

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

BRIAN COULOMBE,
Appellant

D1-20-089

v.

TOWN OF WARE,
Respondent

Appearance for Appellant:

James W. Simpson, Jr., Esq.
Law Officers of James W. Simpson, P.C.
100 Concord Street, Suite 3B
Framingham, MA 02702

Appearance for Respondent:

Layla G. Taylor, Esq.
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Springfield, MA 01144

Commissioner:

Christopher C. Bowman

DECISION

On June 3, 2020, the Appellant, Brian Coulombe (Mr. Coulombe or Appellant), pursuant to G.L. c. 31, §§ 42 and 43, filed this appeal with the Civil Service Commission (Commission), contesting the decision of Provisional Fire Chief, Christopher Gagnon, to terminate him from employment with the Town of Ware (Town) as a Lieutenant for the Town of Ware’s Fire Department (Department). A pre-hearing conference was held remotely by video conference on January 28, 2019.¹ A full hearing was held via video conference over a two (2) day period, on October 28, 2020 and November 20, 2020. As no written notice was received from either party, the hearing was declared private. The full hearing was

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

recorded via Webex and both parties received a link to the recording, which the Commission has maintained a copy of.² Both parties submitted post-hearing proposed decisions.

FINDINGS OF FACT

One (1) Appellant Exhibit and eleven (11) Respondent Exhibits were entered into evidence at the hearing. Based on the documents submitted and the testimony of the following witnesses:

Called by the Ware Fire Department:

- Regina Caggiano, Director of Civil Service Unit at HRD
- Christopher Gagnon, Ware Provisional Fire Chief
- Stewart Beckley, Ware Town Manager
- Eric Daigle

Called the Appellant:

- Thomas Coulombe, Appellant's Father; Former Fire Chief; Now-Lieutenant, Ware Fire Department
- Brian Coulombe, Appellant

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:

1. The Appellant, Brian Coulombe (Appellant or Mr. Coulombe) was born in June 1985,³ as evidenced by his birth certificate, driver's license, and by his own admission. (Testimony of Coulombe; Respondent Exhibit 2, R0060 and R0061).
2. Mr. Coulombe is a lifelong resident of Ware, MA and graduated from Quabbin Regional High School in Barre, MA in 2003. (Testimony of Coulombe).

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this recording should be used to transcribe the hearing.

³ The Commission has kept the Appellant's full date of birth confidential, for privacy reasons.

3. As a seventeen (17) year-old senior in high school, Mr. Coulombe worked part-time for the Ware Fire Department (Department) as a call firefighter. It was through his service as a call firefighter that he was sent to the Massachusetts Fire Academy for part time firefighters. Prior to becoming a call firefighter, he previously held a work-study internship with the Department. He also earned his EMT certificate. (Testimony of Coulombe).
4. It was part of the culture at the firehouse that call firefighters would seek to be hired full time. Chief Christopher Gagnon remembers discussions that Mr. Coulombe was looking to get on the Department full time. (Testimony of Gagnon).
5. Mr. Coulombe's father, Thomas Coulombe, was the Chief of the Ware Fire Department during the Appellant's internship and when he held the part-time call firefighter position, the latter position being one he held for over two (2) years, from 2003 to 2005. (Testimony of Coulombe).

Sign-Up Process for Appellant's Civil Service Exam

6. Regina Caggiano (Caggiano) testified at the hearing of this matter. She has been the Director of the Civil Service Unit of HRD since 2018. She began her career with HRD in 1997, then moved over to the Civil Service Unit in 1998. She was promoted to Assistant Director in 2000, and in that role, she oversaw the certification and appointment division and was aware of the administration and development of the entry level firefighter exam at all relevant times. (Testimony of Caggiano).
7. HRD made an announcement for the April 2004 entry level firefighter examination and sent a multitude of exam posters to as many municipalities as possible to be posted at various locations throughout the municipalities, to include libraries, fire stations, and other municipal buildings. The exam poster was also posted online. The exam poster provided all necessary information for prospective applicants, to include the minimum entrance requirements, age requirements, accommodations, waivers, and the website address for the application itself.

8. This particular exam poster indicated that the test date was on April 24, 2004, the final date to apply for the exam was March 5, 2004, and that the minimum age qualification was nineteen (19) years old by the final date to apply. (Testimony of Caggiano; Testimony of Coulombe; Respondent Exhibit 7).
9. At the age of 18, Mr. Coulombe applied online on the HRD website to take the civil service entry level firefighter examination. HRD records indicate that he provided a date of birth of June 1984. (Respondent Exhibit 8; Respondent Exhibit 2, R0060-61).
10. Specifically, Mr. Coulombe applied for this exam on or about November 24, 2003. Mr. Coulombe was still only 18 years old on the final date to apply, March 5, 2004, as well. (Respondent Exhibits 2, R0060-61; 7 and 8).
11. At the time Mr. Coulombe applied for the civil service examination in November 2003, Mr. Coulombe was aware that there were two (2) positions for firefighter available for original appointment. (Testimony of Coulombe; Respondent Exhibit 2, R0066).
12. The civil service entry level firefighter examination is held every two years, on even numbered years. Since the examination was to be held in 2004, the next available examination for Mr. Coulombe, if he did not qualify for the 2004 examination, would have been in 2006. (Testimony of Caggiano).
13. In 2003, when Mr. Coulombe applied for the exam online, the data that he provided in the application was collected and was fed into HRD's mainframe system, ELYPSIS. The scan date, which is when his applicant data was fed into ELPYSIS, was November 23, 2003, as evidenced by the Application Scanning Information (ASI) sheet. This sheet is a picture of what ELYPSIS maintained.⁴ (Testimony of Caggiano; Respondent Exhibit 8).

