

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108

CEDRIC CRAWFORD,  
Appellant

v.

D1-18-109

CITY OF LEOMINSTER,  
Respondent

Appearance for Appellant:

Scott A. Lathrop, Esq.  
176 Fitchburg Road  
Townsend, MA 01469

Appearance for Respondent:

Brian M. Maser, Esq.  
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Commissioner:

Christopher C. Bowman

DECISION (Corrected Copy Issued 5/13/19 re: Page 15, Paragraph 3)

On June 11, 2018, the Appellant, Cedric Crawford (Mr. Crawford), pursuant to G.L. c. 31, § 43, filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the City Leominster (City) to terminate him as a patrol officer from the City's Police Department (Department).

On July 9, 2018, I held a pre-hearing conference at the Armand P. Mercier Community Center, 21 Salem Street, Lowell, Massachusetts 01854. The full hearing was held at the same location on September 24, 2018.<sup>1</sup> As no written notice was received from either party, the

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<sup>1</sup> 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.

hearing was declared private. All witnesses, with the exception of the Appellant, were sequestered.

A digital recording was created of the hearing and both parties were provided with a CD of the proceeding. The City had the digital recording transcribed by a Certified Court Reporter and Notary Public and have filed the transcript with the Commission which will serve as the official record of the proceeding.

**FINDINGS OF FACT:**

Nineteen (19) Joint Exhibits, numbered 1-19, were agreed to by counsel prior to the hearing and entered into evidence. At the hearing, I accepted Exhibit “A” through Exhibit “T” into evidence. I also left the record open for various documents which have been submitted and marked as Exhibits “U” and “V”. Additionally, on or about November 6, the City provided a transcript of the Appellant’s appeal in Leominster District Court concerning the revocation of his License to Carry Firearms. I have marked that transcript as Exhibit “W” and the City’s Trial Memorandum related to that proceeding as Exhibit “X”. Based on the documents submitted and the testimony of the following witnesses:

*For the City:*

- Vang Lee, Sergeant, Leominster Police Department;
- Matthew Fallon, Patrol Officer, Leominster Police Department;
- Michael Goldman, Chief of Police, Leominster Police Department;

*For the Appellant:*

- Cedric Crawford, Appellant;
- Kenneth Leone, Patrol Officer, Leominster Police Department;
- Corey Donnelly, Patrol Officer, Leominster Police Department;

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:

1. At the time of his termination on June 4, 2018, Mr. Crawford had been employed by the City for approximately six (6) years as a patrol officer. (Stipulated Fact) He was one of only two African American employees in the Police Department. (Exhibit 13) Mr. Crawford is a fourteen (14)-year service veteran with two (2) combat deployments (Kuwait and Iraq). He received a “General Discharge” from the Massachusetts National Guard on September 29, 2017, for “continuous and willful absence.” (Stipulations, Testimony of Mr. Crawford, Exhibit 9, Exhibit Q)
2. Chief Goldman is a thirty (30)-year veteran of the Leominster Police Department, the last three of which he has served as Interim Chief of Police. Beneath Chief Goldman, in order of rank, are five (5) Lieutenants, eight (8) Sergeants, and fifty-six (56) Patrol Officers. Uniformed personnel generally work a so-called 4x2 schedule although there are a few officers of varying ranks that work a Monday to Friday, 8a-4p administrative schedule. (Testimony of Chief Goldman)

*Night / Morning of May 11<sup>th</sup> / May 12<sup>th</sup>, 2018*

3. On the night of May 11, 2018, Mr. Crawford was working his 11p-7a shift when, at approximately 1:00AM, he was dispatched to CVS on Nelson Street for a reported shoplifting. While en route to the CVS, dispatch advised that the suspect had left the location in a grey vehicle. Dispatch provided responding officers with the vehicle make, model, and license plate number. (Testimony of Sgt. Lee, Testimony of Mr. Crawford, Exhibit S)

