

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1984CV01851

CITY OF LEOMINSTER

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION and CEDRIC CRAWFORD
Defendants.

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION
FOR JUDGMENT ON THE PLEADINGS

The plaintiff, City of Leominster, brought this action to seek judicial review and reversal of a decision issued by the Massachusetts Civil Service Commission (Commission), see G. L. c. 31, § 43, and c. 30A, § 14, that granted, in part, Defendant Crawford's ("Crawford") appeal of a determination made by the city of Leominster (City) to terminate his employment as a police officer and reduce the discipline to a 60-day suspension. The case is before the Court now on the plaintiff's motion for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c), in accordance with the Superior Court procedure for resolution of administrative appeals. See Superior Court Standing Order 1-96 (2017).

NOTICE SENT
03.23.20
S.A.L.
MASS.A.G.
R.L.Q. JR.
K.P./LAW
J.M.C.
B.M.M.

(LAT)

After hearing, and upon review of the administrative record, see G. L. c. 30A, § 14(4) and (5), the Court **DENIES** the plaintiff's motion. For the following reasons, the plaintiff has failed to meet his burden "of proving the invalidity of the Commission's decision," *Mendonca v. Civil Serv. Comm'n*, 86 Mass. App. Ct. 757, 762 (2014), citing *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 242 (2006).

Discussion

On September 24, 2018, a hearing was conducted before the Civil Service Commission and a decision was ultimately rendered where the Commission unanimously voted to modify Crawford's termination to a 60 day suspension. The majority voted to make the ruling contingent upon Crawford successfully appealing the District Court's decision to affirm the Police Chief's revocation of his license to carry a firearm. The Commission heard from six witnesses and viewed 19 exhibits. The Commission found by a preponderance of the credible evidence that the City has shown that 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. The Commission found that these actions constitute a violation of the Department's rules regarding insubordination; neglect of duty; and conduct unbecoming an officer.

The Commission also found that The City had not shown by a preponderance of the evidence, that 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.

The administrative record supports the following: Officer Cedric Crawford, an Army combat veteran, was appointed as a police officer for the City of Leominster in 2012. On June 4, 2018, the City terminated Crawford's employment for violating Department Rules on

Insubordination, Neglect of Duty, and Conduct Unbecoming of an Officer, based on an incident that occurred during his shift on May 11, 2018. Prior to June 4, 2018, Crawford had been disciplined on at least four prior occasions, with discipline ranging from a verbal warning to a written warning to suspension.

Sgt. Vang Lee ("Lee"), an 11-year veteran of the Leominster Police Department, became a sergeant on October 31, 2017. Sgt. Lee supervised 12 officers and in the short time he has been a sergeant, he has administered discipline 66 times.

On May 11, 2018, Crawford and Lee were working the 11 PM to 7 AM shift. At approximately 1 AM, Crawford made an arrest for a shoplifting from CVS. He brought the suspect back to the CVS to confirm that he was the perpetrator and then transported the individual to the station for booking. Lee was the Officer In Charge and was the booking officer that night. Upon reviewing Crawford's report of the CVS incident, Lee felt the report to be deficient and contacted Crawford over the Department's radio system telling him to return to the station. When Crawford returned, Lee informed him that he needed to add more information to his report. Crawford acknowledged Lee by nodding his head in response to Lee's comments and exited the office. Crawford then went to amend the report. Shortly thereafter, Lee and Ofc. Fallon entered the room where Crawford was seated at a computer terminal. At this point, Lee explained to Crawford the importance of speaking to the reporting party. Crawford responded that he had never done that in the six years that he worked in Leominster under similar circumstances. Lee told Crawford that from now on Crawford would be expected to do so. Crawford stood up from his chair, approached Lee, within inches of his face, and started to yell. Lee told Crawford to step back and Crawford did. Crawford then walked around Lee, took off his tactical vest and slammed it against the wall, where it bounced off the wall and landed on the

floor. This encounter was captured on a video and audio recording. Crawford then picked up his vest and yelled, "I can't take this shit no more, I'm going home" or words to that effect. Lee directed the on-duty dispatcher to contact Ofc. Donnelly, the third-shift union steward, to report back to the police station to speak to Crawford. Lee heard a loud bang coming from the basement of the building and asked Ofc. Fallon to accompany him downstairs. When Lee and Fallon entered the officer's locker room, they saw Crawford seated on a bench in front of his open locker, resting his head in his hands. Lee asked Crawford if he was okay and Crawford asked Lee why he was badgering him. Lee responded that he was not badgering Crawford but just trying to make him a better officer. When Lee then told Crawford that he did not want to see him lose his job, Crawford began to cry and said he "had a lot of shit going on." Lee alleged that Crawford then threw his loaded firearm into his locker. Crawford disputes this. In his termination letter to Crawford, the mayor stated that Crawford "recklessly and dangerously threw the loaded weapon into [his] locker." The Commission reached a different conclusion and Chairman Christopher Bowman wrote:

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.

The administrative record supports affirming that the Commission had, as required, "substantial evidence" upon which to ground its decision to overturn the City's decision to terminate Crawford and to reduce the discipline to a 60-day suspension. See *Brackett v. Civil Serv.*

Comm'n, supra at 241-242, and cases cited.