⁴ HRD was unable to provide the Town with the Appellant's actual application because it was on an old server and the system has since been deactivated. ELYPSIS still exists at HRD, which is why the ASI sheet has been able to be produced.

14. Mr. Coulombe used his parents' credit card to pay for the examination. (Testimony of Coulombe; Respondent Exhibit 11). HRD provided a spreadsheet of the payment for this exam which affirms that Kathleen Coulombe's credit card was used. (Respondent Exhibit 11, R0276).
15. Mr. Coulombe testified that he entered his parents' email address as the email contact during payment. (Testimony of Coulombe; Respondent Exhibit 11, R0276).
16. Mr. Coulombe told an investigator for the Town of Ware that his father did not know that he was going to be taking the Civil Service examination. (Respondent Exhibit 2, R0026).
17. The HRD ASI sheet revealed a particular serial number, that being #500, which is a code that indicates a web-based application. Only web-based applications could use a credit card for payment, as opposed to a written, bubble-sheet application which required an applicant to pay using a money order. This was the first year HRD had both online and hand-written mail-in applications. (Testimony of Caggiano; Respondent Exhibit 8, R0266; Respondent Exhibit 11, R0276).
18. If an applicant entered a birthdate that made them ineligible (too young, or too old) for the exam, HRD's computer system would immediately reject the application and "kick it out as an error." (Testimony of Caggiano).
19. HRD's computerized system accepted Mr. Coulombe's application. (Testimony of Caggiano).
20. The application was accepted because the birthdate provided, June 1984, would have deemed him eligible. (Respondent Exhibit 8). This birthday was off by exactly one year. (Testimony of Beckley, Daigle, Gagnon). Mr. Coulombe's actual birthday is June 1985. (Testimony of Coulombe; Respondent Exhibit 2, R0060-61).

Appellant's April 24, 2004 Civil Service Exam

21. On the day of the April 24, 2004 examination, all applicants were checked in by a staff member of HRD to verify the person's name and picture, to be sure it was the same person who applied. HRD did not

verify birthdates. At all times relevant to this case, the entry of a birthdate on an application for the exam was done on the “honor system.” (Testimony of Caggiano). Mr. Coulombe brought identification with him, which was likely his driver’s license. (Testimony of Coulombe).

22. On April 24, 2004, Mr. Coulombe took the civil service examination. At the time of the examination, he was still only 18 years old. (Testimony of Coulombe; Respondent Exhibit 2, R0060-61).

23. HRD has on file another Application Scan Sheet (ASI) for when Mr. Coulombe took the Lieutenant’s Civil Service Exam in 2011. This 2011 ASI indicates that he entered his birthday as June 1985 on the online application, which is an accurate birthdate.⁵ (Respondent’s Exhibit 2, R0042; Respondent Exhibit 8, R00267; Testimony of Caggiano).

24. Typical mistakes HRD encounters with regards to online applications for civil service exams range from applicants accidentally entering a first name in the spot delegated for a last name to issues regarding residency preference or verifying a veteran’s preference. Mistaken entry of a birthdate is not a typical mistake, as Director Caggiano testified she had never seen one instance of this type of mistake. (Testimony of Caggiano).

25. Mr. Coulombe passed the 2004 entry level firefighter civil service examination and was notified as much thereafter. (Respondent Exhibit 2, R0044; Testimony of Coulombe).

26. Thereafter, Mr. Coulombe applied for a permanent position as a firefighter with the Ware Fire Department on January 24, 2005. (Testimony of Coulombe; Respondent Exhibit 2, R0051-57).

⁵ Mr. Coulombe has two accounts with HRD. His first account had all of his demographic information, to include his social security number and a birthdate of June __ 1984. The second HRD account has the same name and social security number as his first account established in 2003, but a birthday of June __ 1985. This second account was established in 2011 when he applied for the Lieutenant’s Civil Service Promotional Exam. (Testimony of Caggiano).

