

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

THOMAS COULOMBE,
Appellant

D-19-253

v.

TOWN OF WARE,
Respondent

Appearance for Appellant:

Andrew T. Gambaccini, Esq.
Reardon, Joyce & Akerson, P.C.
4 Lancaster Terrace
Worcester, MA 01609

Appearance for Respondent:

Layla G. Taylor, Esq.
Sullivan, Hayes, & Quinn, LLC
One Monarch Place, Suite 1200
Springfield, MA 01144

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Civil Service Commission previously upheld the termination of Ware Fire Lieutenant Brian Coulombe after it was proven that 1) Lt. Coulombe did not meet the minimum age requirement to sit for the civil service examination at the time of his appointment as a firefighter; and 2) he provided false information to the state's Human Resources Division to make it appear otherwise.

This appeal involves the demotion (to lieutenant) and 30-day suspension of Fire Chief Thomas Coulombe, Lt. Brian Coulombe's father. Here, after reviewing seven days of testimony and dozens of exhibits, the Commission has found that Thomas Coulombe, who was the Fire Chief at the time of his son's appointment, knew or should have known that his son was ineligible to sit for the examination at the time and that Chief Coulombe failed to stop the illegal appointment of his son as a Ware firefighter from occurring. For these reasons, and for other reasons detailed in the decision, the Town's disciplinary action against Thomas Coulombe is affirmed and Mr. Coulombe's appeal is denied.

DECISION

On December 10, 2019, Thomas Coulombe (Appellant or Mr. Coulombe or Thomas Coulombe), pursuant to G.L. c. 31, §§ 42 and 43, filed an appeal with the Civil Service Commission (Commission) contesting the decision of the Town of Ware (Town) to demote him from the position of Fire Chief of the Ware Fire Department to the position of Lieutenant and to suspend him without pay for a period of thirty (30) days, which began on December 3, 2019. On February 12, 2020, I held a pre-hearing conference at the State Office Building in Springfield, MA. A full hearing was held remotely over a span of seven (7) days on May 13, 2020, June 15, 2020, June 16, 2020, August 17, 2020, August 19, 2020, September 25, 2020, and September 28, 2020.¹ The full hearing was digitally recorded and/or recorded via Webex and both parties received a copy of the recordings.²

All witnesses were sequestered except for Thomas Coulombe and Stuart Beckley, the Town Manager of Ware. Proposed decisions were submitted by the parties on December 28, 2020. For the reasons herein, the Appellant's appeal is denied.

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

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, the recordings provided to the parties should be used to transcribe the hearing.

FINDINGS OF FACT

The Respondent submitted seventeen (17) exhibits. The Appellant submitted forty-four (44) exhibits.³ Two (2) exhibits were entered as Commission Exhibits 1 and 2.⁴ Based upon the evidence and the testimony of the following witnesses:

Called by the Town:

- Stuart Beckley, Town Manager
- Keith Kruckas, Selectman
- Alan Whitney, Selectman
- John Carroll, Selectman
- Edward Wloch, Retired Provisional (Interim) Chief of Ware FD
- Eric Daigle, Investigator
- Charlie Reynolds, Investigator
- David Edgar, Firefighter and President of IAFF, Local 1851
- Town of Ware Police Chief Shawn Crevier
- Jaqueline Becker, former Ware Call Firefighter
- Justin Senecal, former Ware Firefighter
- Lonny Murphy, Ware Call Firefighter
- Ned Russell, Ware Call Lieutenant

Called by the Appellant:

- Thomas Coulombe, Appellant
- David Mottor, Fire Chief for the Town of Blandford
- Laurent McDonald, Fire Chief for the Town of Oxford
- Kathleen Coulombe, Retired Call Fire Captain for the Town of Ware
- Scott Mosso, former Member of the Ware Finance and Capital Planning Committees
- Tracy Opalinski, Selectman

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

³ Appellant's proposed exhibits 18 and 19 are not part of the evidentiary record, as I sustained the objection to strike them as subject to the attorney-client privilege after objection by the Town and briefing and argument by the parties.

⁴ The record was left open for the parties to submit any written documentation regarding notes that witness Charlie Reynolds may have taken as part of his interviews in the workplace investigation that are summarized in Respondent Exhibit 2. Nothing further was submitted.

1. A part of Hampshire County in Western Massachusetts, the Town of Ware has a population of just over 10,000 residents with a land area of 40 square miles. The community is served by a five-member Select Board with a full-time Town Manager and Open Town Meeting as its form of governance. Ware adopted a Town Charter in 2007.
http://www.townofware.com/visitors/about_ware/demographics.php
2. Thomas Coulombe has been a Ware resident for all but two (2) years of his life and has been married to Kathleen Coulombe for more than four (4) decades. He has three (3) children, including his son Brian Coulombe. (Testimony of Thomas Coulombe).
3. Thomas Coulombe graduated from Ware High School in 1974. Between 2000-2008, he earned an associate degree in fire science from Greenfield Community College and a bachelor's degree in fire science from Anna Maria College. (Testimony of Thomas Coulombe).
4. In 1983, Mr. Coulombe became a call firefighter for the Town of Ware and, in 1987, was hired in a full-time capacity. He was laid off in 1989 and went to work for the Holyoke Fire Department, transferring back to Ware ten (10) months later. Mr. Coulombe was promoted to Captain in 1996 and, in 2000 when the Fire Chief resigned, Coulombe was appointed as the permanent Fire Chief.⁵ (Testimony of Thomas Coulombe).

⁵ Dating from around the time that he became the permanent Fire Chief, the record contains an employment contract between the Town and Coulombe that covered the period of July 1, 2002 through June 30, 2005, along with a December, 2007 memorandum of agreement. The memorandum not only extended the terms of the 2002 contract to encompass the window from 2005 to 2009, but also provided that, if no successor agreement was agreed to by June 30, 2009, the terms and conditions of the contractual relationship would continue in effect going forward unless terminated by Coulombe's resignation or otherwise. (Respondent Exhibit 1).

5. The Ware Fire Department is organized pursuant to G.L. c. 48, § 42 under a so-called “strong fire chief” who has full operational and administrative control over the Department, including the power of appointment over all members of the Department. The organization of the Department consists of a Chief, a Deputy Chief, four (4) shift lieutenants and twelve (12) full-time firefighters; additionally, the Department has a volunteer call firefighting force that has a rank structure including individuals at the levels of captain, lieutenant, and firefighter. (Testimony of Thomas Coulombe; Testimony of Stuart Beckley).
6. On or about October 30, 2019, a Notice of Hearing for Contemplated Action of Discipline was delivered to Chief Thomas Coulombe. Also enclosed with the Notice of Hearing were copies of G.L. c. 31, §§ 41-45, as required by G.L. c. 31, § 41. Within that Notice were the Town’s allegations, a summary of which is as follows: (1) failure to comply with the Department’s Code of Ethics relative to the Civil Service exam the Chief’s son took in 2004 and his son’s subsequent hiring at the Department; (2) failure to put the Town on notice of the need to follow National Fire Protection Association (NFPA) standards, (3) failure to ensure equipment and facility were properly maintained and/or place Town on notice of maintenance needs, to include self-contained breathing apparatus (SCBA) air fill station, air compressor, air packs and air bottles, hose testing and ladder testing, and issues with the boiler, a/c units, and the elevator; (3) insubordination due to failure to abide by administrative leave requirements by going to the fire station on two occasions without permission; (4) violation of Code of Ethics for lack of truthfulness and candor to the public during workplace investigation, to include false statements to the press about not filing litigation and false statements to the independent investigator about an incident that occurred

at the fire station the day after being placed on administrative leave; and (5) violation of Code of Ethics and prohibitions on nepotism as outlined in G.L. c. 268. (Respondent Exhibit 2).

7. The hearing was held by the Ware Board of Selectmen on November 4, 2019 and November 26, 2019⁶ at the Ware High School concerning contemplated discipline by the Town against Fire Chief Thomas Coulombe for various allegations. The hearing was held in open session, per Thomas Coulombe's request. Mr. Coulombe's attorney⁷ and Mr. Coulombe attended the first day of hearing. Both Mr. Coulombe and his attorney were given the opportunity to respond to the allegations after having been provided with documentary evidence. On the second day of hearing, Mr. Coulombe appeared on his own behalf. The second day of the hearing was for the purpose of deliberations and decision making by the Board. Two members of the Board of Selectman, Nancy Talbot and Tracy Opalinski, recused themselves from all of the aforesaid proceedings due to Ms. Talbot having a friendship with Mr. Coulombe and Ms. Opalinski having recently been named in an MCAD complaint filed by Mr. Coulombe. (Respondent Exhibit 2; Appellant Exhibits 1-2).
8. Based on the evidence presented at the hearings, the Board voted to impose both a 30-day suspension and a demotion from the position of Chief down to the position of Lieutenant upon Thomas Coulombe. The charge relative to NFPA standards was dropped by the Board, as was the charge alleging failure to maintain the elevator. All other charges against Thomas

⁶ A second day of hearing was necessary; therefore, a second Notice of Hearing was sent to Thomas Coulombe on or about November 21, 2019, along with required Massachusetts General Laws attached thereto. (Respondent Exhibit 4).

⁷ Mr. Coulombe obtained different counsel for his appeal before the Commission.

Coulombe were sustained by the Board.⁸ The suspension was unpaid and was set to run from December 3, 2019 to January 2, 2020.⁹ (Appellant Exhibit 5; Testimony of Beckley; Testimony of Whitney).