“Substantial evidence” in this context means “such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Andrews v. Civil Serv. Comm'n*, 446 Mass. 611, 616 (2006); see G. L. c. 30A, § 1(6). In evaluating whether the record contains such a quantum of evidence, the court “defer[s] entirely to the Commission on issues of credibility and the weight to be accorded to the evidence.” *Thompson v. Civil Serv. Comm'n*, 90 Mass. App. Ct. 462, 469 (2016). Under the substantial evidence test, a conclusion made by the Commission fails judicial scrutiny only where “the evidence points to no felt or appreciable probability of the conclusion or points to an overwhelming probability of the contrary.” *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 692 (2012), quoting from *Duggan v. Board of Registration in Nursing*, 456 Mass. 666, 674 (2010). This standard was met here.

Once the Commission determined that Crawford engaged in misconduct, it went on to determine whether the level of discipline, i.e. termination, was warranted. *Falmouth v. Civil Service Commission*, 447 Mass. 14 (2006) (Civil Service Commission has the authority to modify the penalty so long as the commission provides a reasonable explanation for the modification.) “Unless the commission's findings of fact differ significantly from those reported by the town 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* at 824; *Police Comm'r of Boston v. Civil Serv. Comm'n*, 39 Mass.App.Ct. 594, 600 (1996). Here, it is clear that the Commission’s findings of fact differed significantly from those reported by the City. “In its review, the commission is to find the facts afresh, and in so doing, the commission is not limited to examining the evidence

that was before the appointing authority.” *Beverly v. Civil Service Commission*, 78 Mass. App. Ct. 182, 187 (2010). The decision by the Commission, after a de novo hearing, that the preponderance of the evidence did not support some of the City’s more serious allegations against Crawford, including the unsupported allegations that Crawford was on the verge of attacking Sgt. Lee or Crawford mishandled his firearm by throwing it into his locker, is amply supported by the record. *Id.* at 188.

It is clear to this court that the Commission considered whether favoritism or bias played any role in the City’s decision to terminate Crawford, who is one of only two African-American police officers in a 70 member Police Department. The Commission concluded that bias did not play a role, finding Lee to be “an equal opportunity stickler.” The Commission did express concern however, about the manner in which the “unsupported conclusion that Mr. Crawford was on the verge of physically attacking Sgt. Lee” was reached, calling it “potentially troubling given that Mr. Crawford was one of only two African-American American police officers in the City. It raises the real question of whether some degree of implicit bias infected the decision making process here.” It is also clear to this court that the Commission considered Crawford’s prior history of discipline.

It is clear to this court that the Commission weighed the discipline meted out here to Crawford, against the discipline and underlying offenses of other officers to see whether the termination was consistent with the principles of uniformity and equitable treatment of similarly situated individuals. The Commission concluded that a modification of the termination is warranted, particularly where the City has not proven the most serious allegations against Crawford. The Commission found that for the allegations that were proven, the City appears to have meted out far less discipline against others similarly situated.

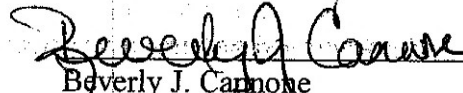
It is clear to this court that the Commission considered separately that Chief Goldman suspended and then revoked Crawford's License To Carry permit. The District Court upheld the Chief's decision and Crawford has appealed that ruling to the Superior Court. That appeal is still pending. The factual findings and inferences drawn by the Commission lied within the province of the Commission, as a matter of administrative law. See *Thompson v. Civil Serv. Comm'n*, *supra*. A fair review of the record reveals that the factual findings and inferences all had evidentiary support sufficient to meet the substantial evidence standard, see *Police Dep't of Boston v. Kavaleski*, *supra*.

In reviewing a decision issued by the commission, a court must give "due weight to the experience, technical competence, and specialized knowledge of [the commission], as well as to the discretionary authority conferred upon it," G. L. c. 30A, § 14 (7). *Brackett v. Civil Serv. Comm'n*, *supra* at 241-242. The reviewing court cannot substitute its judgment for that of the commission, *Thomas v. Civil Serv. Comm'n*, 48 Mass. App. Ct. 446, 451 (2000); *Commissioners of Civ. Serv. v. Municipal Court of Boston*, 369 Mass. 84, 89 (1975), and, under general principles of administrative law, does not decide whether, faced with the same set of facts, it would have arrived at the same conclusion, but whether a contrary conclusion was not merely a possible, but a necessary inference, see *Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd.*, 457 Mass. 663, 690 (2010), quoting from *Commissioner of Revenue v. Houghton Mifflin Co.*, 423 Mass. 42, 43 (1996).

Here, in so considering the administrative record under that deferential standard, the Court cannot conclude the Commission erred in modifying Crawford's termination to a 60 day suspension, particularly where the Commission determined that Crawford did not throw his firearm into the locker, the most serious allegation against him.

ORDER

It therefore is **ORDERED** that the City of Leominster's Motion for Judgment on the Pleadings be, and hereby is, **DENIED**.


Beverly J. Canone
Associate Justice of the Superior Court

DATE: March 12, 2020