27. His mother, who had been the longtime Captain of the call firefighters, filled out the application for him. Within that application, Mr. Coulombe's date of birth is listed as June 1985. (Testimony of Coulombe; Respondent Exhibit 2, R0051-57).
28. At the same time, Mr. Coulombe also applied for non-civil service fire departments in Southbridge, MA and Yarmouth, MA. Mr. Coulombe knew the minimum age requirement for a position in both Southbridge and Yarmouth was eighteen (18) years old. (Testimony of Coulombe).
29. Because his father, Thomas Coulombe, was Chief of the Ware Fire Department when Mr. Coulombe applied for the position of entry level firefighter, Chief Coulombe sought advice from counsel regarding his involvement in his son's candidacy. Chief Coulombe recused himself from the interview process and an outside panel of interviewers was utilized. (Respondent Exhibit 2, R0066-67).
30. Mr. Coulombe recalls that his father was not involved in the interview process because he remembers that his father was the Chief at the time of the interview. (Testimony of Coulombe).
31. As a result of the interview and after having passed the physical ability test (PAT), Mr. Coulombe received an offer of employment from the Ware Fire Department. Mr. Coulombe is not aware of any background investigation performed relative to his candidacy. On June 17, 2004, the Ware Fire Department submitted an authorization form to HRD upon appointment of Mr. Coulombe and one other candidate to the position of firefighter. (Testimony of Mr. Coulombe; Respondent Exhibit 2, R0071-72).
32. Later in his career, four new lieutenant positions were created and Mr. Coulombe was promoted to Lieutenant in 2013, after taking the examination three (3) times. There were no interviews for the lieutenant position. Lieutenant is the next rank higher than his original position. (Testimony of Coulombe; Respondent Exhibit R0080).
33. During his employment with the Department, Mr. Coulombe had no prior disciplinary history within the Department. (Testimony of Coulombe; Testimony of Gagnon).

Appointing Authority Investigation into Appellant

34. Stuart Beckley (Mr. Beckley) has been the Ware Town Manager for eight and a half (8.5) years. Prior to that position, he had been the City Planner for the town of Easthampton, MA for twenty-three (23) years. His current position as Town Manager involves many human resource duties, to include, among other things, hiring within the town and negotiating with bargaining units. (Testimony of Beckley).
35. In mid-late 2018, Mr. Beckley was notified by a recently elected Selectman, Keith Kruckas, that there was a concern that Mr. Coulombe had not been eligible to take the Civil Service examination for entry level firefighter when he did in 2004 because he was not nineteen (19) years old at all relevant times, under the statute. Mr. Beckley understood that a contact at the fire station reported this to Selectman Kruckas. (Testimony of Beckley).
36. Upon receipt of this information from Selectman Kruckas, Mr. Beckley contacted HRD to ascertain whether HRD had any information relative to the concerning allegation. HRD provided Mr. Beckley copies of the ASI, showing a June 1984 birthday for the April 24, 2004 examination. HRD also provided a spreadsheet relative to Mr. Coulombe's payment for the exam. When Mr. Beckley found an incorrect birthdate listed for Mr. Coulombe on the ASI sheet, it gave credence to the rumor he had heard. (Testimony of Beckley; Respondent's Exhibit 5, R0247-257 and Exhibit 11, R0276).
37. In or around February 2019, the Board of Selectman authorized the Town of Ware to hire an outside investigative agency, the Daigle Law Group (DLG), to investigate whether Mr. Coulombe and/or his father (then-Chief Coulombe) were involved in any misconduct relative to Mr. Coulombe's original appointment to the position of entry level firefighter. (Testimony of Beckley; Testimony of Daigle).
38. Eric Daigle testified at the hearing of this appeal. He is the principal of Daigle Law Group, LLC and he received his juris doctor degree from Quinnipiac Law School. His company is based out of Southington,

CT and they primarily conduct workplace investigations. In his capacity as a workplace investigator, he is a fact finder and makes conclusions as to whether violations occurred. (Testimony of Daigle).

39. As part of his investigation, Mr. Daigle interviewed Deputy Fire Chief Edward Wloch on March 14, 2019. Deputy Chief Wloch has been employed by the Ware Fire Department since 1989, and full time since 1996. When asked if he was aware of the issue surrounding the allegation that Mr. Coulombe may have falsified his age, Wloch stated that it is “probably the worst kept secret in the Town of Ware.” According to Mr. Wloch, “the worst part was, everybody likes the kid but he just kept bragging about the fact that his dad’s got all the pull in the world. He got him to take the test because we knew there were going to be openings coming up in the fire department. He got a waiver for him to take the test early...” Deputy Chief Wloch indicated that “everybody assumed he had some sort of waiver...” When asked further how anyone came to know about the issue of date of birth specifically, Deputy Chief Wloch responded that “the kid bragged about it to everybody... Oh my dad’s got pull. He knows what he’s doing.”⁶ (Respondent Exhibit 2, Attachment F, R0148-151).

40. Following a thorough investigation, which included six (6) interviews, including, among others, Mr. Coulombe, Chief Thomas Coulombe, Selectman Kruckas, Town Manager Beckley, and Deputy Chief Wloch, the independent investigator found the following facts:

- Mr. Coulombe applied for the original civil service examination on November 24, 2003 and took the exam on April 24, 2004. (Respondent’s Exhibit 2, R0032-0036; Testimony of Daigle).
- On April 24, 2004, the Appellant was not 19 years old. (Respondent’s Exhibit 2, R0032-0036; Testimony of Daigle).
- On April 24, 2004, at the age of 18, the Appellant took and passed the civil service examination to become eligible for appointment as firefighter. (Respondent’s Exhibit 2, R0032-0036; Testimony of Daigle).
- The HRD ASI document, with a scan date of “2003-11-24,” cites the Appellant’s date of birth as “6-__-84” which is not his correct date of birth. The correct date of birth is June __ 1985. (Respondent’s Exhibit 2, R0032-0036, R0071-0072; Testimony of Daigle).
- On April 28, 2005, Mr. Coulombe was one of two individuals appointed as a firefighter to work for the Town. (Respondent’s Exhibit 2, R0032-0036, R0071-0072; Testimony of Daigle).