4. As Mr. Crawford approached the CVS in his patrol cruiser, he identified the suspect vehicle and initiated a traffic stop. (Testimony of Mr. Crawford, Exhibit S)
5. As he approached the vehicle Mr. Crawford observed the driver removing items from his person and placing them on the front passenger seat. Mr. Crawford ordered the driver to step out of the vehicle, which he did nonviolently, whereupon Mr. Crawford performed a pat frisk. When asked by Mr. Crawford, the driver admitted that the items in his car were from the CVS. While placing the suspect under arrest, Mr. Crawford requested that a tow truck be contacted to respond to the scene to tow the suspect's vehicle. (Testimony of Mr. Crawford, Exhibit S)
6. Sergeant Vang Lee (Sgt. Lee) was the Officer-in-Charge of Mr. Crawford's 11p-7a shift commencing on May 11, 2018. Sgt. Lee is an eleven (11) year veteran of the LPD and was promoted to the rank of Sergeant in October 2017. (Testimony of Sgt. Lee)
7. Since his promotion, Sgt. Lee has re-trained or counseled essentially every patrol officer on the 11p-7a shift. He also has, on occasion, referred officers for discipline up the chain of command. (Testimony of Chief Goldman, Testimony of Sgt. Lee, Exhibit U)
8. Sgt. Lee was working in the station on the night of May 11, 2018, when he overheard the radio traffic relative to the shoplifting call at CVS which Mr. Crawford responded to. Sgt. Lee was contemporaneously observing the vehicle locations of the responding officers via each vehicle's GPS tracking device. None of the patrol units that responded to the shoplifting call went to the CVS to speak to the reporting party. When Sgt. Lee heard Mr. Crawford request a tow, he requested that Mr. Crawford contact him via phone. (Testimony of Sgt. Lee, Exhibit 6)

9. The purpose of Sgt. Lee's phone call with Mr. Crawford was to inquire as to whether anyone had responded to the CVS to speak with the reporting party "to find out if a crime was actually committed" and to confirm that the suspect was involved in the reported shoplifting. In response to Sgt. Lee's initial directive to report to the CVS to speak to the reporting party, Mr. Crawford initially questioned why it was necessary given the suspect's admitting to stealing the items from CVS. Sgt. Lee renewed his directive that Mr. Crawford go to the CVS and he concluded his call by saying words to the effect that he was "sick and tired of guys not speaking with the [reporting party]". (Testimony of Sgt. Lee, Exhibit 6)
10. Mr. Crawford returned to the CVS with the suspect from the vehicle, confirmed his involvement via eyewitness identification, and then transported the arrestee to the station for booking. (Testimony of Sgt. Lee and Mr. Crawford)
11. Sgt. Lee, as the OIC, performed the booking of the suspect, which took approximately thirty (30) minutes. While Sgt. Lee was booking the arrestee, Mr. Crawford was preparing his report of the incident. (Testimony of Mr. Crawford and Sgt. Lee)
12. Immediately following the booking of Mr. Crawford's arrestee, Sgt. Lee had to process another arrest by another officer, Officer Matthew Fallon (Officer Fallon). Following that booking, Sgt. Lee proceeded to review Mr. Crawford's incident report of the CVS call. By the time he first reviewed Mr. Crawford's report, Mr. Crawford had vacated the station and returned to his patrol sector. (Testimony of Sgt. Lee and Mr. Crawford)
13. Upon Sgt. Lee's initial review of Mr. Crawford's report of the CVS call, Sgt. Lee found the report to be deficient in certain respects and contacted Mr. Crawford over the Department's radio system to request that he return to the station. (Testimony of Sgt. Lee)