9. Brian Coulombe, the son of Thomas Coulombe, was born on June [redacted]1985,¹⁰ as evidenced by his birth certificate, his driver's license, by his own admission, and confirmed by his parents during their testimony at the Commission hearing of this matter. (Testimony of Thomas Coulombe; Testimony of Kathleen Coulombe; Respondent Exhibits 2(A, ex. C) and 2(A, ex. H)).
10. Brian Coulombe is a lifelong resident of Ware, MA and graduated from Quabbin Regional High School in Barre, MA in June of 2003. (Respondent Exhibit 2(A, ex. H); Testimony of Thomas Coulombe; Testimony of Kathleen Coulombe).
11. While still in high school, Brian Coulombe worked part-time for the Ware Fire Department (Department) as a call firefighter, after having earned his EMT Certificate. 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, which also took place during high school. (Respondent Exhibit 2 (A, ex. H); Testimony of Thomas Coulombe; Testimony of Kathleen Coulombe).

⁸ Within the Board's Notice of Decision, the Board noted in the deliberation portion of the hearing that Mr. Coulombe's conduct at the first day of the hearing was disrespectful of the Board and the Deputy Chief, which the Board used as further evidence of a disrespectful and insubordinate tone and attitude. (Respondent Exhibit 5). To the extent that these are considered charges against Mr. Coulombe, they are not sustained. Should the Town wish to bring additional charges against Mr. Coulombe relative to his alleged behavior at the local hearing, such charges would require a separate notice, separate hearing, etc.

⁹ Initially, Selectman John Carroll read the date for which the suspension was to begin incorrectly (November 3, 2019) at the second day of the hearing. As a result, an emergency third day of hearing was held on November 28, 2019, so as to amend the date the suspension was to begin. The correct date for the suspension to begin was December 3, 2019. (Appellant Exhibits 1, 2, and 3).

¹⁰ The Commission has kept the Appellant's full date of birth confidential, for privacy reasons.

12. Kathleen Coulombe is Thomas Coulombe's wife and Brian Coulombe's mother. She is a retired Captain of the Ware Call Fire Department. She held a position in the Ware Call Fire Department for over twenty (20) years. She was hired by her husband's predecessor, Chief Glenn Trim, and was promoted to the rank of Captain by her husband, as Chief of the Department. Mrs. Coulombe supervised her son, Brian, when he was a call firefighter for the Department. Mrs. Coulombe was integral in writing numerous successful grants for the Department, in conjunction with her husband, throughout the years.¹¹ (Testimony of Kathleen Coulombe; Respondent Exhibit 2(A, ex. H).
13. Thomas Coulombe was the Chief of the Ware Fire Department during every instance in which Brian Coulombe applied for a position with the Department. Thomas Coulombe was the Chief when Brian Coulombe began his internship at the Department as a high school student, when Brian was hired as a call firefighter for the Department, when Brian applied for the Civil Service exam in November 2003, when he took the April 24, 2004 Civil Service exam, when he applied for a full-time firefighter position at the Ware Fire Department, when he was ultimately hired for the position in 2005, and when he was promoted to Lieutenant in 2013.¹² (Testimony of Thomas Coulombe; Respondent Exhibits 2(A, ex. B), 2(A, ex. C), 2(A, ex. H), 2(A, ex. I)).

Brian Coulombe's Application for 2004 Civil Service Exam

¹¹ By her estimate, Kathleen Coulombe spent approximately forty (40) hours per year on grant writing. She was not hired to write grants, but felt she was good at it, so she took a lead role within the Department alongside her husband. She had a detailed knowledge of how and when to apply for federal grants. (Testimony of Kathleen Coulombe).

¹² When asked during the Town of Ware's internal investigation, Brian Coulombe indicated that he did not recall what rank his father held when he joined the Ware Fire Department. (Respondent Exhibit 2(A, ex. H).

14. Brian Coulombe applied for the Civil Service firefighter exam on November 24, 2003, with the Human Resource Division of the Commonwealth of Massachusetts (HRD). Brian Coulombe was only 18 years old on November 24, 2003, when he filled out the exam application. (Respondent Exhibits 2(A, ex. B) and 2(A, ex. C)).
15. In his HRD exam application, Brian Coulombe indicated that his date of birth was June __ 1984. (Respondent Exhibit 2(A, ex. B)).
16. Brian Coulombe's birthdate is not June __, 1984. His birthdate is exactly one year after, on June __, 1985. (Respondent Exhibit 2(A, ex. C)).
17. During the Town of Ware's internal investigation, Brian Coulombe stated to the independent investigator that he personally filled out the HRD application for the Civil Service examination. He indicated that he did not get any help with the application.¹³ (Respondent Exhibit 2(A, ex. H)).
18. When asked by the Town's independent investigator what he put down for his date of birth on the exam application, Brian Coulombe stated, "I don't recall. It should have been June __, 1985." Brian Coulombe further indicated, "That's my date of birth and that's what I would intend to put on anything." He further stated that he did not intentionally provide a false date of birth on his 2003 application and that he filled out the application "to the best of my ability." (Respondent Exhibit 2(A, ex. H)).

¹³ Brian Coulombe indicated that he does not recall when he took the Civil Service exam nor does he recall how old he was when he took the exam. (Respondent Exhibit 2(A, ex. H)).

19. During the Town of Ware's internal investigation, when Brian Coulombe was asked if his father knew he was taking the Civil Service exam, Brian stated, "of course." (Respondent Exhibit 2(A, ex. H)).
20. At the time Brian Coulombe applied for the Civil Service examination in November 2003, there were two (2) upcoming positions for firefighter available for original appointment. (Testimony of Thomas Coulombe; Respondent Exhibit 2(A, ex. C)).
21. The civil service entry level firefighter examination is held every two (2) years. An eligible list generated by HRD generally remains in effect for two years. (Testimony of Thomas Coulombe; Respondent Exhibit 2(A, ex. I)).
22. When asked during the Town's internal investigation if he was *currently* aware of the statutory requirements in the state of Massachusetts to be eligible to take an exam to become a firefighter, Brian Coulombe indicated that he did not know how old a person has to be to become a firefighter in Massachusetts. When the investigator noted to Brian that he had been with the Ware Fire Department for almost fifteen (15) years and currently held the rank of Lieutenant, Brian Coulombe continued to maintain that he still did not know the minimum age requirement to take the exam stating, "I don't handle applications. That's above my pay grade." (Respondent Exhibit 2(A, ex. H)).
23. HRD has on file an Application Scanning Information sheet (ASI) for when Brian Coulombe took the entry level firefighter examination in 2004. Brian Coulombe was shown this document during his internal investigation by the Town's investigator. Brian Coulombe verified that his name, address, and phone number were all accurate. He indicated that the

date of birth was not accurate and that it was off by exactly one year. (Respondent Exhibits 2(A, ex. B) and 2(A, ex. H)).

24. The Application Scanning Information document indicates that notice for the examination was sent to Brian Coulombe on March 31, 2004. The document also indicates that the exam date was April 24, 2004. Brian Coulombe, when asked by the investigator, stated that he had no reason to disagree with the information provided in the Application Scanning Information document. (Respondent Exhibits 2(A, ex. B) and 2(A, ex. H)).
25. The Application Scanning Information sheet further indicates that the 2004 exam was held at Duggan Junior High in Springfield, MA. Brian Coulombe told the Town's investigator that he does not recall the exact location but he does recall that he took the test at a school. (Respondent Exhibits 2(A, ex. B) and 2(A, ex. H)).
26. HRD has on file another Application Scanning Information document for when Brian Coulombe took the Lieutenant's Civil Service Exam in 2011. This 2011 ASI indicates that he entered his birthday as June __ 1985 on the application, which is an accurate birthdate.¹⁴ This second Application Scanning Information document, for the Lieutenant's civil service exam, has a different serial number for Brian Coulombe than the serial number that appears on the 2003 Application Scanning Information document, thereby signifying that Brian Coulombe

¹⁴ Brian Coulombe has two (2) separate 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. (Respondent Exhibit 2(A, ex. B)).

has two (2) accounts with HRD's Civil Service division, presumably because of the two different birthdates on file. (Respondent Exhibits 2(A, ex. B) and 2(A, ex. H)).

27. Brian Coulombe passed the 2004 entry level firefighter civil service examination and was notified as much thereafter. (Respondent Exhibits 2(A, ex. B), 2(A, ex. C) and 2(A, ex. H); Testimony of Thomas Coulombe).

28. Thereafter, Brian Coulombe applied for a permanent position as a firefighter with the Ware Fire Department on January 24, 2005. (Testimony of Thomas Coulombe; Respondent Exhibit 2(A, ex. C) and 2(A, ex. H)).

29. Brian Coulombe's mother, Kathleen, who had been the longtime Captain of the Call firefighters, filled out the Ware Fire Department application for him. Within that application, Brian Coulombe's date of birth is listed as June __ 1985. This is the correct date of birth, as confirmed by his birth certificate. Within that application, Thomas Coulombe, his father, crossed out some of the language on one page of the application and amended the language in his own handwriting. (Testimony of Kathleen Coulombe; Respondent Exhibit 2(A, ex. I, Bates Stamp 0221-0222)).

30. Specifically, Thomas Coulombe was asked by the investigator about a portion of Brian Coulombe's firefighter application (page 31) which requires the candidate to acknowledge certain items, including that there will be a CORI inquiry. The application, as written, references a "fire officer" position and that the "Police Chief" will conduct the CORI. On Brian Coulombe's application, those words are crossed out with "fire officer" replaced with the hand-written "firefighter / EMT" and "Police Chief" replaced with the hand-written "Fire

Chief””. (Respondent Exhibit 2A, Bates Number 0065-0066). The exchange between the investigator and Thomas Coulombe was as follows:

Investigator: I do have a question on ... the application, in its cover there ... there were some changes made to the application notice, it looks like ...

Coulombe: Yeah, we stole, that’s from the Police Department.

Daigle: You stole the notice requirement or the application?

Coulombe: The notice requirement.

Investigator: Who switched over the authority of the background investigation of the Police to the Fire Chief?

Coulombe: To do query?

Investigator: Yes.

Coulombe: I did.