⁶ Deputy Chief Wloch did not testify at the Commission hearing. The transcript from the Daigle investigative interview was entered into evidence as Respondent Exhibit 2, Attachment F, R0148-0152).

- Thomas Coulombe was the Department Chief from 2001 or 2002 and was the Chief at the time of Mr. Coulombe's appointment in 2005. (Respondent's Exhibit 2, R0032-0036, R0071-0072; Testimony of Daigle).

41. Mr. Daigle noted that Mr. Coulombe, during this interview, was able to recall many specific details about the civil service hiring process yet had no recollection as to whether his father was the Chief when he was hired in 2005. Mr. Daigle also found unbelievable that Mr. Coulombe told him that he did not know what the minimum age to become a firefighter was when he applied in 2003, nor does he currently know what the minimum age requirement is – even though he was now a sixteen (16) year veteran of the Department and a Lieutenant at the time of the Daigle interview. (Testimony of Daigle; Respondent Exhibit 2, R0167-0176).

42. Mr. Daigle also concluded that the timing of the test was relevant to Mr. Coulombe's motive to lie about his birthdate, since he would have to wait until 2006 to take the test if he could not take it in 2004. The timing was key because it was a two (2) year process. (Testimony of Daigle).

43. The Daigle investigative report concluded that there was sufficient evidence that Mr. Coulombe was untruthful in his July 2, 2019 interview with Mr. Daigle during the workplace investigation. (Testimony of Daigle; Respondent Exhibit 2, R0035-36).

Local Level Hearing Before Provisional Chief Christopher Gagnon

44. Christopher Gagnon (Chief Gagnon) is the current Provisional Fire Chief for the Town. He was recommended for appointment by Town Manager Beckley and appointed to that position by a vote of the Board of Selectmen effective December 22, 2019, following the retirement of Deputy Chief Edward Wloch and the demotion of Thomas Coulombe to lieutenant. (Respondent Exhibit 4, R0246; Testimony of Gagnon and Beckley).

45. Mr. Beckley immediately signed the paperwork that was supposed to go to HRD following the appointment of Chief Gagnon by the Board of Selectmen, but inadvertently failed to mail the document

to HRD. When this error came to his attention, Mr. Beckley immediately caused new paperwork to be completed and submitted it to the HRD for immediate approval. (Testimony of Beckley; Respondent Exhibit 4, R0246).

46. Prior to his appointment to Provisional Fire Chief, Christopher Gagnon was appointed to the position of full-time fire lieutenant in or around 2009. He began his service with the Ware Fire Department as a provisional firefighter in or around 1991 then as a full-time firefighter in 1992. Chief Gagnon is currently the appointing authority for all firefighting staff in the Ware Fire Department. (Testimony of Gagnon, Beckley; Respondent Exhibit 4, R0246;). See also, G.L. c. 48, § 42.

47. Chief Gagnon heard of the birthdate issue in the late fall of 2019, around the time that the Board of Selectman held a hearing that resulted in Chief Thomas Coulombe's demotion. (Testimony of Gagnon).

48. After fully reviewing the unredacted Daigle investigative report, Chief Gagnon was concerned. It appeared Mr. Coulombe was not old enough to apply for and sit for the entry level firefighter exam. It was a statutory requirement that an applicant be nineteen (19) years old on the last day to apply for the exam and it did not appear that there was any other explanation for why the Appellant took the exam other than his lying on his application. (Testimony of Gagnon).

49. Chief Gagnon read the finding of untruthfulness and agreed, after reading Mr. Coulombe's investigative interview transcript, that he appeared to be evasive during the interview. Chief Gagnon explained that if someone did not do anything wrong, that person would not have been as evasive about it. He also believed Mr. Coulombe full well knew at the time of the 2019 interview with Mr. Daigle that his father had been the Fire Chief when he applied for the exam and when he was hired; he felt the Appellant's claim in the investigative interview that he did could not recall this was not true. (Respondent's Exhibit 2, R0176; Testimony of Gagnon).

50. Chief Gagnon did not want to believe the findings to be true because he had known the Appellant for years, since he was a child, and knew him to be a good firefighter and EMT. The Chief thought about the situation for some time, but eventually realized that he had to take the personal side out of it. It became inescapable for him, after he read the report several times, that the evidence was strong that the Appellant had lied and intentionally provided an incorrect birthdate on the exam. He believed that this type of conduct was potentially terminable. (Respondent's Exhibit 2, R0004-R0230; Testimony of Gagnon).
51. Town Manager Beckley also testified to how difficult the situation was and how he and Chief Gagnon were so conflicted. They were trying to balance Mr. Coulombe's career and length of experience with the level of dishonesty and lack of ethics. (Testimony of Beckley).