14. When Mr. Crawford arrived at the station he reported to the OIC's office. Sgt. Lee advised Mr. Crawford that he needed to add more information to his report. Contrary to the statement in the Mayor's June 4, 2018 termination letter that Mr. Crawford "left the OIC's office without acknowledging Sgt. Lee and the requests he made of you", Mr. Crawford *acknowledged Sgt. Lee by nodding his head in response to Sgt. Lee's comments* and exited the office. (Testimony of Sgt. Lee)
15. Mr. Crawford proceeded into the report writing room, which is next door to the OIC's office. Sgt. Lee went into the report room with the other materials pertaining to Mr. Crawford's arrest and he began to explain to Mr. Crawford why the missing information needed to be included in the report. (Testimony of Sgt. Lee)
16. At the time Sgt. Lee walked into the report room, Mr. Crawford was seated at a computer terminal with his back to Sgt. Lee and the door to the report room. Officer Fallon was in the room at that time, as well, preparing his report from his arrest that Sgt. Lee had booked earlier that evening. Officer Fallon was facing the entryway of the report room and his back was to Mr. Crawford and Sgt. Lee. (Testimony of Sgt. Lee and Officer Fallon)
17. During this conversation, Sgt. Lee attempted to impress upon Mr. Crawford the need to speak to the reporting party. Mr. Crawford told Sgt. Lee that he had never done that in the six years he had worked in Leominster under these circumstances (i.e. – suspect making an admission). Sgt. Lee responded with words to the effect that he would be expected to always speak to a reporting party from "now on". (Testimony of Sgt. Lee)
18. Mr. Crawford stood up from his chair and stood in very close proximity, nose-to-nose almost, with Sgt. Lee, while yelling at him. What Mr. Crawford specifically said Sgt. Lee could not recall. (Testimony of Sgt. Lee)

19. Sgt. Lee told Mr. Crawford to step back. Mr. Crawford did step back as directed and immediately walked around Sgt. Lee, removed his tactical vest, and as he reached the doorway of the report room, threw his tactical vest against the wall opposite the report room. (Testimony of Sgt. Lee and Mr. Crawford, Exhibit P - Video)
20. Mr. Crawford threw the weighted Kevlar vest with such force that it bounced off the wall and landed on the floor. The portable radio attached to Mr. Crawford's vest can be seen on the video recording bouncing on the floor as the vest hit the ground. Mr. Crawford then walked away from the door to the report room and towards the stairwell at the end of the hallway. (Exhibit P – Video)
21. As he was walking toward the stairwell, Mr. Crawford stepped on the vest almost falling to the ground. Sgt. Lee emerged from the report room and looked in Mr. Crawford's direction at which time Mr. Crawford, who was facing away from Sgt. Lee (toward the stairwell), stopped and put his arms in the air. (Exhibit P – Video)
22. Mr. Crawford then turned around, and while bending over, walked two (2) or three (3) steps in Sgt. Lee's direction and picked up his vest and an object which had flown from it and yelled "I can't take this shit no more, I'm going home" or words to that effect. (Exhibit P – Video)
23. It does not appear that Mr. Crawford was "about to become physically violent towards [Sgt. Lee] who is standing in the hallway" as alleged in the Mayor's June 4, 2018 termination letter to Mr. Crawford. (Exhibit P – Video)

24. Mr. Crawford had no intention of becoming physically violent toward Sgt. Lee. The purpose of him turning around, bending over, and moving back toward Sgt. Lee was solely to pick up his vest and the object that had been fallen from it. (Testimony of Mr. Crawford)<sup>2</sup>
25. Mr. Crawford did not say anything threatening to Sgt. Lee. (Testimony of Sgt. Lee)
26. Mr. Crawford then turned around and proceeded to walk to the end of the hallway towards the stairwell at the back of the building that led to the officers' locker room in the basement of the building. Sgt. Lee returned to the OIC's office. (Testimony of Sgt. Lee and Mr. Crawford)
27. From the OIC's office, Sgt. Lee directed the on-duty dispatcher to contact Officer Donnelly, the third shift union steward, to report back to the police station for purposes of speaking with Mr. Crawford. (Testimony of Sgt. Lee)
28. Approximately five minutes after the incident in the hallway with Mr. Crawford, and while still in the OIC's office, Sgt. Lee heard a loud bang coming from the basement of the building. Sgt. Lee asked Officer Fallon, who was still in the report room, if he had heard the noise. He and Officer Fallon proceeded downstairs to investigate the source of the noise. (Testimony of Sgt. Lee)
29. Sgt. Lee and Officer Fallon walked down the flight of stairs to the basement landing and down the hallway to the officers' locker room. After making entry into the locker room, Sgt. Lee found Mr. Crawford seated at a bench facing his open locker, resting his head in his hands. (Testimony of Sgt. Lee)