Investigator: Is this your handwriting?

Coulombe: Yes.

Investigator: You had reviewed this application?

Coulombe: Yes.

(Respondent Exhibit 2(A, ex. I), Bates Stamp 0221-0222)

31. Because he was the Chief of the Department when his son applied for a firefighter position, Thomas Coulombe sought advice from town counsel regarding what his involvement should be in his son’s candidacy. With the advice of counsel, Thomas Coulombe recused himself from the interview process and an outside panel of interviewers was utilized. Thomas Coulombe ultimately appointed his son to the position, since counsel advised him that he

could not abdicate his role as appointing authority.¹⁵ (Respondent Exhibit 2(A, ex. C); Testimony of Thomas Coulombe).

32. As a result of the interview and after having passed the physical ability test (PAT), Brian Coulombe received an offer of employment from the Ware Fire Department. No background investigation was performed relative to his candidacy. On June 17, 2004, the Ware Fire Department submitted an authorization form to HRD upon appointment of Brian Coulombe and one other candidate to the position of firefighter. (Respondent Exhibit 2(A, ex. C); Testimony of Thomas Coulombe).
33. Later in his career, Brian 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 of firefighter. (Respondent Exhibits 2(A, ex. B) and 2(A, ex. C)).
34. During the internal investigation by the Town's independent investigator, Thomas Coulombe was asked if he knew, as the Chief, what the age requirement is to take the Civil Service exam. Thomas Coulombe responded by saying that he knows that the age requirement is nineteen (19) years old *to be hired* for appointment as a firefighter. When the investigator cited M.G.L. c. 31, s. 58, which states that one must be 19 years old *by the last day to register for the test*, Thomas Coulombe said, "I would take your word for it." Thomas Coulombe went on to testify, "I don't worry about that end of it. My job is to request the list

¹⁵ During the internal investigation done by the Town, Brian Coulombe testified that he could not recall whether his father was the Chief of the Department when he was sworn in as a permanent firefighter in 2005. (Respondent Ex. 2(A, ex. H)).

from Civil Service. Civil Service’s job is to send me a list of qualified individuals. I am guessing Civil Service did their job.” (Respondent Exhibit 2(A, ex. I)).

35. Thomas Coulombe told the independent investigator for the Town that he did not know how old his son was when he took the Civil Service exam or when he took the exam. (Respondent Exhibit 2(A, ex. (I)).

36. During his testimony before the Commission, Thomas Coulombe testified that his son had initially gone to Greenfield Community College in the Fall of 2003, and when that did not work out, he wanted his son to get any job he could. He said that he knew his son was applying for firefighter positions in Longmeadow, Southbridge, Sturbridge, and Yarmouth. (Testimony of Thomas Coulombe).

37. Thomas Coulombe testified at the hearing of this appeal about his own entrée into firefighting. He indicated that when he first considered firefighting back in the 1980s, he worried that he would time out of the upper age limit to be eligible to become a firefighter. He testified that he “was very aware” of what the age limit was, noting that he was 32 years old at the time he first became a firefighter. Even though he was aware of an upper age limit, he testified that he “had no idea” about a minimum age requirement. Even after being a Chief for over 20 years, he claimed he was not aware of the minimum age limit to take the exam. (Testimony of Thomas Coulombe).

38. Thomas Coulombe confirmed that his son lived with him throughout high school, that he held an internship with the Ware Fire Department during high school (which he termed the Junior Firefighter’s Program), that his son graduated high school on June 6, 2003, and that

his son attended the Recruit Fire Academy in February 2004.¹⁶ (Testimony of Thomas Coulombe).

Independent Investigator Hired By Town

39. Stuart Beckley (Mr. Beckley) has been the Ware Town Manager for eight (8) years. Prior to that position, he had been the City Planner for the town of Easthampton, MA for twenty-three (23) years and has also served twice as their Acting Town Administrator. His current position as Town Manager in Ware involves many human resource duties, to include, among other things, hiring within the town and negotiating with bargaining units. As the Town Manager, Mr. Beckley is the Fire Chief's day-to-day boss. The Board of Selectmen has the hiring/firing authority and the authority to discipline the Fire Chief. (Testimony of Beckley).
40. The role of the Ware Board of Selectmen is to supervise the Town Manager and set policies for the Town. The Board of Selectmen (Board) is comprised of five (5) elected members. The Board serves as the Appointing Authority for the Fire Chief, both under G.L. c. 48, § 42 and the Town Charter. Members of the Board included John Carroll, Alan Whitney, Keith Kruckas, Tracy Opalinski, and Nancy Talbot. (Testimony of Beckley; Appellant's Exhibit 4).
41. In the summer of 2018, Mr. Beckley was notified by a recently elected Selectman, Keith Kruckas, that there was a concern, based on rumors,¹⁷ that Brian Coulombe had not been

¹⁶ Thomas Coulombe indicated in his interview with the Town's independent investigator that he was "pretty sure" his son lived at home when he took the Civil Service exam. He further indicated that he does not remember talking to his son about the test. Thomas Coulombe recalls that, at that time in his son's life, he was telling him to get "any freaking job he could." Thomas Coulombe does not recall seeing a notice that his son passed the test but that his son "probably told me he passed" the test. (Respondent Exhibit 2(I)).

¹⁷ Selectman Kruckas had been told of the allegation by at least two (2) named sources in the Department, former firefighters Meegan and Danitis.

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, as required under MA law.¹⁸ (Testimony of Beckley).

42. Upon receipt of this information from Selectman Kruckas, Mr. Beckley contacted HRD to ascertain whether HRD had any information relative to the allegation. HRD provided Mr. Beckley copies of the Application Scanning Information document which indicated that Mr. Coulombe provided a June __ 1984 birthday for the April 24, 2004 examination. This was an incorrect birthdate. (Testimony of Beckley; Respondent's Exhibit 2(A, ex. B)).
43. In or around February 2019, the Board of Selectmen authorized the Town of Ware to hire an outside investigative agency, the Daigle Law Group (DLG), to investigate whether Brian Coulombe and/or his father, Thomas Coulombe, were involved in any misconduct relative to Brian's original appointment to the position of entry level firefighter. (Testimony of Beckley; Testimony of Daigle).
44. Eric Daigle testified at the hearing of this appeal. He is the principal of Daigle Law Group, LLC, formed in 2010. Mr. Daigle holds a juris doctor degree from Quinnipiac University. Prior to becoming an attorney, Mr. Daigle had been a military police officer and a Connecticut State Trooper. From 1992-2002, he spent six (6) years in the Major Crime Unit for the CT State Police, investigating high level homicide cases. His company is based out of Connecticut, and it primarily conducts workplace investigations. In his capacity as a workplace investigator, he is a fact finder and makes conclusions as to whether violations

¹⁸ Mr. Beckley understood that a contact at the fire station reported this to Selectman Keith Kruckas. Selectman Kruckas gave no opinion to Mr. Beckley, at that time, about any suspicion of involvement by Thomas Coulombe. Mr. Beckley indicated that, over time, opinion grew within the Board (except Selectman Nancy Talbot) that Thomas Coulombe was likely involved due to "common sense he'd known the date." (Testimony of Beckley).

occurred. He did not provide legal advice to the Town, as he was not hired for that role.

(Testimony of Daigle).

45. The Board decided to place Thomas Coulombe on paid leave during the workplace investigation, on the advice of some of the investigators the board interviewed,¹⁹ including Mr. Daigle. By putting Mr. Coulombe on paid leave, he would not have access to records of the Department during the pendency of the investigation. (Testimony of Kruckas; Testimony of Carroll; Testimony of Beckley).

46. On or about February 20, 2019, Selectman John Carroll and Town Manager Beckley met with Thomas Coulombe to notify him that he was being placed on administrative leave and to provide a letter detailing the parameters of the leave. (Testimony of Beckley; Testimony of Carroll). The letter directed him, among other things, “to stay away from the Fire Department” while on leave without permission. (Respondent Exhibit 2(C). Police Chief Shawn Crevier was also present at that meeting so that he could drive Mr. Coulombe home from the Department. (Testimony of Beckley and Chief Crevier).

47. Mr. Daigle indicated that he was not hired to render the Town’s findings, noting that his past investigations clear people at times and, at other times, find people who did something wrong. He explained that, typically, when an investigation is commenced, people are highly emotional and giving opinions. “Opinions don’t mean anything to me,” stated Mr. Daigle.²⁰ (Testimony of Daigle).

¹⁹ Several potential investigators were interviewed by members of the Board. The Board ultimately decided to hire the Daigle Law Group. (Testimony of Beckley, Carroll, Kruckas, Opalinski).

²⁰ Mr. Daigle testified that he typically has 4-8 cases per year, a percentage of which he has found no-wrongdoing. He gave recent examples where he found no-wrongdoing. (Testimony of Daigle).

48. Mr. Daigle explained that, throughout the course of his investigation, he concluded that some of the Board members harbored ill will toward Thomas Coulombe, specifically Selectman Keith Kruckas.²¹ Mr. Daigle noted that Mr. Kruckas was passionate about the situation. Mr. Kruckas called Mr. Daigle on two occasions. In a call, Mr. Kruckas would bring up details to him that were outside the scope of the agreed upon investigation. Mr. Daigle noted that Mr. Kruckas' calls regarding issues outside the scope were inappropriate and that this "is not how we do business." He said the calls did not last long and noted that any conversations would need to be recorded.²² (Testimony of Daigle).

49. As part of this investigation, Charles Reynolds, an associate of the Daigle Law Group, interviewed Ware 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 Brian 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, "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.'"²³ (Respondent Exhibit 12).

²¹ Selectman Carroll testified that he assumed Mr. Coulombe knew about Brian Coulombe's actions relative to the incorrect birthdate on the exam application. He was asked when he formed this assumption and Selectman Carroll indicated that he formed this assumption when Selectman Kruckas told him about the rumors in 2018. Selectman Carroll testified that he "had his suspicions" and then the "Daigle report supported my suspicions." (Testimony of Carroll).