Appellant's Appointing Authority Hearing

52. The Notice, dated May 12, 2020, which explained the Appellant's rights to an Appointing Authority hearing under G.L. c. 31, §41 provided three (3) bases for possible discipline of the Appellant, up to termination, as follows: 1) his ineligibility for his original appointment and any promotions that flowed from it based on his ineligibility to apply for and take the exam, 2) the Appellant's untruthfulness during his interview with Mr. Daigle, and 3) his violation of the obligation of candidates and existing employees to be truthful and candid by providing a false date of birth on his application for the April 24, 2004 civil service exam. (Respondent's Exhibit No. 2, R0004-R0005; Testimony of Gagnon).
53. Chief Gagnon delivered the Notice directly to the Appellant and told him that if he had any exculpatory information to bring it to him. Chief Gagnon was hoping for Mr. Coulombe to present anything he had to try to disprove the allegations. (Testimony of Gagnon).
54. The Appellant chose to be represented by his Union, the International Association of Firefighters, Local 1851, ("Local 1851") at the hearing and the then Union President, David Edgar, attended the hearing with him and on his behalf. The Appellant did not ask to present witnesses and did not provide any documentary

evidence at the hearing. (Respondents Exhibits 1 and 3, R-232-0244; Testimony of Gagnon and Appellant).

55. Per the agreement of all the attendees the hearing was audio recorded. (Respondent's Exhibit 1 and Exhibit 3; Testimony of Gagnon and Appellant).

56. During the hearing, the Mr. Coulombe did not provide any material information, nor did he offer any explanation or additional witnesses. He indicated that he first learned about the allegations against him in December of 2018. Chief Gagnon asked whether the Appellant did anything to try to straighten the situation out from the time he learned about it to the time of the Notice and the Appellant said no. (Respondent's Exhibit 1 and Exhibit 3; Testimony of Gagnon and Appellant).

57. At the hearing, the Mr. Coulombe did not present any comparator information. (Respondent's Exhibit 1; Testimony of Gagnon and Appellant).

58. At the hearing, the Mr. Coulombe explained that he felt that the investigation involving his birthdate was a byproduct for the Town's going after his father's job. Chief Gagnon indicated at the hearing before the Commission that while it was true that the investigations with Thomas Coulombe and the Appellant ran concurrently, it did not take away from the fact that the Mr. Coulombe was ineligible to take the exam and provided no explanation to explain how it happened or why it should be excused. (Testimony of Gagnon).

59. Chief Gagnon also strongly considered the fact that the Appellant knew about the allegations against him for quite some time and did not contact HRD or anyone else to try to fix it. He thought that someone that did not do anything wrong would have more likely been proactive to try to remedy the situation. The Chief expected him to naturally want to contact HRD and ask questions since he had known about this allegation by the Town for a long time. The Chief stated, "I'd be all over it. I'd be shaking a lot of trees to get to the bottom of what is going on." (Respondent's Exhibit 3, R0232-234; Testimony of Gagnon).

60. Although Chief Gagnon could not say with 100% certainty whether the Appellant lied on his exam application, he believed that the evidence demonstrated that “it was highly likely that there was intent to make it happen.” Chief Gagnon testified that there clearly was an element of possible intent because he had something to gain (a spot on the eligible list) from this bad decision. (Respondent’s Exhibit 3, R0232-R0234; Testimony of Gagnon).
61. Chief Gagnon did not think demotion was an appropriate discipline in this case. The only discipline appropriate was to terminate Mr. Coulombe, since a simple demotion would still put Mr. Coulombe in a position that he legally would not have the right to hold, “plus the deception on the application sealed the deal.” (Testimony of Gagnon).
62. On May 22, 2020, the Appellant was sent a "Notice of Appointing Authority's Decision to Terminate," outlining the basis for termination. His termination was effective May 28, 2020. (Respondent’s Exhibit 3; Testimony of Gagnon).

Comparator Cited by Appellant

63. At the Commission hearing the Appellant, for the first time, alleged that termination was excessive because another firefighter, Firefighter A, had not been disciplined in 2005 by his father, who was Chief at that time, for an allegation of voter fraud and possible residency issues. (Testimony of Coulombe).
64. There was a requirement that all full-time firefighters live in the town of Ware. Chief Thomas Coulombe questioned the residency of Firefighter A after it was reported to him that the firefighter had registered to vote in the neighboring town of Hardwick and voted in Hardwick’s annual town meeting. (Testimony Beckley; Testimony of Gagnon).
65. It was alleged that Firefighter A had voted on an issue at a Hardwick town meeting, which raised concerns for two reasons. First, the Town of Ware had a residency requirement for its firefighters and if he lived in Hardwick and voted in Hardwick then Firefighter A would be violating the residency requirement.

Second, it raised a question about whether Firefighter A was engaged in any kind of voter fraud. Mr. Beckley, who assisted then-Chief Thomas Coulombe on this issue, was focused on the residency and the respective Town Clerks of Ware and Hardwick looked into the voter fraud issue. (Testimony of Beckley).

66. The Town of Ware determined that Firefighter A did reside in Ware. He had a lease for his primary residence there and his family had property in Hardwick. To Mr. Beckley's knowledge neither the Ware Town Clerk, Nancy Talbot, nor the Hardwick Town Clerk pursued the voter fraud allegations. (Testimony of Beckley).

67. Former Chief Thomas Coulombe testified at the hearing and explained that Firefighter A had signed a document under the pains and penalties of perjury that he was a resident of Hardwick. Chief Coulombe indicated that the town "folded" on this case and never supported the Chief in his recommendation that the town discipline Firefighter A.⁷ Chief Coulombe indicated that there was never a hearing on this issue and Firefighter A never got to give his side of the story. (Testimony of Coulombe).