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<sup>2</sup> During Sgt. Lee's candid testimony before the Commission, he initially did not even recall that Mr. Crawford turned around and walked back toward him, stating: "And then he was trying to pick up his vest, almost tripping. And then he said that he's sick and tired of this shit and that he was going to go home. And then he just left to go downstairs ... I recall him just leaving to go down. I can't recall if he turned around and faced me." After being shown the video and asked "Do you see him turn around *and come back at you now?*", Sgt. Lee stated "I can't see it". After being shown the video a second time, Sgt. Lee acknowledged that Mr. Crawford could be seen turning around, but, even when prompted by counsel a second time, Sgt. Lee did not state that Mr. Crawford "came back at [him]."



30. Sgt. Lee approached Mr. Crawford and stood behind him at an angle while Mr. Crawford remained seated. Officer Fallon stood several feet away from Sgt. Lee's location given the conversation he was having with a fellow patrol officer. In response to Sgt. Lee's question if Mr. Crawford "was OK", Mr. Crawford asked Sgt. Lee why he was "badgering him."  
(Testimony of Sgt. Lee)
31. Sgt. Lee responded that he was not badgering Mr. Crawford. Rather, he was "trying to make him a better officer." (Testimony of Sgt. Lee)
32. When Sgt. Lee told Mr. Crawford that he did not want to see him lose his job, Mr. Crawford began to cry and said he "had a lot of shit going on." (Testimony of Sgt. Lee)
33. When Sgt. Lee told Mr. Crawford to go home for the rest of his shift, Mr. Crawford stood up, unholstered his loaded firearm and placed it into the space above the shelf of his locker. He thereafter removed his duty belt and undershirt and threw both in the main space of his locker before donning his personal sweatshirt and leaving the locker room. (Testimony of Mr. Crawford)
34. Mr. Crawford did not "recklessly and dangerously [throw] the loaded weapon into [his] locker" as alleged in the Mayor's June 4, 2018 termination letter to Mr. Crawford.  
(Testimony of Mr. Crawford)<sup>3</sup>
35. Chief Goldman learned of Mr. Crawford's conduct and actions when he checked his Department e-mail in the morning hours of May 12 and read Sgt. Lee's report of the incident

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<sup>3</sup> I carefully considered Sgt. Lee's written statement and testimony that Mr. Crawford "threw" his firearm into the locker. I did not make such a finding for multiple reasons including: 1) Mr. Crawford's credible testimony to the contrary; 2) Sgt. Lee's somewhat equivocal *initial* testimony on this subject, initially testifying before the Commission that Mr. Crawford "pretty much" threw the firearm into the top shelf of the locker; 3) Officer Donnelly's credible testimony that Sgt. Lee, only minutes after the incident told him: "I *think* he [Crawford] threw his gun in the locker."; 4) the description of the physical configuration of the locker (two shelves) which would make it hard to "throw" the firearm into it; and 5) the very close distance between where it appears that Mr. Crawford was standing and the locker.

that occurred with Mr. Crawford earlier that morning. (Testimony of Chief Goldman, Exhibit 6)

36. Chief Goldman went to the police station to prepare paperwork placing Mr. Crawford on administrative leave. In addition, Chief Goldman prepared a notice to Mr. Crawford suspending his License to Carry Firearms. (Testimony of Chief Goldman, Exhibit 1, Exhibit A)
37. The on-duty sergeant, Sergeant Fraher, delivered the notices to Mr. Crawford at his residence. (Testimony of Chief Goldman, Exhibit 8)
38. In the days that followed, Chief Goldman reviewed the Department's audio and video recordings that captured Mr. Crawford's behavior. Following his review of the video, Chief Goldman converted the suspension of Mr. Crawford's LTC to a full revocation. (Testimony of Chief Goldman, Exhibit B)
39. As part of his review of the incident, Chief Goldman reviewed Mr. Crawford's arrest report of the shoplifting call at CVS. Chief Goldman agreed with Sgt. Lee's assessment that the report was deficient. Chief Goldman also spoke with Sgt. Lee and Officer Fallon as to the incident and Mr. Crawford's conduct. (Testimony of Chief Goldman)
40. Chief Goldman did not speak with Mr. Crawford and/or ask him for a written statement regarding the events of May 12<sup>th</sup>. (Testimony of Chief Goldman and Mr. Crawford)
41. Via an undated memorandum to Mayor Mazarella, Chief Goldman requested that the Mayor convene a hearing to consider whether to terminate Mr. Crawford. (Testimony of Chief Goldman, Exhibit 2)
42. As referenced above, Sgt. Lee's written statement (and testimony before the Commission) does not allege that Mr. Crawford threatened him and/or "came back at him" while in the