²² Selectman Alan Whitney testified that "we knew we needed a third party" to investigate the matter at hand and the investigation needed to be "exhaustive – to prove or disprove it." He indicated that there were a lot of rumors flying around and that he was pushing for all of the information to come out to put the rumors to bed and move on. (Testimony of Whitney).

²³ Deputy Wloch testified that he assumed the waiver rumor was legitimate because the Town sought and obtained special legislation in 1999 to permit Deputy Wloch to be certified for appointment as a firefighter in Ware because

50. Mr. Beckley provided Mr. Daigle with Brian Coulombe's birth certificate, the Application Information Scanning documents he had obtained from the HRD, Brian Coulombe's personnel records, and the policies of the Ware Fire Department. The policies he obtained from Mr. Beckley included a manual that contained a Code of Ethics. The Code of Ethics stated that "I will conduct both my personal and professional lives so as to inspire the confidence of the public." (Testimony of Daigle; Respondent Exhibit 2(A)).

51. Mr. Daigle also contacted HRD for any additional information they might have about Brian Coulombe's Civil Service record. HRD provided Mr. Daigle with copies of computer print-outs that showed Brian Coulombe's Individual Municipal Employment History Record and exam scores on Civil Service Exams, but HRD indicated that they did not have any further records involving Brian Coulombe's appointments and promotions. (Testimony of Daigle; Respondent Exhibit 2(A, ex. B); Commission Exhibits 1, 2).

52. Additionally, the Daigle Law Group conducted six (6) interviews, including Thomas Coulombe, Brian Coulombe, Selectman Keith Kruckas, Selectman John Carroll, Town Manager Stuart Beckley, and Deputy Chief Edward Wloch. The independent investigator found the following facts:

- Brian Coulombe applied for the original Civil Service examination on November 24, 2003 and took the exam on April 24, 2004.
- On April 24, 2004, the date of the exam, Brian Coulombe was not 19 years old.
- 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.
- 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.

he exceeded the maximum age requirement. (Testimony of Wloch; Chapter 460 of Acts of 1998). No waiver was ever found to be obtained for Brian Coulombe. (Testimony of Daigle; Testimony of Thomas Coulombe).

- On April 28, 2005, Mr. Coulombe was one of two individuals appointed as a firefighter to work for the Town.
- 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 Exhibit 2(A)).

53. Mr. Daigle observed that Brian Coulombe had a strong personality and that he was clearly not happy to be interviewed. When he showed Brian Coulombe the HRD's Application Scanning Information report for the April 24, 2004-Civil Service examination, Mr. Daigle noticed Brian's demeanor "dramatically changed," most especially when Mr. Daigle showed Brian the date of birth on the document. Brian Coulombe quickly asked for a break to consult with his attorney. Following this, Mr. Coulombe appeared "deflated." Once shown the Application Scanning Information document, Brian Coulombe's body language changed, which impacted Mr. Daigle's evaluation of Brian Coulombe's credibility.²⁴ (Testimony of Daigle; Respondent Exhibit 2(H)).

54. The Daigle investigative report concluded that there was sufficient evidence that Brian Coulombe, the son, was (1) untruthful in his interview with Mr. Daigle during the workplace investigation and also concluded (2) that he violated the Ware Fire Department's Code of Ethics because there was sufficient evidence that he provided a false date of birth in his application which enabled him to take the 2004 exam at the age of 18, in violation of the civil service law. (Testimony of Daigle; Respondent Exhibit 2(A)).

²⁴ Mr. Daigle testified that he looks at a witness' confidence level, their defiance level, sarcasm, non-genuine answers, the way the witness holds himself in the chair, etc., when trying to form an opinion as to a witness' credibility. (Testimony of Daigle).

55. Mr. Daigle concluded that Thomas Coulombe violated the Code of Ethics/Canons of Fire Ethics – Section 4. Specifically, section 4 states” *“I will conduct both my personal and professional lives so as to inspire the confidence of the public.”* (Testimony of Daigle; Respondent Exhibit 2A).
56. Mr. Daigle noted that Thomas Coulombe’s claims of ignorance were troublesome and the facts and evidence could cause a reasonable person to believe Thomas Coulombe was not being truthful when he claimed he did not know that 19 years old was the required age to apply to take the exam and that he did not know Brian’s age at the time of the exam, especially because of his detailed knowledge of other aspects of the Civil Service laws and Brian’s statement that his father knew he was taking the exam. (Testimony of Daigle; Respondent Exhibit 2A).
57. Mr. Daigle expected more from a Chief with over thirty (30) years of firefighting experience, that most people who want to do that job know the requirements, and that this information should be in his wheelhouse of knowledge. Mr. Daigle was particularly taken aback by the Chief’s attitude of “I didn’t know then, and I don’t know now.” (Testimony of Daigle).
58. Mr. Daigle concluded that, as a “strong chief,” one has a responsibility to know the state laws regarding firefighter employment and either knew or should have known that an applicant needed to be 19 years old to apply for and take the exam. He explained that Thomas Coulombe would have known his son’s age, that Thomas Coulombe did know that the firefighter’s exam was only held every two years and would have known what openings would be coming up in the Department because he was the Fire Chief. (Testimony of Daigle; Respondent Exhibit 2(A)).

59. Mr. Daigle concluded that it was reasonable to believe that Thomas Coulombe knew or should have known of the legal age requirement to take the exam and his failure to protect the Town did not inspire confidence in the public, in contravention of the Code of Ethics. (Testimony of Daigle; Respondent Exhibit 2(A)).
60. Lastly, Daigle notes in his report, “After spending 30 years in the fire service, it is not credible for a Chief of a Massachusetts Fire Department, who is heavily involved in several Massachusetts Fire Chiefs Associations,²⁵ to state that he did not know when the Civil Service examination took place in 2004; that he was unaware that his son took the examination in 2004; or that he did not know his son was under the age of 19 at the time of the examination in violation of Civil Service requirements. (Testimony of Daigle; Respondent Exhibit 2(A)).
61. According to Thomas Coulombe, the Ware Fire Department has Standard Operating Guidelines which govern operations at the Department and that his rules in the Fire Department were that “you better have common sense and do the right thing.” He said he did not “put these rules down in writing because the Union would grieve it and if they grieved it, they usually lost and I was happy living in that world.” Mr. Coulombe agreed that people should be disciplined for lying, which he agreed is unacceptable, insubordination, self-dealing, and nepotism (if you can prove the nepotism, he stated). He agreed that firefighters

²⁵ At the time of his August 6, 2019 interview with Mr. Daigle, Thomas Coulombe had been a member of the New England Fire Chiefs Association for 5 years, as its Secretary/ Treasurer, he had been a member of the Western Massachusetts Fire Chief Association as its Treasurer for 8 years, and also the Treasurer of the Hampshire County Fire Chiefs Association for 8 years. (Respondent Exhibit 2(A, ex. I)).

are held to a higher standard as public sector employees and agreed that he should be held to that same standard.²⁶ (Testimony of Thomas Coulombe).

62. On or about September 8, 2019, Mr. Daigle submitted his findings to the Board of Selectman. (Testimony of Daigle).

Maintenance of Fire Equipment

63. The purpose of Self-Contained Breathing Apparatus (SCBA) equipment in the fire service is to provide airway protection to firefighters during fire suppression activities. The air compressor is a critical component of the SCBA system, which takes in air from the outside and cleans it through a series of filters to fill SCBA canisters that supply clean breathable air to the firefighters. Although the compressor fills empty bottles that need to be refilled during an active fire incident, the compressor also automatically kicks in and fills bottles that are running low when they are not in use. (Testimony of Wloch; Testimony of Mottor).

64. Self-Contained Breathing Apparatus (SCBA) systems, ladders, and hoses are all key lifesaving equipment for firefighters involved in fire suppression activities. (Testimony of Thomas Coulombe; Testimony of Beckley; Testimony of Edgars; Testimony of Whitney; Testimony of Carroll; Testimony of McDonald; Testimony of Mottor). The issue of maintenance of life saving equipment was a key concern for Selectman Alan Whitney, much more so than equipment such as the a/c unit or the boiler. (Testimony of Whitney).

²⁶ Additionally, the Ware Fire Department has a policy in its “Rules and Regulations” that prohibits: conduct unbecoming... that tends to lower the service in the estimation of the public; conduct prejudicial to good order and discipline; immoral conduct; and disobeying a direct order. (Appellant’s Exhibit 7).

65. The National Fire Protection Association (NFPA) promulgates standards for the maintenance and testing of this lifesaving equipment. (Testimony of Thomas Coulombe; Testimony of Mottor; and Testimony of McDonald).
66. Under NFPA standards, ladders and hoses that are in service should be tested annually. Air flow testing and regular maintenance on SCBA compressed air systems should be performed at least annually. (Testimony of Wloch; Testimony of Thomas Coulombe; Testimony of Mottor; Testimony of McDonald; Testimony of Edgar).
67. While budget constraints or the lack of equipment might limit a Department's ability to check all hoses or all ladders every year, it is important to try to meet these NFPA standards. (Testimony of Mottor; Testimony of McDonald). Fire Chief David Mottor explained that with new equipment, he might skip air flow testing for a year but he would test annually with old equipment. (Testimony of Mottor). Due to budget constraints, Chief McDonald tests half of the hoses in his Department every year. (Testimony of McDonald).
68. During his pre-deprivation hearing before the local appointing authority, Thomas Coulombe acknowledged that only 20 to 25 out of 400 hoses were tested annually.²⁷ (Appellant Exhibit 1; Respondent Exhibit 6). He attributed this to budget constraints and the refusal of the employees he managed to perform the testing. (Testimony of Thomas Coulombe; Respondent Exhibit 6; Appellant Exhibit 1).
69. Thomas Coulombe was aware that the SCBA equipment was reaching the end of its useful life, as the lifespan indicated by the manufacturer had passed. (Testimony of Thomas Coulombe;

²⁷ At the appeal hearing before the Commission, Mr. Coulombe testified that he grossly understated the amount of hoses that were actually tested. (Testimony of Thomas Coulombe).