68. Chief Gagnon was not aware of the facts involving Firefighter A's residency issue. He was not in a management position at the time. (Testimony of Gagnon).

69. Mr. Beckley did not inform Chief Gagnon of the issue when he was considering the Appellant termination. Mr. Beckley viewed these issues as having significant differences. First, the issue with Mr. Coulombe involved whether he was eligible to even be on the list that resulted in his original appointment and whether he could legally be hired in the first place. With respect to Firefighter A's residency issues, a candidate is not ineligible to take the exam and be on the list if they do not reside in Ware.⁸ As for the possible residency issue with Firefighter A, then-Chief Coulombe ultimately concluded that Firefighter A was a resident of Ware. There was never any conclusion about whether Firefighter A engaged in voter

⁷ Chief Coulombe recommended that, after a hearing, he, as the appointing authority for the Department would at least suspend Firefighter A, and quite possibly terminate him from employment.

⁸ The law does not prohibit firefighters from living outside communities when they apply for exam but does require firefighters to establish residency within a 10-mile radius of the hiring community within 9 months of hire.

fraud.⁹ Firefighter A was not disciplined and, according to Mr. Beckley, Thomas Coulombe never communicated any discipline or recommended that Firefighter A receive any discipline in the matter.

(Testimony Beckley).

Legal Standard

G.L. c. 31, §43 provides:

"If the commission by a preponderance of the evidence determines that there was just cause for an action taken against [a tenured civil service employee] ... it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of the evidence establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority."

The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass.App.Ct. 486, 488 (1997). See also Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956).

Under section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited.

⁹ Former Chief Coulombe testified before the Commission relative to Firefighter A. He claims that the town "folded" on the case, which resulted in no discipline for Firefighter A. Chief Coulombe indicated that he spoke with Mr. Beckley and that he would recommend at least a suspension for Firefighter A, possibly a termination. According to Chief Coulombe, there was

Analysis

G.L. c. 31, s. 58 states in part: “No person shall be eligible to take an examination for original appointment to the position of firefighter or police officer in a city or town if the applicant will not have reached 19 years of age on or before the final date for the filing of applications for the examination, as so stated....” The preponderance of the evidence has established that Mr. Coulombe was required to be 19 years old by March 5, 2004, the final date for filing the application examination, in order to be eligible to sit for the exam. Mr. Coulombe’s birth certificate and his driver’s license, and by his own admission, prove that Mr. Coulombe was born on June __ 1985. There is no dispute that Mr. Coulombe was only 18 years old on March 5, 2004. There is no dispute that Mr. Coulombe was still only 18 years old when he sat for and took the firefighter civil service examination on April 24, 2004.

There had been a rumor for years that Mr. Coulombe had not been old enough to become a Ware firefighter when he sat for his 2004 civil service examination. As one witness interview transcript put it, it was the worse kept secret in town. No action was taken by the Town on these rumors, as they were just that, rumors, until a new Selectman had been elected and he began to look into the allegation in 2018, after having been told of the allegation by an unnamed source in the fire station. Thereafter, the Town Manager sought information from HRD relative to Mr. Coulombe’s application for the 2004 examination and HRD provided a document that immediately gave credence to these rumors. Indeed, Mr. Coulombe’s record had an incorrect birthdate, making him exactly one year older, on his HRD ASI scan sheet. The Town hired an outside, independent investigator, Eric Daigle, to look further into the matter to determine how an incorrect birthdate appeared on HRD’s records for Mr. Coulombe. I credit the town for hiring an outside, independent investigator, so as to remove any hint of bias, since both Mr. Coulombe and his father, the Chief, were going to be investigated for any possible involvement.

The preponderance of the evidence supports the conclusion that Mr. Coulombe provided an incorrect birthdate on his civil service exam application. First, Ms. Caggiano testified that the Application Scanning Information sheet is a document that *only* contains information an applicant provided to HRD in their online application. HRD did not generate this information, it was generated solely from what an applicant had provided. I credit Director Caggiano's testimony, as she has deep institutional knowledge of the civil service examination application and administration process, both today and how the sign-up process has evolved over the years. Ms. Caggiano had never experienced any mistakes by applicants with regards to entering their birthdate wrong. The evidence simply does not support a conclusion that HRD's computer system malfunctioned or that HRD failed in its duty to identify that he provided an incorrect birthdate. As Director Caggiano testified, applicants are trusted that they will provide truthful information on their exam applications, which, at a minimum, would be expected of anyone applying for a position of trust and great authority within the Commonwealth, such as firefighter or police officer. HRD's ASI sheet indicates that Mr. Coulombe's birthdate is listed as June __ 1984 because Mr. Coulombe, who filled out the 2003 application online, entered that birthdate into the system.