hallway. Chief Goldman's undated memo to the Mayor, however, states in part: "The video is shocking. Crawford clearly commits an unwarranted violent act *and appears on the verge of more violence ...*" (emphasis added) (Exhibit 2)

43. Chief Goldman's memo also states in part: "Moments later Sgt Lee heard three loud bangs from the basement. He stated to me *they sounded like gun shots.*" (emphasis added) (Exhibit 2) There is no reference that the bangs "sounded like gun shots" in Sgt. Lee's written statement *or* in his testimony before the Commission. (Exhibit 6 and Testimony of Sgt. Lee)
44. Chief Goldman's memo also states in part: "Crawford then removed his duty weapon from his holster and in a reckless and dangerous manner threw the firearm into his locker."  
(Exhibit 6)
45. Chief Goldman's memo also states in part: "I have suspended his LTC. After viewing the violent episode in the hallway it is my intent to exercise my exclusive right as the issuing authority to revoke his LTC permanently." (Exhibit 2)
46. A local appointing authority hearing took place on May 24, 2018 to determine whether Mr. Crawford should be terminated for alleged violations of Department rules 7.01 (Insubordination), 5.1 (Neglect), or his handling of his tactical vest in violation of Rule 4.02 (Conduct Unbecoming an Officer). (Exhibit 9)
47. At the local hearing, Chief Goldman made a verbal presentation and offered evidence of Mr. Crawford's alleged conduct for the Mayor to consider. The Mayor viewed the video that captured Mr. Crawford's conduct in the hallway, listened to the audio recording of the incident, and reviewed Mr. Crawford's disciplinary history with the Department, as well. (Testimony of Chief Goldman, Exhibit 4).

48. The Mayor terminated Mr. Crawford's employment by letter dated June 4, 2018. The termination letter stated in part:

"Your conduct towards a superior officer on May 12 represents conduct unbecoming an officer in the extreme. In response to simple requests that you amend your report to include material facts and better support the arrest of the alleged shoplifter, you exhibited gross insubordination to your sergeant. You left the OIC's office without acknowledging Sgt. Lee and the requests he made of you relative to the report and when he attempted to speak to you again the report room, you approached him in a very confrontational manner before exiting the room and violently throwing your tactical gear against the wall. When Sgt. Lee followed you into the hallway, you turned in his direction in a very aggressive manner and it looked like you were about to physically attack him. In the locker room, you showed a reckless disregard for your safety and the safety of your fellow officers in your handling of your loaded duty weapon. Lastly, you neglected your duty and abandoned your responsibilities when you unjustifiably lost your temper and yelled that you were going home after your sergeant asked you to simply revise your report." (emphasis added) (Exhibit 9)

49. On July 17, 2018, Mr. Crawford appealed Chief Goldman's revocation of his LTC in Leominster District Court. (Exhibit C)

50. The District Court subsequently held a hearing on Mr. Crawford's appeal on September 5, 2018, at which Chief Goldman and Mr. Crawford testified. (Exhibit W)

51. On September 6, 2018, the District Court upheld the Chief's revocation, stating the following reasons for the decision:

"The display of frustration/violence at work. Throwing a tactical vest (with radio attached) against a wall while in yelling conversation with Sergeant Lee (viewed video of incident listened to audio tape)." (Exhibit D)

52. As of the date of the hearing before the Civil Service Commission, Mr. Crawford had an appeal pending in Superior Court regarding the District Court's decision. (Stipulated)

### *Legal Standard*

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is

charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass.256 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300 (1997). "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

G.L. c. 31, § 43 provides: "If the commission by a preponderance of the evidence determines that there was just cause for an action taken against 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."