Respondent Exhibit 6; Appellant Exhibit 1). Over the past few fiscal years, he applied for grants with the assistance of his wife, Kathleen Coulombe, to replace the SCBA equipment. (Testimony of Beckley; Testimony of Mosso; Testimony of Thomas Coulombe; Testimony of Kathleen Coulombe). Thomas Coulombe understood from past years that it would likely take a couple of grant cycles to obtain a grant to cover the cost of the new equipment, which was expensive. (Testimony of Beckley; Testimony of Mosso; Testimony of Thomas Coulombe). Separately, he also submitted requests for appropriations for this equipment to the Capital Planning Committee. (Testimony of Beckley; Testimony of Mosso; Testimony of Thomas Coulombe; Appellant Exhibits 39-42). The Capital Planning Committee recommend to Town Meeting that the funding for new SCBA equipment be funded in phases over a period of a few fiscal years. (Testimony of Beckley; Testimony of Mosso; Testimony of Thomas Coulombe; Testimony of Kathleen Coulombe).

70. Requests for funding SCBA air flow, ladders, and equipment testing did not go to the Capital Planning Committee as these were not capital expenses. (Testimony of Beckley; Testimony of Mosso). Thomas Coulombe did not request increases to the Fire Department budget for such testing. (Testimony of Beckley; Testimony of Mosso). Thomas Coulombe notified the Town that the SCBA was nearing the end of its useful life and would need to be replaced and that he was actively working to secure grants to assist with that replacement. (Testimony of Thomas Coulombe).

71. After Thomas Coulombe had been placed on administrative leave in February 2019, the Ware Fire Department's air compressor broke down and stopped working in June of 2019. (Testimony of Beckley; Testimony of Wloch; Testimony of Edgars; Testimony of Whitney).

Deputy Wloch, who oversaw the station because the Appellant was on paid leave, contacted one of the Fire Department's vendors, Industrial Protection Services (IPS), to come in to look at the equipment. (Testimony Beckley; Testimony of Wloch).

72. The IPS technician indicated that the compressor's filters were very dirty and speculated that it *might be* black mold, speculation that turned out to be unfounded. (Testimony Wloch).

73. Because the compressor was out of commission and the Fire Department needed filled air bottles, it borrowed equipment from a number of area fire departments, including the Easthampton Fire Department. (Testimony of Wloch; Testimony of Mottor).

74. The air compressor was fixed and the Town authorized monies to pay for the expired bottles that it was unable to fill because they were required to be taken out of service. (Testimony of Wloch; Testimony of Beckley).

75. Deputy Wloch and Stuart Beckley looked for records of annual maintenance, including flow testing, to see what work and testing had been done on the compressor in prior years. Although Mr. Coulombe testified that he had the testing done in the Spring of 2018 (and that if the failure to test was anyone's fault that it was the Deputy Chief's because he was at the helm when Mr. Coulombe was on leave), there were no records of any of the vendors who were identified at the Commission hearing having performed air flow testing in 2018 when Thomas Coulombe was in charge. (Testimony of Wloch; Testimony of Beckley; Respondent Exhibits 8, 16, 17).

76. After the failure of the compressor, and while Thomas Coulombe was on paid leave, the Firefighter's union, International Association of Firefighters (IAFF), Local 1851, filed a grievance alleging that the Appellant had failed to maintain the firefighters' equipment properly. Deputy Wloch created a punch list of items that needed to be tested or fixed at the

Fire Department and also provided this information to Mr. Beckley. Among these items were the ladders and the hoses. (Testimony of Wloch; Respondent Exhibit 2(B)). It was through this list and Deputy Wloch's reports to the Board, that the Board learned that the hoses and the ladders were not being tested annually.²⁸ (Testimony of Beckley; Testimony of Wloch).

Alleged Insubordination While on Paid Administrative Leave – Two Appearances at Department

77. While Thomas Coulombe was on paid administrative leave, which began on February 20, 2019, he went to the Ware Fire Department thereafter on two (2) separate occasions without permission from Mr. Beckley or the Board. (Testimony of Beckley; Respondent Exhibit 2(C); Respondent Exhibit 6).

78. The first instance occurred in the Spring of 2019, wherein Thomas Coulombe went to the fire station and spoke with his son, Brian Coulombe. Mr. Coulombe admits he went to the station on a whim and testified that he went there to tell his son about his grandson's Little League game. (Testimony of Thomas Coulombe; Respondent Exhibit 6; Appellant Exhibit 1).

79. On or about June 1, 2019, Thomas Coulombe once again went to the Fire Department while still on paid administrative leave. While there, he admits that he briefly spoke with Justin Senecal, a firefighter at the Department, and his son, Brian. Photographs from that date, pulled by Stuart Beckley, show Mr. Coulombe inside the bay of the station that day. (Testimony of Thomas Coulombe; Testimony of Senecal; Respondent Exhibit 2C; Respondent Exhibit 6).

²⁸ The Board first heard about the equipment issues and the allegations that they were improperly maintained just prior to the Board's pre-disciplinary hearing. (Testimony of Kruckas).

80. Stuart Beckley issued a memo to the Appellant on or about June 28, 2019, reminding him that he was not permitted to go to the station while he was on paid administrative leave. (Testimony of Beckley; Testimony of Thomas Coulombe; Appellant's Exhibit 31).

Appellant's Communications with the Press about Litigation

81. On January 25, 2019, after being notified that the Board was cancelling noticed meetings with Thomas Coulombe and Brian Coulombe, the Appellant's then-attorney, Jack Collins, sent an e-mail to the Town's labor attorney requesting certain public records and stating that the Appellant "wants to explore his options regarding MCAD and Civil Rights complaints." He asked that the request be treated as a "litigation hold." (Appellant's Exhibit 25).

82. On or about October 10, 2019, an article was printed in MassLive by a local reporter, detailing that the Ware Board of Selectmen planned to meet behind closed doors in an executive session on October 15, 2019, because Thomas Coulombe was threatening to sue them. In his interview, Thomas Coulombe reportedly said that the information about him threatening to sue was wrong and that there was no pending litigation on his part and specifically stated, "that's news to me." He also told the reporter that he did not think the purpose of the Board meeting comported with Open Meeting Laws. (Appellant Exhibit 32).

83. The Appellant filed an open meeting law complaint with the Division of Open Government at the Attorney General's Office, claiming that the executive session was improper.²⁹ (Respondent Exhibit 11).

²⁹ In an April 29, 2020 determination, the Division of Open Government specifically stated they investigated and found the Board's October 15-2009 executive session was to discuss "ongoing settlement discussions and the Board's litigation strategy" and that these topics were "appropriate for Executive Session." (Respondent Exhibit 11).

84. There was no pending litigation at the time Mr. Coulombe spoke to the reporter or when that newspaper article was published. A few weeks after that newspaper article ran, Thomas Coulombe filed an MCAD complaint, which alleged that certain Board members were discriminating and retaliating against him based on his age. This complaint was filed on or about October 28, 2019. (Appellant Exhibits 25 and 32; Testimony of Thomas Coulombe).

Incident at Fire Station the Day After Being Placed on Paid Administrative Leave

85. The morning after Thomas Coulombe was placed on leave, Selectman Kruckas met with Mr. Beckley to check on the status of the paid administrative leave and to see how Mr. Coulombe handled the news. Mr. Beckley reported to Selectman Kruckas that when he placed Mr. Coulombe on leave, he asked that Mr. Coulombe contact him so a time could be arranged for Mr. Coulombe to pick up his personal belongings. When driving back to his home after this meeting with Mr. Beckley, Selectman Kruckas passed the Fire Department. Selectman Kruckas saw Mr. Coulombe's car in the Fire Department parking lot along with the Police Chief's car. He turned around and tried to call Mr. Beckley and Selectman Carroll, because he thought Mr. Coulombe did not have permission to be there. Selectman Kruckas was concerned because he had just spoken to Mr. Beckley, who said he was going to set something up for a later date with Mr. Coulombe, so Mr. Kruckas did not think Mr. Beckley had already authorized them to go to the Department. (Testimony of Kruckas).

86. Mr. Kruckas attempted to go inside the Fire Department and entered the vestibule. He rang the buzzer and the firefighter who answered got Deputy Wloch for him. Deputy Wloch told Selectman Kruckas he did not know why Mr. Coulombe and the Police Chief were there. (Testimony of Kruckas; Testimony of Wloch).

87. While there, Mr. Coulombe retrieved three Monson Savings Bank bags from the cabinet on the Fire Chief's office's north wall, placed them on his desk, and asked Police Chief Crevier to verify his petty cash amount. Mr. Coulombe also opened the desk drawer and took out a metal box and asked Police Chief Crevier to count the money in a white envelope marked "CLASS". Police Chief Crevier counted \$280.00 and wrote it on the envelope with the date, time and his initials. Police Chief Crevier also counted the money in the metal box, which totaled \$207.00 and a check for \$52.00. He also documented this on the back of the envelope marked "CLASS". (Testimony of Crevier; Respondent Exhibit 2D).
88. Selectman Kruckas was about 20 feet away from the Appellant when they were in the building and Police Chief Crevier was there at all times. Chief Crevier recalls that, "I can assure you I wouldn't leave those two on the property together." While at the Fire Station, Selectman Kruckas indicated that Mr. Coulombe was not supposed to be there without the Board being notified. Selectman Kruckas did not appear to be upset, did not raise his voice, nor did he say anything inappropriate. Mr. Coulombe and Police Chief Crevier went out the side door and they left the parking lot at the same time. (Testimony of Crevier).
89. Selectman Kruckas left in his vehicle to go to the Town Hall. (Testimony of Kruckas). He then met with Police Chief Crevier and Stuart Beckley at Town Hall soon thereafter. Selectman Kruckas told Police Chief Crevier that Mr. Coulombe was not supposed to go to the Fire Station without someone from the Board or Mr. Beckley being present and Police Chief Crevier said he understood.³⁰ (Testimony of Crevier; Respondent Exhibit 2D).

