

**DECISION**

The Civil Service Commission (Commission) voted at an executive session on May 16, 2013 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated March 13, 2013. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein with the following additional findings and conclusions that, in addition to the failure to disclose his conviction, the decision to terminate the Appellant is further justified by the other reasons stated in the Appointing Authority's termination letter, namely, the Appellant's criminal conviction that resulted in a one-year sentence of incarceration and the deceptive manner in which he concealed the true reasons for his failure to return to duty. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby **dismissed**.

By vote of the Civil Service Commission (Ittleman, Marquis, McDowell and Stein, Commissioners [Bowman – Absent]) on May 16, 2013.

A true record. Attest.



Paul M. Stein  
Commissioner

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

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

Notice to:

Michael P. Murphy, Esq. (for Appellant)  
Brian Magner, Esq. (for Respondent)  
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-626-7200  
FAX: 617-626-7220  
WEBSITE: [www.mass.gov/dala](http://www.mass.gov/dala)

March 13, 2013

Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

**Re: Joseph T. Conran v. Boston Development Authority**  
**DALA Docket No. CS-12-579**  
**CSC Docket No. D1-12-197**

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CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,

  
Richard C. Heidlage  
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Michael P. Murphy, Esq.  
Brian Magner, Esq.

**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

**Division of Administrative Law Appeals**

**Joseph T. Conran,**  
Appellant

v.

Docket No. D1-12-197  
DALA No. CS-12-579

**Boston Redevelopment Authority,**  
Respondent

**Appearance for Appellant:**

Michael P. Murphy, Esq.  
One Gateway Center, Suite 350  
Newton, MA 02458

**Appearance for Respondent:**

Brian Magner, Esq.  
Deutsch Williams  
One Design Center Place, Suite 600  
Boston, MA 02210

**Administrative Magistrate:**

**Maria A. Imparato, Esq.**

**SUMMARY OF RECOMMENDED DECISION**

The BRA had justifiable cause to discharge the Appellant for his failure to disclose his conviction and incarceration for OUI that resulted in his being absent without leave for two months prior to his discharge.

**RECOMMENDED DECISION**

Joseph T. Conran filed a timely appeal under M.G.L. c. 31 ss. 42 and 43 of the June 11, 2012 decision of the Boston Redevelopment Authority (BRA) to discharge him from his position of Senior Real Estate Specialist.

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I held a hearing on October 11, 2012 at the office of the Civil Service Commission, One Ashburton Place, Room 503, Boston, MA. The hearing was private because I did not receive a written request from either party to make the hearing public.

I admitted documents into evidence. (Exs. 1 – 15.) Chris Liebke, Human Resources Director of the BRA and the Economic Development and Industrial Corporation (BRA-EDIC), and Peter Meade, Director of BRA-EDIC and the Appointing Authority, testified on behalf of the Respondent. Mr. Conran testified on his own behalf, and offered the testimony of Mark Donahue, Deputy Director of the Asset Management Division of the BRA, and Cathleen Conran, Mr. Conran's wife.

The record closed on January 10, 2012 with the filing of a post-hearing brief by the Respondent. Petitioner's counsel did not file a post-hearing brief, and two telephone messages left on his office answering machine went unanswered.

### **FINDINGS OF FACT**

1. Joseph T. Conran worked for the BRA-EDIC from February 1990 to June 11, 2012 when he was discharged from his position of Senior Real Estate Specialist. Mr. Conran had previously held the positions of paralegal for real estate transactions, and special assistant for real estate. (Testimony, J. Conran; Ex. 5.)
2. When Mr. Conran was hired, he told the then-Human Resources Director that he was an alcoholic and had a conviction for OUI. (Testimony, J. Conran.)
3. Mr. Conran's job responsibilities as a Senior Real Estate Specialist were to assess and determine property values for acquisition and disposition of property, and to manage and coordinate the appraisal process including coordinating service of outside appraisers. (Ex. 7.)