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law;" Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm'n., 43 Mass.App.Ct. 300, 304 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification

for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service;” School Comm. v. Civil Service Comm’n, 43 Mass.App.Ct. 486, 488 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

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

Under section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew;” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. However, “[t]he commission’s task.. is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision’,” which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority; Falmouth v. Civil Service Comm’n, Id., quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

### *Analysis*

By a preponderance of the evidence, the City has shown that Mr. Crawford engaged in substantial misconduct which adversely affects the public interest by: 1) standing up from his chair and standing in very close proximity to Sgt. Lee, while yelling at him, after Sgt. Lee was telling him to correct a deficient report; 2) throwing his tactical vest against the wall opposite

the report room with such force that it bounced off the wall and landed on the floor; and 3) telling Sgt. Lee that he was going home. These actions constitute a violation of the Department's rules regarding insubordination; neglect of duty; and conduct unbecoming an officer.

The City has not shown, by a preponderance of the evidence, that Mr. Crawford, as alleged by the City: 1) left the OIC's office without acknowledging Sgt. Lee and the requests he made of Mr. Crawford relative to the report; 2) turned in the direction of Sgt. Lee in the hallway in a very aggressive manner like he was about to physically attack Sgt. Lee; or 3) mishandled his firearm in the locker room by throwing it into his locker in a reckless manner.

As stated in the findings, Sgt. Lee testified that Mr. Crawford *did* acknowledge his request to edit the arrest report.

The City (Mayor)'s conclusion that ~~Sgt. Lee~~ **Mr. Crawford** turned in the direction of Sgt. Lee in the hallway in a very aggressive manner like he was about to physically attack Sgt. Lee is not supported by the video evidence or the testimony of Sgt. Lee. The video clearly shows that Mr. Crawford, after throwing his tactical vest against the wall, tripped on the vest and then turned around to pick up the vest before heading down the stairwell. Sgt. Lee never stated in his report that Mr. Crawford, while in the hallway, made any verbal threats against him and/or that Mr. Crawford appeared to be about to attack him. Sgt. Lee's candid and thoughtful testimony before the Commission confirmed that he (Sgt. Lee) never believed that Mr. Crawford was about to attack him in the hallway that morning. The City's false statements regarding this allegation against Mr. Crawford began with a memo from the Police Chief to the City's Mayor stating in part: "The video is shocking. Crawford clearly commits an unwarranted violent act *and appears on the verge of more violence ...*". Even the Police Chief, in his testimony before the Commission, could not support the Mayor's more damning allegation that Mr. Crawford "was

about to physically attack Sgt. Lee” which would constitute criminal conduct on the part of Mr. Crawford. Simply put, this just didn’t happen.

For all the reasons stated in the findings, the City has also not shown that Mr. Crawford mishandled his firearm in the locker room by throwing it into his locker in a reckless manner. There were three persons present in the locker room when this alleged incident occurred: Mr. Crawford, Sgt. Lee and Officer Fallon. The Police Chief, who personally conducted the “investigation” into this matter, never even spoke with Mr. Crawford regarding this allegation before reaching his conclusion. Officer Fallon’s report made no mention of Mr. Crawford throwing his firearm into his locker and the Police Chief appeared to do little or no follow-up to ask Officer Fallon exactly what he did – or did not – see in the locker room that morning. That leaves the statement of Sgt. Lee. As referenced previously, I found Sgt. Lee’s testimony before the Commission, in general, to be candid and forthcoming. He listened to the questions carefully; offered thoughtful answers; and took his entire sworn testimony before the Commission seriously. On this topic, however, I simply believe that Sgt. Lee mis-remembered what occurred here. Given the physical configuration of the locker; how close Mr. Crawford was standing to it; and the plausible testimony of Mr. Crawford, it is more likely that Mr. Crawford placed his firearm on the shelf near the top of the locker and then threw his *gear* into the larger, bottom section of the locker. In short, Mr. Crawford did not, as alleged by the City, mishandle his firearm on the morning in question.