Further, the evidence proves that Mr. Coulombe had a clear motive to misrepresent his birthdate. He was embedded in the Ware Fire Department, beginning his career when he was still in high school, at just seventeen (17) years old, first as a work study intern and then as a call firefighter. He already had obtained his EMT certification and it was the culture at the station for call firefighters to aspire to become full-time firefighters when positions opened up. Then that chance arose around the time he was graduating high school, with the advent of two (2) entry level firefighter positions becoming available at the Department. The only problem was that Mr. Coulombe was not eligible under the GL c. 31, s 58 to take the upcoming civil service examination, due to the minimum age requirement. At the time, he was already working as a call firefighter, his father was the Chief, his mother was a Captain, he had just

graduated high school, and he was preparing for a career in the field. Mr. Coulombe had applied not only to the Ware Fire Department, but also two (2) non-civil service fire departments, so he was clearly looking to break into fire service and immediately begin his career. Having worked in the Department and having two parents entrenched in the system, he would have had the opportunity to know potential timelines for job openings and, given the timing of the civil service exams, he would have missed the opportunity to apply for the two open positions in 2005 if he did not sit for the 2004 exam. So, he would certainly have a motive to enter an incorrect birthdate on the application which would have made him eligible for the exam. Had he entered a birthdate that made him ineligible, either too young or too old to take the exam, the system at HRD would have automatically rejected the application, thus the need to enter an eligible, yet fraudulent, birthdate.

Mr. Coulombe was notified by the Department in late 2018 that it was investigating an allegation that he was not eligible for the 2004 exam. Even with this allegation hanging over him for almost two years, he never once tried to clear his name by contacting HRD to ascertain what the issue was. Chief Gagnon noted that this was difficult for him to understand when he evaluated the evidence, since he felt that if someone had made an allegation against him for something that he did not do, he would have contacted HRD to get to the bottom of what happened.

Mr. Coulombe claimed to be 100 percent certain that he signed up for this exam on his own, with no help from others, although he used his parents' credit card to complete the transaction and entered his parents' email address as the point of email contact. Additionally, his mother filled out the lengthy 2005 Ware Fire Department application by hand for Mr. Coulombe, after he passed the 2004 civil service examination. Mr. Coulombe testified that he did not know what the minimum age requirement was for the Ware Fire Department, even after all those years living with the Chief and a Captain at the Department, nor does he admit to knowing now what the age requirement is, even though he has been on

the job for 16 years and has achieved the rank of lieutenant. I do not credit Mr. Coulombe's testimony that he did not know what the age requirement for Ware was at the time he applied for the exam, nor do I believe that he does not know the age requirement now, because he was able to detail with specificity what the age requirement was for other non-civil service departments he signed up for, that being eighteen (18) years old for Southbridge and Yarmouth, MA. Mr. Coulombe did not apply for any other civil service department other than Ware, most likely because the age requirement was nineteen (19) years old, and his father was not the Chief of the other fire department.

In addition to knowing what the age requirement was for Southbridge and Yarmouth, Mr. Coulombe was also aware that he had to apply for the exam on HRD's website, that he had to sit for the exam, that an eligible list would be generated, that for most departments the applicant needed to be an EMT and that many were looking for paramedics. When pressed as to how he knew all of those details but did not know the age requirement for his own current employer, he backtracked and said that he actually could not be sure that the other two departments had a minimum age of 18 years. HRD had posted the requirements on its website, the same website Mr. Coulombe used to apply for the exam. HRD had also widely also circulated the exam poster around the Commonwealth with the requirements for the position, many of which Mr. Coulombe was able to detail for the Commission. Mr. Coulombe had obviously done his homework and prepared himself for this career with his prior on-call firefighting role so it is difficult to imagine that he overlooked the statutory age requirement. It is just not credible.

Other discrepancies in Mr. Coulombe's testimony also stretch his credibility with the Commission. In his interview with Mr. Daigle during the internal investigation in 2019, Mr. Coulombe told Mr. Daigle that he did not recall if his father was the Chief when he became a firefighter in 2005. This statement is wholly inconsistent with his testimony before the Commission that, during his candidacy for the position of permanent firefighter in 2005, he recalled that he was interviewed by persons other than his father,

due to the conflict of interest because *his father was the Chief*. How would Mr. Coulombe recall that his father recused himself from an interview because he was the Chief, yet he told Mr. Daigle that he could not recall whether his father was the Chief when he was sworn for that same position soon after the interview. Mr. Coulombe also testified that he recalls that his father was his boss, the Chief, two years prior to his swearing in for a permanent position, when he was a call firefighter during the years 2003-2005. Mr. Coulombe clearly attempted to downplay his father's leadership position during the 2019 Daigle interview, since it is highly unlikely that someone of his father's stature was not aware of the age requirement and would not pass along that key fact to his son.

I did not find that the decision to terminate the Appellant was based on political considerations, favoritism, or bias. At all times during the independent investigation and during the disciplinary hearing held before Chief Gagnon, Mr. Coulombe was given the benefit of the doubt by both Chief Gagnon and the Town Manager, Stuart Beckley. I credit both of their testimony. The Chief and the Town Manager weighed Mr. Coulombe's experience and his lengthy career with the lack of honesty and breach of ethics. When an initial inquiry uncovered that there might be some merit to the allegation, it resulted in a well-founded decision to investigate further. Chief Gagnon had known Mr. Coulombe since he was a kid and worked with him throughout Mr. Coulombe's entire career. He wanted to believe that there was nothing to the rumors. The last thing he wanted to do was terminate an employee and he wanted to find fault with the investigation.