4. On or about May 10, 2011, Mr. Conran was found guilty by a jury of operating under the influence. The criminal docket sheet lists his crime as "OUI-LIQUOR OR .08%, 5<sup>th</sup> offense c. 90, s. 24(1)(a)(1)." Mr. Conran knew that because he had two prior OUI convictions that he might face incarceration. Mr. Conran was not sentenced until January 30, 2012. (Ex. 8; Testimony, J. Conran.)
5. Mr. Conran had been sober for 15 years prior to this event. (Testimony, J. Conran.)
6. Mr. Conran did not tell anyone at the BRA about his conviction. He did speak with Mr. Donovan of the City of Boston Employee Assistance Program (EAP) about the best way to proceed. Mr. Donovan told him that he did not need to notify the BRA if he were not going to be incarcerated. (Testimony, J. Conran.)
7. On January 27, 2012, in anticipation of his sentencing on January 30, 2012, Mr. Conran submitted a request to the BRA for six weeks of vacation from January 30 to March 9, 2012. (Ex. 9.)
8. Chris Liebke, the BRA Human Resources Director, approved the request for vacation time. She had her benefits manager call Mr. Conran to see whether he needed help because she found both the timing of his request and the length of time he requested to be unusual. Mr. Conran told the benefits manager that nothing was wrong, he was just taking a vacation. (Testimony, Liebke.)
9. On January 30, 2012, Mr. Conran was sentenced to one year in the house of correction with three years of supervised probation. Mr. Conran was required to attend three AA meetings each week. (Ex. 8; Testimony, J. Conran.)

10. When Mr. Conran was sentenced, he advised his wife to stay in contact with Mr. Donovan of EAP. Mrs. Conran called Mr. Donovan who said he would do his best to obtain a leave of absence for Mr. Conran from the BRA. (Testimony, J. Conran, C. Conran.)
11. At the end of February 2012, Mrs. Conran called Ms. Liebke and told her Mr. Conran was incarcerated for an OUI. Mrs. Conran sent the criminal docket sheet to Ms. Liebke at Ms. Liebke's request on March 8, 2012. Mr. Conran's vacation leave expired on March 9, 2012. He was due back at work on March 12, 2012. Mrs. Conran told Ms. Liebke that she did not know when Mr. Conran would be released. (Testimony, Liebke, C. Conran.)
12. By letter of March 12, 2012 to Peter Meade, BRA-EDIC Director and the Appointing Authority, Mr. Conran requested an unpaid leave of absence to August 1, 2012.  
"Unfortunately my disease of Alcoholism has caused some legal issues. I am currently in substance abuse treatment at a county facility." (Ex. 10.)
13. By letter of March 13, 2012 to Mr. Meade, Mr. Conran indicated, "I have become aware that the Boston Redevelopment Authority is in the process of possibly terminating my employment. I would like to request a hearing... Is it possible to suspend me without pay until I can attend a hearing?" (Ex. 11.)
14. Mr. Conran's accrued time was exhausted on March 21, 2012. By letter of March 23, 2012, Ms. Liebke sent a Notice of Hearing pursuant to M.G.L. c. 121B, s. 52 and c. 31, s. 41 to Mr. Conran at the Dedham House of Correction, and at his home address. The hearing was scheduled for April 11, 2012. (Ex. 1.)
15. Prior to sending the notice, Ms. Liebke spoke with BRA counsel who contacted Mr. Conran's attorney to see whether Mr. Conran wanted to offer his resignation. Mr. Conran's counsel declined the offer. (Testimony, Liebke.)



16. On April 11, 2012, the disciplinary hearing went forward. Mr. Conran was represented by his attorney and his wife, neither of whom offered an objection to Mr. Conran's absence. The BRA was represented by Robert Luisi, the BRA's Acting Director of Administration and Finance, Ms. Liebke, and Attorney Magner. (Ex. 2.)
17. By letter of April 13, 2012, Ms. Liebke formally denied Mr. Conran's request for leave to August 1, 2012. (Ex. 12.)
18. On May 22, 2012, the hearing officer at the April 11, 2012 hearing issued his decision finding that the BRA had just cause to discharge Mr. Conran for misconduct, that is, his failure to notify the BRA of his criminal conviction and incarceration, and the fact that he had been absent without leave since March 22, 2012 when his personal and vacation leave were exhausted. (Ex. 2.)
19. By email communication on June 3 and June 6, 2012, BRA labor counsel contacted Mr. Conran's counsel to confirm their agreement to extend the seven day deadline in M.G.L. c. 31, s. 41 for Mr. Meade to issue his decision in order to allow Mr. Conran to consult with his counsel about resigning rather than being discharged. Mr. Conran's counsel did not respond. (Exs. 3, 4.)
20. By letter of June 11, 2012, Mr. Meade adopted the hearing officer's report and discharged Mr. Conran from the BRA effective that day. (Ex. 5.)
21. Mr. Conran filed a timely appeal on June 20, 2012. (Ex. 6.)
22. Mr. Conran was released from the house of correction on July 26, 2012. (Testimony, J. Conran.)
23. While he was incarcerated, Mr. Conran completed a course in the neurobiology of addiction, an intensive reentry program, and a recovery coping skills course. After his release, he

attended a 12-week therapeutic support program for veterans with substance abuse problems. (Ex. 15.)