Having determined that Mr. Crawford did engage in some misconduct, I must determine whether the level of discipline here (termination) was warranted.

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

“After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute



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

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

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

First, my findings of fact do differ significantly from those reported by the City. As stated above, after a de novo hearing, the preponderance of the evidence does not support some of the City’s more serious allegations against Mr. Crawford, including the unsupported allegations that Mr. Crawford was on the verge of attacking Sgt. Lee or that Mr. Crawford mishandled his firearm by throwing it into his locker.

Second, I considered whether favoritism or bias played any role in the City’s decision to terminate Mr. Crawford. I can’t ignore that Mr. Crawford, according to a separate MCAD filing, was one of only two (2) African American police officers in a seventy (70)-member police department. I did not find any bias on the part of Sgt. Lee. He is, by all accounts, an equal opportunity stickler, requiring that every report, in every circumstance, be thorough and precise.

While his practice, immediately upon his promotion, of documenting *and disciplining* officers for alleged errors and omissions may arguably not be the most effective management practice, there is no evidence that he singled out Mr. Crawford for submitting a deficient report. I do question, however, how the City reached its unsupported conclusion that Mr. Crawford was on the verge of physically attacking Sgt. Lee. That unsupported conclusion, and how it was reached, to me, is potentially troubling given that Mr. Crawford was one of only two (2) African-American police officers in the City. It raises the real question of whether some degree of implicit bias infected the decision-making process here.

Third, I considered Mr. Crawford's prior discipline. In 2017, he received a written warning for neglect of duty in violation of Department regulations and he also received two training notices for deficient performance in his capacity as a patrol officer. In 2016, Mr. Crawford was verbally counseled and removed from the Department's detail list for using his cell phone while working a detail in violation of Department policy. In 2015, Mr. Crawford received a verbal reprimand for neglect of duty in violation of Department regulations and two training notices. (Testimony of Chief Goldman, Exhibit G, Exhibit H, Exhibit I, Exhibit J, Exhibit K, Exhibit L, Exhibit M). By letter dated March 6, 2018, Mr. Crawford was suspended for a period of ten (10) working days, five (5) days of which were held in abeyance for neglect of duty and insubordination. The incident giving rise to this suspension occurred on November 23, 2017, when Mr. Crawford locked himself out of his police cruiser and failed to respond to a call for service. The resulting investigation into the incident conducted by the Department concluded that Mr. Crawford was insubordinate towards a superior officer (Sgt. Lee) during his investigatory interview and that he neglected his duties when he locked himself out of his cruiser without reporting the incident to dispatch. (Testimony of Chief Goldman, Exhibit F, Exhibit G).

Fourth, in regard to whether the discipline meted out here (termination) was consistent with the principles of uniformity and the equitable treatment of similarly situated individuals, I reviewed the discipline, and the underlying offenses, of other officers, referenced in Exhibits 15, 16, 17 and 18. Of those, the only potentially comparable matter occurred in in 2016. Officer A was given twenty (20) hours of punishment duty for: a) a 30-40 minute delay in responding to assist a fellow police officer, due to transporting a laborer working on his home; and b) confronting a sergeant in a “loud and angry manner” after the sergeant ordered the police officer to cover as house officer. The 2016 discipline letter from the Police Chief to Officer A states in part: “you are well aware of your past disciplinary issues [] that has factored into my decision.” (Exhibit 15)

After a careful review of the above-referenced factors, I have concluded that a modification of the discipline imposed (termination) by the City on June 4, 2018 is warranted. The City has not proven the most serious allegations against Mr. Crawford, and, for those allegations that have been proven, the City appears to have meted out far less discipline against others, including Officer A, who also had prior discipline. Mr. Crawford’s discipline should be modified to a sixty (60)-day suspension. This recognizes the Town’s failure to prove the most serious allegations while considering that Crawford’s insubordination and angry outburst was more severe than Officer A’s misconduct.