³⁰ In or around November of 2019, Mr. Coulombe requested a copy of the video surveillance camera from the Ware Fire Department for February 21, 2019. Stuart Beckley responded that he was unable to secure it as video is overridden approximately every two weeks. (Testimony of Beckley; Appellant Exhibit 33).

90. When asked on cross examination about this incident, Thomas Coulombe indicated that Police Chief Crevier was with him the entire time at the Department that day.³¹ When it was pointed out that Police Chief Sean Crevier did not testify that Kruckas was yelling or having a meltdown or that it turned into a “shitshow,” Mr. Coulombe stated, “If I was Sean and worried about getting my kid appointed and worried about getting the ethics through the Board meeting, I might forget things too.”³² (Testimony of Coulombe).

2016 Brush Fire Incident & Resulting Nepotism Charges

91. The final charge alleges that Thomas Coulombe violated the Department’s Code/Canons of Ethics and G.L. c. 268A by failing to ensure proper procedural protocols consistent with Ethics Commission advisories relating to “the day-to-day active supervision of your son and wife, who are both subordinate members of the Department, and failing to hold them to the same standards as others in the Department.” The disciplinary notice continued, stating that “[t]he Board finds that your continued role as Fire Chief presents an untenable conflict of interests [sic] that impacts your ability to continue in that role.” (Respondent Exhibit 5).

92. Town Manager Stuart Beckley disagreed with this charge and, as Coulombe’s direct supervisor, had no concerns about nepotism by Coulombe and thought Coulombe handled managing his wife and son well, under the circumstances. Mr. Beckley is not the Appointing Authority, however. (Testimony of Beckley)

93. Thomas Coulombe was the Fire Chief for sixteen (16) years with Brian Coulombe as a member of the Department and nineteen (19) years with Kathleen Coulombe as a member of

³¹ Unlike Chief Crevier’s account of the incident, Mr. Coulombe claimed Keith Kruckas was yelling and screaming. (Testimony of Thomas Coulombe). I do not credit this testimony.

³² Police Chief Crevier testified that his son had applied for a position to be a Ware Police Officer. (Testimony of Crevier).

the Department. (Testimony of Thomas Coulombe; Testimony of Kathleen Coulombe; Respondent Exhibit 2(A, ex. C)).

94. The Town presented evidence as to an event in April 2016 in which it was asserted that Kathleen Coulombe was insubordinate to Deputy Edward Wloch but was not disciplined by her husband, Chief Thomas Coulombe, for the alleged insubordination. (Testimony of Wloch).

95. In April 2016, Thomas and Kathleen Coulombe were at their niece's house on a Saturday when a call was received for a brush fire. While Kathleen responded directly to the fire, Thomas Coulombe returned home to retrieve the command vehicle and then responded. (Testimony of Kathleen Coulombe; Testimony of Thomas Coulombe).

96. The testimony of those present described the fire as occurring near a residential area in a wooded section that was divided by a ridge. Brian Coulombe, who was working that shift, appears to have been among the first to arrive and, when Kathleen arrived, Brian Coulombe was the incident commander. (Testimony of Kathleen Coulombe). Upon her arrival, Kathleen had her face-to-face with Brian and, as that was occurring, Thomas Coulombe radioed that he was arriving on scene and would be assuming control as the incident commander. (Testimony of Kathleen Coulombe; Testimony of Thomas Coulombe).

97. Kathleen then moved to Thomas Coulombe's location to transfer command to him and, during that face-to-face, she was assigned as command of the sector on the other side of the ridge from Chief Coulombe. (Testimony of Kathleen Coulombe). She proceeded to her sector and thereafter had a conversation over the radio with Thomas Coulombe about a certain tree that was on fire. Thomas Coulombe's decision was that the tree would not be taken down at

that point but might be taken down later, after personnel largely had cleared from that sector when the fire was controlled. (Testimony of Kathleen Coulombe; Testimony of Thomas Coulombe).

98. The fire happened to be in the vicinity of Deputy Chief Wloch's house and, when he became aware of it, he showed up on scene. (Testimony of Wloch). There is a conflict in the testimony as to whether Deputy Chief Wloch announced his presence on scene by radio. (Testimony of Thomas Coulombe; Testimony of Wloch).

99. According to the Town's witness, Lieutenant Ned Russell, Deputy Wloch began discussing taking a tree down. Deputy Chief Wloch ordered Russell to cut the tree down.³³ (Testimony of Wloch and Russell). Wloch directed nearby personnel to move and all did except for Kathleen Coulombe, who indicated that she did not hear Wloch initially; Wloch repeated his directive additional times, raising his voice and using profanities while doing so. (Testimony of Wloch; Testimony of Kathleen Coulombe).

100. Witnesses then described a heated conversation between the two, which Kathleen testified included her indicating that she was in command of the sector, had been given a directive not to take the tree and did not understand why Wloch was ordering something different; Wloch responded by indicating that he was the Deputy Chief and that she would do what he says. (Testimony of Kathleen Coulombe).

³³ Two of the Town's witnesses, former Ware Firefighter Jaqueline Becker and Firefighter Lonny Murphy, who were present at the scene that day, testified that they believed Deputy Wloch was the incident commander at that particular sector of the brush fire that day, not Captain Kathleen Coulombe. (Testimony of Becker; Testimony of Murphy). It is unclear whether they formed the opinion that Deputy Wloch was the incident commander of that section of the fire due to his higher administrative rank (than that of Captain Coulombe), or if he was indeed assigned as incident commander of that section of the fire directly by Chief Coulombe.

101. Thomas Coulombe, who then was with the property owner, observed Deputy Wloch approaching him in an excited state and swearing; Coulombe told him to stop the behavior and that the issue would be addressed at another time. (Testimony of Thomas Coulombe). Thereafter, Thomas Coulombe spoke with Deputy Chief Wloch and Kathleen Coulombe, telling them that the issue was over after the discussion and they were to move forward. (Testimony of Thomas Coulombe).
102. Deputy Chief Wloch, who admitted to using profanities toward Kathleen, was not disciplined for his conduct and there equally was no sanction imposed on Kathleen for possible insubordination. There was no further investigation done by Chief Coulombe into the matter. (Testimony of Thomas Coulombe; Testimony of Wloch).
103. Laurent McDonald, a former Director of the Massachusetts Firefighting Academy, manager of the certification programs at the National Fire Protection Association and an individual certified at the level of train the trainer for National Incident Management Systems(NIMS) and the Incident Command System (ICS), provided testimony useful to reference at the threshold of this charge. (Testimony of McDonald).
104. NIMS and ICS provide a framework by which first responders are to address any incident from a large-scale terrorist attack to a small brush fire. Central to the framework are the concepts of unity of command and span of control—with unity of command meaning that there exists an overall authority, the incident commander, through whom all decisions flow and span of control recognizing that any supervisor is capable only of managing between three to seven individuals on a scene. (Testimony of McDonald).

105. As McDonald explained, an incident commander sits at the top of the decisional pyramid and, when the span of control becomes too large, he or she can designate certain individuals to act within designated spheres with the incident commander's authority; when those individuals then experience too large a span of control, further subsets can be created. All decisions emanate either from the incident commander or from those who have been designated as in control of an area by the incident commander. To deviate from the unity of control is referred to as freelancing, something that is not acceptable within the context of NIMS or ICS. (Testimony of McDonald).

106. A first responder arriving to a scene is to check in with the incident commander, preferably in person in what is known as a face-to-face but at least by radio if in-person is not possible, and is to be assigned a task by the incident commander. (Testimony of McDonald).

107. The NIMS and ICS framework can be a little foreign to those most familiar with traditional administrative rank structure. As McDonald explained it, a superior/subordinate officer relationship in the firehouse does not necessarily apply at a fire scene. If a firefighter has received control over an area or an operation through the incident commander, a superior officer does not have the ability to countermand that firefighter's decisions because those decisions carry the authority of the incident commander. (Testimony of McDonald).

Legal Standard

Sections 41-45 of G.L. c. 31 allow for discipline of a tenured civil servant for "just cause" after due notice, hearing (which must occur prior to discipline other than a suspension from the payroll for five days or less), and a written notice of decision that states "fully and specifically the reasons therefore." G.L. c. 31, § 41. An employee aggrieved by such disciplinary action may appeal to the

Commission, pursuant to G.L.c. 31, § 42 and/or § 43, for de novo review by the Commission “for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. As prescribed by G.L. c. 31, § 43, ¶ 2, the Appointing Authority bears the burden of proving “just cause” for the discipline imposed by a preponderance of the evidence.

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

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, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983) The Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of “merit principles” which govern civil service law that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “separating employees whose inadequate performance cannot be corrected.” G.L. c. 31, § 1.

Section 43 of G.L. c. 31 vests the Commission with “considerable discretion” to affirm, vacate or modify discipline but that discretion is “not without bounds” and requires sound explanation for doing so. See, e.g., Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 600 (1996) (“The power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio . . . accorded the appointing authority”). See also Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006), quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

Analysis regarding the Section 42 (Procedural) Appeal

The Appellant, Thomas Coulombe, claims that proper procedure was not followed by the Town in connection with his demotion and suspension and that he was not provided the process that was due. The evidence proves otherwise.