### CONCLUSION AND RECOMMENDATION

The role of the Civil Service 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.” *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997). An action is “justified” when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rule of law. *Id.*, at 304, quoting *Selectmen of Wakefield v. Judge of First District Ct. of E. Middlesex*, 262 Mass. 477, 482 (1928); *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 211, 214 (1971). 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.” *Murray v. Second District Ct. of E. Middlesex*, 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof is one of a preponderance of the evidence, which is established “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.” *Tucker v. Pearlstein*, 334 Mass. 33, 35-36 (1956). If the Commission finds by a preponderance of the evidence that there was just cause for an action against the Appellant, the Commission shall affirm the action of the Appointing Authority. *Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission 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.” *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

### **Jurisdiction**

The Civil Service Commission has jurisdiction over this matter through the provisions of M.G.L. c. 121B, s. 52, which provides the protections of M.G.L. c. 31, ss. 41-45 to certain employees of redevelopment authorities.

M.G.L. c. 121B, s. 52 provides in pertinent part: “No person permanently employed by a redevelopment authority, who is not classified under chapter thirty-one, shall, after having actually performed the duties of his office or position for a period of six months, be discharged, removed, suspended, laid off, transferred from the latest office or employment held by him without his consent, lowered in rank or compensation, nor shall his office or position be abolished, except for just cause and in the manner provided by sections forty-one to forty-five, inclusive, of chapter thirty-one.”

The Appellant is entitled to the protections of M.G.L. c. 31, ss. 41-45 as a permanent employee of a redevelopment authority who actually performed the duties of his position for a period of more than six months.

### **M.G.L. c. 31, s. 42 claim**

Appellant’s counsel argued at hearing that the BRA failed to follow the procedural requirement of M.G.L. c. 31, s. 41 because: 1) the Notice of Hearing did not include copies of M.G.L. c. 121B, or copies of M.G.L. c. 31, ss. 41-45; and 2) the Appellant requested that the hearing be delayed until he could attend the hearing.

The Notice of Hearing indicates on its face that copies of the statutory sections were appended to the notice. (See Ex. 1.) If the BRA inadvertently failed to actually enclose the statutory sections with the notice, the Appellant has not argued or demonstrated that he was in any way prejudiced by that failure.<sup>1</sup>

With respect to the Appellant's second argument, I note that he was represented at the appointing authority hearing by his counsel and his wife, neither of whom objected to the Appellant's absence, and neither of whom objected to the BRA's Notice of Hearing. (Ex. 2, Procedural Issues.) On the day of the hearing, April 11, 2012, the Appellant's counsel was unable to provide a date certain on which the Appellant would be released from the house of correction.

The Appellant has failed to argue or demonstrate that he was in any way prejudiced by the BRA's unwillingness to delay his hearing indefinitely until he was able to attend.

I recommend that the Appellant's section 42 appeal be dismissed.

**M.G.L. c. 31, s. 43 claim**

I conclude that the BRA has demonstrated by a preponderance of the evidence that it had reasonable justification for discharging the Appellant for his misconduct that adversely affected "the public interest by impairing the efficiency of the public service." *Murray*, 389 Mass. at 514.

The Appellant was convicted of OUI for either the third or the fifth time. He failed to inform the BRA of either his conviction or his incarceration. He requested a six week vacation leave, which was granted, but which would not cover the entire period of his incarceration. As a result, the Appellant was absent without leave as of March 22, 2011. At the time of his

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<sup>1</sup> M.G.L. c. 31, s. 42 provides in pertinent part: If the commission finds that the appointing authority has failed to follow said requirements [of section 41] **and that the rights of said person have been prejudiced thereby**, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.

discharge on June 11, 2012, the BRA did not know when the Appellant would be released from the house of correction. At that time, he had been away from work and not performing the duties of his job since January 30, 2012, a period of more than four months.

The Appellant's failure to notify his employer of his conviction and incarceration demonstrates a lack of good judgment, and perhaps an intent to deceive. At hearing, the Appellant testified that he did not inform his employer because he was "embarrassed." This is not an understandable explanation for the Appellant's failure to take all reasonable steps to preserve his employment by disclosing his predicament to his employer and seeking an arrangement that would have allowed him to remain employed.

The BRA has demonstrated justifiable cause for the discharge of the Appellant based on his failure to inform his employer of his conviction and incarceration that resulted in his being absent without leave. I recommend that the Appellant's appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imperato

Maria A. Imperato

Administrative Magistrate

DATED: **MAR 13 2013**