Finally, although the termination letter makes no reference to it, I need to separately consider that Chief Goldman suspended, and subsequently revoked, Mr. Crawford’s LTC permit. Mr. Crawford sought review of the Chief’s revocation in the Leominster District Court. Prior to the hearing before the Commission, the court upheld the Chief’s revocation, following a court hearing at which Mr. Crawford and Chief Goldman testified.

The City argues that, given that the Department requires an officer to possess and maintain a valid LTC permit to serve as a police officer, Mr. Crawford is not able to perform the essential functions of his position if he lacks the required permit, thus providing further justification for his termination. Mr. Crawford's post-hearing brief does not address the issue.

The courts have acknowledged a potential reason for allowing reinstatement of police officers who do not possess LTCs, even when such possession is made a condition of employment by a rule, regulation or collective bargaining agreement. Allowing the revocation or suspension of an LTC to trump a finding that there was no just cause for discharge would nullify the just cause requirements embodied in G.L. c. 31, § 43 or a collective bargaining agreement.

In confirming an arbitrator's award reinstating a municipal police officer, the Appeals Court, in an unpublished decision, noted:

Just cause for dismissal is not established by the unadorned fact that a chief exercises his discretion to refuse to issue an employee a firearm, because, if that were all that was needed to dismiss a police officer, the officer's contractual right not to be discharged except for just cause is meaningless.

City Manager of Worcester v. New England Police Benev. Ass'n, Local 911, 85 Mass. App. Ct. 1119, 2014 WL 1884385, \*1 (2014) (Rule 1:28).

Here, in the instant appeal, the Chief's decision to revoke Mr. Crawford's LTC has been affirmed by the District Court; Mr. Crawford has appealed that ruling to Superior Court; and that appeal is still pending. While my findings and conclusions are based on considerably more evidence (including very credible and candid testimony from Sgt. Lee and others) than was before the District Court, I cannot presume or predict the outcome of the Superior Court Appeal.<sup>4</sup>

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<sup>4</sup> The evidence presented to me does not corroborate the Chief's testimony that Mr. Crawford was "on the verge of violence" nor does it corroborate the Mayor's further inference that Mr. Crawford was about to attack Sgt. Lee or that he "threw" his firearm in a "reckless and dangerous manner". Neither of those individuals are percipient witnesses to the incident. Sgt. Lee, himself, does not claim that he thought he was ever in jeopardy of being attacked..

For this reason, and because of the inherent requirement of a police officer to carry a firearm, the relief ordered by the Commission here is contingent upon a successful appeal by Mr. Crawford of the District Court's decision to affirm the revocation of his LTC.

*Conclusion*

Mr. Crawford's appeal under Docket No. D1-18-109 is hereby ***allowed in part***. His termination is hereby modified to a sixty (60) day suspension. Said relief is contingent upon Mr. Crawford successfully appealing the District Court's decision to affirm the Police Chief's revocation of his license to carry a firearm.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan\*, Commissioners) on May 9, 2019.

Any 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:  
Scott A. Lathrop, Esq. (for Appellant)  
Brian M. Maser, Esq. (for Respondent)

\*Commissioner Tivnan concurs in the Decision insofar as it finds that the Appellant's conduct does not warrant termination, but would impose further remedial discipline for the misconduct which the Appellant committed and was not his first offense.

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108

CEDRIC CRAWFORD,  
Appellant

v.

D1-18-109

CITY OF LEOMINSTER,  
Respondent

**CONCURRING OPINION OF COMMISSIONER CAMUSO**

I concur in the Decision as I agree that the findings and credibility determinations of the Presiding Commissioner, Chairman Bowman, show that the City did not establish just cause for terminating the Appellant for the limited unprofessional behavior that is supported by the evidence. I write to note that I believe the statement in the Decision that there is an “inherent requirement of a police officer to carry a firearm” is not necessary to this Decision and is, in my view, inconsistent with my understanding that a law enforcement officer can, in appropriate circumstances, be placed on limited or restricted duty that does not require that he or she be required to carry a firearm. Thus, I do not believe that the Commission’s authority to reinstate an officer, in an appropriate case, necessarily must be conditioned on that officer’s prior reinstatement, reissuance or renewal of a revoked or lapsed license to carry.

/s/ Paul Camuso