Mr. Coulombe was properly notified of a contemplated disciplinary hearing under civil service law on October 30, 2019, more than 72 hours prior to the hearing. He was provided hundreds of pages of documents in advance of that hearing, including a comprehensive investigative report from The Daigle Law Group with specific findings. That hearing took place over the course of two (2) days, on November 4, 2019, and November 26, 2019. On the first day of hearing Mr. Coulombe was provided the opportunity to explain his side of the story, on his own or through his counsel, or jointly, in a hearing that was approximately three (3) hours long. Mr. Coulombe was permitted to have the hearing in public and did so, as was his right. He was also told he could submit any written evidence that he wanted the Board of Selectmen to consider. On the second day of hearing, the Board re-convened to deliberate and decide the outcome.

The gravamen of the Appellant claim that he was not provided a “full hearing” as contemplated by the G.L. c. 31, §41 rests on his contention that he was denied the opportunity to present witnesses. Case law is clear that the “full hearing” required is not an adjudicatory hearing and is not conducted in the vein of a trial. *See, e.g., Chmielewski v. Massachusetts Office of Commr. Of Probation*, 513 F. 3d. 309, 316 (1st Cir. 2008) (“The termination hearing is not a court of law, and the same level of process is not required.”). There is no requirement in the statute that the hearing officer be impartial, pretrial discovery is not required, the rules of evidence do not apply even at the agency level, and the employee has no right to subpoena witnesses to appear before the hearing officer. *See, e.g., Chmielewski* at 318 - M.G.L. c. 30A, § 11 (formal rules of evidence do not apply before agencies, including the Commission); G.L. c. 233, §8 (permitting, but not requiring, a Board of Selectman to summons a witness to a public hearing if they choose).

While the formality and procedural requisites for a public employee’s pre-deprivation hearing can vary, depending on the importance and nature of the subsequent proceedings, I find that in this case, where the Appellant has the right to de novo review by the Commission, where he received written notice of the charges against him, where he was provided an explanation of the charges against him at that hearing and in the Notice of Discipline, he was provided the opportunity to tell his side of the story, and he did provide his story through his own words and his counsel, that the type of hearing envisioned by the applicable statute, the level of due process protections contemplated in the case law has been afforded. *See e.g., Hall-Brewster v. BPD*, 96 Mass.App.Ct. 12 (2019) (A pre-deprivation proceeding is an initial check against mistaken decisions, leading to a determination of whether there are reasonable grounds to believe that the charges against a public employee are true and support the proposed action), *Perkins v. City of*

Attleboro, 969 F.Supp.2d 158 (D. Mass. 2013) (finding that “due process is flexible and calls for such procedural protections as the particular situation demands” and deputy chief’s gathering of written statements, meeting with the Plaintiff prior to any adverse employment action being taken, and subsequent appeal to the Commission with a hearing was adequate process); Cleveland Bd. of Education v. Loudermill, 470 U.S. 532, 545 (finding that the pre-deprivation hearing need not be elaborate and, where more comprehensive post-termination procedures are available, the pre-termination hearing need only provide ‘an initial check’ against mistaken decisions). In short, there was no failure to provide a full hearing and no prejudice to the Appellant that would support dismissal and reversal of the Board of Selectmen’s actions pursuant to G.L. c. 41, § 42.

Analysis Regarding the Section 43 (Just Cause) Appeal

There had been a rumor circulating for years in the Town of Ware that longtime Fire Chief Thomas Coulombe’s son, Brian Coulombe, had not been old enough to become a Ware firefighter when he sat for his 2004 Civil Service examination. As Deputy Chief Edward Wloch put it, “it was the worse kept secret in town.” Many in the town who heard the rumor believed that Brian Coulombe possibly received a waiver for the position due to his father’s “connections in Boston” and Deputy Wloch, who himself had received a waiver to become a firefighter because he had exceeded the maximum age limit, believed that there was some credence to the “waiver theory.” No action was taken by the Town on these rumors for years, as they were just that, rumors, until Keith Kruckas, a newly elected Selectman, began to investigate the allegation in 2018. Selectman Kruckas had been told of the allegation by at least two (2) named sources in the Department, former firefighters Meegan and Danitis.

Massachusetts General Law c. 31, § 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 [.]” Thereafter, the Town Manager, Stuart Beckley, sought information from the Commonwealth’s Human Resources Division (HRD) relative to Brian Coulombe’s application for the 2004 examination and HRD provided documents that immediately gave credence to potential wrongdoing. Indeed, Brian Coulombe had an incorrect birthdate on file with HRD, which would make him exactly one year older, on his HRD ASI scan sheet for the entry level firefighter exam in 2004. This incorrect birthdate made Brian Coulombe seem old enough to sit for the 2004 entry level firefighter Civil Service examination.

Soon thereafter, the Town took the appropriate step of hiring an outside, independent investigator, Eric Daigle of the Daigle Law Group, to look further into the matter to determine how an incorrect birthdate appeared on HRD’s records for Brian Coulombe. Investigator Daigle, an attorney and former Connecticut State Trooper who investigated homicides, made it clear to the Commission that he realized that members of the Ware Board of Selectmen were emotional and beginning to form opinions about the allegations against Brian and Thomas Coulombe, most especially Selectman Kruckas. Investigator Daigle credibly testified that he purposefully took steps as the outside investigator so as to avoid the appearance of improper influence by the Board. As explained by Mr. Daigle, he deemed it improper for Mr. Kruckas to contact him and speak to him about allegations that were outside the scope of the investigation. Of these conversations, Mr. Daigle noted that “this is not how we do business.” I credit Mr. Daigle when

he testified that “opinions mean nothing to me” and that he understood that his job was to make findings and form conclusions based on the evidence uncovered, not based on what certain Town officials might want the findings to be.

Following a fair, independent, and thorough investigation, which included half a dozen interviews and lengthy document compilation, Mr. Daigle concluded that Brian Coulombe’s birth certificate, his driver’s license, Brian’s own admission, and his parent’s confirmation, all prove that Brian Coulombe was born on June __ 1985. The date of birth that appeared on the HRD ASI scan sheet indicated Brian Coulombe was born on June ___ 1984. It is indisputable that Brian was only eighteen (18) years old on April 24, 2004, the date of the firefighter Civil Service exam. Mr. Coulombe was still only eighteen (18) years old when he sat for and took the firefighter exam, which took place on April 24, 2004, in violation of G.L. c. 31, § 58.

The preponderance of evidence shows that Thomas Coulombe, Brian’s father and the Chief at the time, engaged in substantial misconduct which adversely effected the public interest since he had a duty, as the Chief, to have knowledge of the laws of the Commonwealth regarding employment within a fire department. Thomas Coulombe agrees that a Ware firefighter should be held to a high ethical standard, since firefighters serve the public at large. Thomas Coulombe agreed, under cross-examination, that there was an expectation that those who are untruthful, who engage in self-dealing, insubordination, and/or nepotism should be disciplined by the Town and that he should be held to the same standard. I do not credit Mr. Coulombe’s testimony that he did not know the laws relative to the age requirements to become a firefighter, even after thirty (30) years of experience. Like Investigator Daigle, I conclude that Thomas Coulombe knew or should have known of the legal age requirement.

As a longtime member of the Ware Fire Department, first as a firefighter, then a Captain, and having been the Chief for four (4) years by the time his son took the Civil Service exam, it is not plausible that Thomas Coulombe did not know his son was too young to take the examination on April 24, 2004. Brian Coulombe had lived at his parents' house his entire life (18 years) by the time he took the exam on April 24, 2004. Thomas Coulombe admits that he has always known how old his son is at any given time throughout his life. Just after high school ended in June 2003, Brian was considering dropping out of community college in the Fall of 2003 and Thomas Coulombe admits that he was imploring Brian to "get any freaking job he could" since college had not worked out as planned. At that same time, Thomas Coulombe admits that two (2) firefighter positions were opening up on the Ware Fire Department and that Brian had been taking major steps to initiate a possible career in the fire service as young as high school, to include obtaining his EMT Certificate, attending a part-time firefighter academy, becoming a Call firefighter for the Town, completing a work study internship as a senior in high school that same year, and taking fire science courses in college. Thomas also admitted that HRD's certified list of eligible candidates for a position in the Department last two (2) years. It follows that, since a certified list remains in effect for two (2) years, had Brian not taken the exam when he did in 2004, he would have missed the hiring round for the two (2) open positions in the Department (a Department with only 12 full-time firefighters on staff) since he would have had to wait two (2) more years to take the Civil Service exam again.

Brian Coulombe claimed that he signed up for this exam on his own, with no help from others. In stark contrast to his alleged independence with the 2004 Civil service application and exam, it was Brian's mother who assisted Brian with the 2005 Ware Fire Department

application. Thomas Coulombe also personally had a hand in the Ware application as well, having amended some of the language of the application itself by crossing out certain words and adding others in his own penmanship.

Thomas Coulombe and his wife dedicated years of service to the Ware Fire Department, with a combined total of almost fifty (50) years, and both parents served in leadership roles in the Department concurrently. Both Thomas Coulombe and Kathleen Coulombe spent hours researching and writing grant applications for the Department over the years. They testified to the all-consuming nature of the Department on their everyday lives and how proud they were to serve the Town. In light of those facts, I find Thomas Coulombe's purported ignorance on the entire issue of his son's entrance into the fire service to lack credibility.

I do not credit Thomas Coulombe's testimony that he did not know that nineteen (19) years of age was the required age to apply for the civil service examination, since he testified that he was "well aware" of the *maximum* age requirement because he was worried that he would exceed the maximum age requirement when he applied for the fire service in the 1980s. That was some twenty years *prior* to his own son's application for the examination. Since the 1980's, Thomas Coulombe has served as a firefighter, a Captain, and rose all the way to the rank of Chief for the Ware Fire Department and one could very easily conclude that if he did not learn of the minimum age requirement when he first applied, since those dates were so important to him starting his own career, that he would have learned the applicable age limits over the course of his lengthy career as a Firefighter, or once he became a Captain, and, at the very least, once he became a Chief four years prior to his son's application for the exam. To assert otherwise strains

credulity, especially since Chief Coulombe testified to a vast knowledge of the testing procedures both before and on the day of the Civil Service exam itself.