Ultimately, Chief Gagnon had to put his personal interest aside and do what was right for the system and the Department. The weight of the evidence, combined with the untruthfulness of Mr. Coulombe, tipped the scale where it became obvious to the Chief what had to be done. Demotion was not an option because Mr. Coulombe had never been eligible for initial appointment. He could not be demoted from lieutenant to firefighter when he had not been legally appointed in the first place. By a preponderance of

the evidence, the Town has proven that Mr. Coulombe was statutorily ineligible for any position as a firefighter in the Town of Ware because he did not meet the minimum age requirement to apply or sit for the exam, in violation of G.L. c. 31, s. 58, with no legitimate excuse. Even with no improper motive, the fact remains that he would not have been on the eligible civil service list had he not taken the exam.

In summary, I have found that the Appellant engaged in substantial misconduct which adversely affected the public interest. Having reached that conclusion, I must determine whether the level of discipline (termination) against the Appellant was warranted.

As stated by the SJC in Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814, 823-825 (2006):

“After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly. G.L. c. [31], s. § 43 (‘The commission may also modify any penalty imposed by the appointing authority.’) Here the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.’” Id. citing Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

“Such authority to review and amend the penalties of the many disparate appointing authorities subject to its jurisdiction inherently promotes the principle of uniformity and the ‘equitable treatment of similarly situated individuals.’ citing Police Comm’r of Boston v. Civ. Serv. Comm’n, 39 Mass.App.Ct. 594, 600 (1996). However, in promoting these principles, the commission cannot detach itself from the underlying purpose of the civil service system— ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” Id. (citations omitted).

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“Unless the commission’s findings of fact differ significantly from those reported by the [appointing authority] or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty. The commission is not free to modify the penalty imposed by the [appointing authority] on the basis of essentially similar fact finding without an adequate explanation.” Id. at 572. (citations omitted).

First, my findings do not differ significantly from those of the Fire Chief.

Second, as referenced above, I do not believe the Fire Chief's decision here was influenced by political considerations, favoritism or bias.

Finally, I considered whether the incident involving Firefighter A is a comparable incident that should mitigate against termination. The Appellant did not present any comparator information at his pre-deprivation hearing and presented it for the first time to the Commission. Even taking the allegations of voter fraud as legitimate in the light most favorable to Mr. Coulombe, I do not find Firefighter A's case to be comparable. If Firefighter A had indeed registered to vote in a town in which he did not reside, that did not have the same inescapable nexus to his employment that Mr. Coulombe's misconduct did. Mr. Coulombe's decision to fraudulently misrepresent his age trampled on the rights of at least one other applicant for the firefighter position in violation of the basic merit principles required of the civil service appointment process. Mr. Coulombe was not eligible, under the law, for appointment; therefore, he must be terminated from that position. The Commission has previously upheld the termination of civil service firefighters who lied about their residency preference when initially hired by the municipality, which is analogous to this case. Sean Layton & Ryan Layton v. City of Somerville, G1-10-292, G1-10-293 (2010); Investigation Regarding: Residency Preference of Certain Pittsfield Firefighters, I-18-210 (investigation by Commission, resulting in resignation of two employees who did not meet residency preference as had been claimed).

Lastly, the Appellant argued that his termination should be overturned under G.L. c. 31, s. 42 because G.L. c. 31, s. 41 requires the decision to terminate come from the appointing authority and Chief Gagnon had not been properly appointed as a Provisional Fire Chief when he terminated the Appellant on May 22, 2020. This claim for relief lacks merit. G.L. c. 48, s. 42, states: "Towns accepting the provisions of this section.... which have accepted corresponding provisions of earlier laws may establish a fire department. The Chief shall be appointed by the selectmen...and shall appoint a deputy chief and

such officers and firemen as he may think necessary, and may remove the same at any time for cause and after a hearing.” Chief Christopher Gagnon was appointed the Provisional Fire Chief for the Town of Ware effective December 22, 2019 by a vote of the Board of Selectmen for the Town. The paperwork for the provisional promotion was immediately signed by the Town Manager but was inadvertently not filed with HRD until July 28, 2020.

G.L. c 31, s. 42 allows the Commission to restore an employee without loss of compensation if the appointing authority has failed to follow the Section 41 requirements and that the rights of said person have been prejudiced. Here, the evidence is clear that Chief Gagnon had been appointed in December 2019 as the Provisional Chief by the Board of Selectman. It was the Board’s clear intent that Chief Gagnon serve in this role, but for an error transmitting the document to HRD by the Town Manager, that paperwork would have been submitted to HRD. Once the Town learned of the omission to file, the Town immediately remedied the situation. Further, the statute requires the Appellant to have been prejudiced by the error. Here, the Appellant was afforded all the procedural notice he was due and he was given the opportunity for a full hearing and to be represented by counsel. He was not prejudiced in any way by the failure to file the paperwork.

For all of these reasons, the Appellant’s appeal under Docket No. D1-20-089 is *denied*.

Future Effective Date of Decision

For all the reasons discussed in the analysis, Commission intervention is not warranted here. However, given Brian Coulombe’s decade and a half of service to the Town, it is appropriate for the Commission to provide the parties with additional time to consider a resolution short of termination that is in the public’s best interest. The Commission has previously provided counsel for both parties with a roadmap for a possible resolution and we encourage them to engage in good faith discussions in this regard. To facilitate such efforts, the effective date of this decision is June 21, 2021.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on May 21, 2021.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:
James Simpson, Esq. (for Appellant)
Layla Taylor, Esq. (for Respondent)