Thomas Coulombe testified that HRD was responsible for making determinations as to one's eligibility for the position and that it is out of his hands – if he receives a name on an eligible list, he assumes that person has been vetted by HRD and is qualified to be considered for the position. That may well be true in most circumstances, however, the applicant for the Department in this instance was his son - - a person who lived with the Chief. Brian Coulombe told Mr. Daigle that “of course” his father knew he was taking the Civil Service exam. The Appellant's feigned ignorance of a basic requirement of taking the firefighter civil service examination is not credible in view of his many years of service and leadership in the WFD as well as his involvement in leadership activities outside the WFD.

By a preponderance of the evidence, the Town has proven Thomas Coulombe knew of his son's date of birth; that he knew or should have known that his son was ineligible for appointment as a firefighter at the time; and that he failed to take the appropriate action, as Fire Chief, to prevent this illegal civil service appointment.

Additional Charges Against Appellant

During Eric Daigle's investigation into Brian and Thomas Coulombe, Thomas Coulombe was placed on paid administrative leave. As stated in the letter served on Mr. Coulombe, he was ordered by the Board of Selectman to “stay away” from the Fire Department during his leave. An agreement was reached between the Town Manager and Mr. Coulombe that he could go to the Department to retrieve personal belongings so long as Mr. Beckley or the Chief of Police accompanied him. Unexpectedly, Mr. Coulombe requested the Chief of Police, Sean Crevier,

accompany him the very next morning to the Department. Chief Crevier did as much and wrote a report about his relatively uneventful trip to the Fire Department.

In his interview with Eric Daigle, Mr. Coulombe was asked about what took place at the Fire Department that particular day. Mr. Coulombe claimed that Selectman Kruckas had a meltdown, was yelling at him, and it turned into a “shitshow.” The Board found these statements by Mr. Coulombe to be untruthful. In his testimony to the Commission, Chief Crevier stated that, at no time during Thomas Coulombe’s time at the Department that day, did Chief Crevier leave Mr. Coulombe and Selectman Kruckas alone together, since he knew that would be a caustic situation. I credit Chief Crevier’s testimony. I do not find Thomas Coulombe’s statements that Mr. Kruckas was yelling at him, having a meltdown, and that it turned into a “shitshow” to be credible. I find that the Town has proven, by a preponderance of the evidence, that Thomas Coulombe was untruthful in his interview with Mr. Daigle relative to this incident, especially since there is no evidence to corroborate Mr. Coulombe’s statements about Mr. Kruckas’ demeanor that day. On the contrary, Chief Crevier stated the exact opposite at the appeal hearing before the Commission, thereby corroborating Selectman Kruckas’ testimony.

The Town also alleged that Thomas Coulombe was insubordinate to the Board of Selectmen on two occasions. The first instance was when he allegedly made false statements to the press about not having filed litigation against the Town. I do not find that the Town has met its burden of proof relative to this first allegation of insubordination. Mr. Coulombe had not filed any litigation against the Town at the time of his interview with the reporter for MassLive, nor did he file any litigation at the time the newspaper article was published. At the time of the interview and /or when the article was published, Mr. Coulombe’s attorney had simply sent an

email about contemplated litigation and had requested a “litigation hold” for certain documents. This is not the equivalent of filing litigation, and therefore, Mr. Coulombe was not being untruthful when he stated that there was no pending litigation. I do not sustain this first charge of insubordination.

The Town has also alleged that Mr. Coulombe was insubordinate with the Board when he failed to adhere to the parameters of his administrative leave, by not staying away from the Department as ordered to do so by the Board. Mr. Coulombe admitted that he went to the Department on two (2) separate occasions without permission after having been told not to do so. The Town also presented still photographs from video surveillance at the Department, which proves Mr. Coulombe was at the Department during his leave, without permission. Mr. Coulombe claimed that, because he was either outside in the parking lot or in an area where the general public is allowed, that he did not violate the terms of his administrative leave. While both parties appear to be splitting hairs here, and this appears to be an example of piling on of charges, the preponderance of evidence does support the charge that Mr. Coulombe violated the Town’s order by his actions here.

Additionally, the Town alleged that Mr. Coulombe violated the Department’s Code of Ethics and G.L. c. 268A by failing to ensure proper procedural protocols consistent with Ethics Commission advisories relating to the daily supervision of his wife and son... and failing to hold them to the same standards as others in the Department. The Town presented evidence as to two specific instances wherein it alleged nepotism: (1) the hiring of his own son, Brian, for a firefighter position he was statutorily ineligible for; and (2) a brush fire incident in April 2016. Central to this appeal, however, is my conclusion that Thomas Coulombe was aware that his son

was not eligible for appointment as a firefighter as he did not meet the minimum age requirement to sit for the civil service examination – and he failed to take any action as the Town’s Fire Chief to prevent this illegal appointment from occurring.

As for the brush fire incident, the Town alleges that Mr. Coulombe failed to discipline his wife for insubordination to Deputy Wloch during a 2016 brush fire. Having heard all of the testimony by numerous witnesses to this brush fire, I find that Thomas Coulombe was the incident commander at the scene, having so announced his taking over the scene upon his arrival to the site. Deputy Wloch appeared on scene after having walked over from his own house. Captain Kathleen Coulombe arrived on scene prior to Deputy Wloch and received her marching orders directly from her husband, the incident commander.

While some at the scene believed Deputy Wloch was the incident commander at the section of the brush fire he was in, other witnesses believed Kathleen Coulombe was the incident commander for that same section. When Captain Coulombe failed to listen to Deputy Wloch’s orders to move away from a tree that was going to be cut down, Deputy Wloch lost his temper and began swearing at the Captain. I am unable to discern who the incident commander of that section of the brush fire was that day, and as such, the Town has failed to prove by a preponderance of the evidence that Captain Coulombe was insubordinate to Deputy Wloch, since Captain Coulombe may very well have been the incident commander of that section. Thomas Coulombe spoke to both parties, listened to what they had to say, and treated them equally, considering that both of them may have been at fault. Deputy Wloch admits he used inappropriate language that day, yet he was not disciplined either. I do not find that the Town has proven this nepotism charge as it relates to the brush fire incident since the Town has not

proven by a preponderance of the evidence that Mr. Coulombe favored his wife over Deputy Wloch.

The final charge by the Town relates to the proper maintenance of equipment at the Department. Months after Mr. Coulombe was placed on administrative leave in February 2019, the air compressor began to exhibit problems. At that time (June 2019), Deputy Chief Wloch was at the helm of the station. While Mr. Coulombe's administrative leave likely made the day-to-day operations at the Department somewhat harried at times, due to the Department head being out on leave, it seemed all too easy for some at the Department and in town government to blame Mr. Coulombe for shortcomings that occurred at the Department when he was on leave since he was already under investigation.

Deputy Wloch was in charge during Mr. Coulombe's administrative leave and was faced with an issue involving the air compressor. In the end, the filters to the compressor needed to be changed and the compressor was fixed. Unfortunately, a rumor about black mold in the filter was discussed among the rank and file because of a comment the technician made, which likely in turn, caused the grievance to be filed with a laundry list of complaints against Mr. Coulombe's maintenance of the Department equipment, to include the hoses, the ladders, the entirety of the SCBA equipment, the a/c unit, and the boiler. The substance in the compressor filter was not black mold; however, it was oil and the filter trapped the oil, just as it should have. To me, it is painfully clear that the rank and file capitalized on the situation at hand – that Thomas Coulombe's tenure at the Department was under a microscope -- and this was the chance to have many of their complaints heard. Deputy Chief Wloch passed along the Union's concerns to the

Town Manager, which some of the complaints, in turn, became part of the allegations against Thomas Coulombe at his disciplinary hearing.

Pursuant to the non-binding NFPA standards, fire departments should ideally test their ladders, hoses, and SCBA equipment on an annual basis. Mr. Coulombe did not meet the NFPA standard as it relates to that equipment, since the entirety of the hoses and ladders were not tested on a yearly basis. Mr. Coulombe was aware the SCBA equipment was reaching the end of its useful life, and consequently, took active measures to acquire the funds to replace the equipment. Mr. Coulombe had applied for grants over the past few fiscal years, understanding full well that it would likely take a couple of grant cycles to obtain a grant to cover the cost of the new equipment which was expensive. Separately, he also submitted requests for appropriations for this equipment to the Capital Planning Committee.

Since the NFPA Standards are guidelines that fire department should ideally follow and are not promulgated law in Massachusetts, I do not hold Mr. Coulombe to the NFPA standards and given the appearance that this laundry list of maintenance issues is arguably “piling on” to the main allegation about Mr. Coulombe and his possible involvement with his son’s improper appointment, I do not believe these are valid charges warranting discipline.

Conclusion

The Town has proven by a preponderance of the evidence that the Appellant has committed substantial misconduct which adversely affects the public interest by impairing the efficiency of public service, most especially by knowing that his son was ineligible to sit for the firefighter examination and failing to take steps to prevent the subsequent illegal appointment of

his son. I find that there was just cause for demotion of Thomas Coulombe from Ware Fire Chief to Lieutenant and just cause for the 30-day suspension without pay.

For these reasons, Thomas Coulombe's appeal under Docket No. D-19-253 is *denied*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman, Chair

By a 4-0 vote of the Civil Service Commission (Bowman, Chair; Ittleman, Stein and Tivnan, Commissioners [Camuso – Absent]) on July 15, 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:

Andrew Gambaccini, Esq. (for Appellant)

Layla Taylor, Esq. (for Respondent)