

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Michael Crowley
Appellant

v.

Docket Nos.D1-08-260 & D-09-192

City of Boston,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Michael Crowley (hereafter "Crowley" or "Appellant") filed timely appeals with the Civil Service Commission ("Commission") claiming that the City of Boston Transportation Department (hereafter "City" or "Appointing Authority") did not have just cause regarding two separate disciplinary matters: 1) a five-day suspension (D-09-192); and 2) the Appellant's ultimate termination (D1-08-260). The two appeals were consolidated by the Commission. A hearing was held on August 12, 2009 at the offices of the Civil Service Commission. As no written notice was received from either

party, the hearing was declared private. The hearing was digitally recorded. Following the hearing, the parties submitted proposed decisions.

FINDINGS OF FACT

Based upon the documents entered into evidence, (exhibits 1 through 10), the parties stipulated facts (“Stip. Facts”) (the exhibits, testimony and stipulation apply to both appeals) and the testimony of the Director of Operations, Paul F. McColgan Sr.; Meter Operations Foremen, Kevin Ruane; Parking Meter Maintenance Supervisor, Timothy Hallahan; and the Appellant Michael Crowley, **I make the following findings of fact:**

1. The Appellant worked full-time as a parking meter operations person for the City of Boston from February 17, 1999 until he was terminated on October 8, 2008. The Appellant apparently was employed in this position the entire period of his City employment. (Stip. Facts).
2. As a parking meter operations person, the Appellant was responsible for installing meters, removing meters, repairing broken meters, and working in the shop. (Stip. Facts).

APPELLANT’S PAST DISCIPLINE

3. On November 19, 2004 the Appellant was counseled for entering a barroom while on his work shift. (Stip. Facts).
4. The Appellant was suspended for five (5) days on February 24, 2005 for conducting personal business on work time and in a City vehicle, being out of his assigned work area, and poor work performance. (Stip. Facts).
5. On April 9, 2007, the Appellant was counseled for reckless driving. (Stip. Facts).
6. On April 23, 2007, the Appellant was issued a written warning for being off the payroll without any accrued time to cover the absence. (Stip. Facts).

7. On June 21, 2007, the Appellant was issued a one (1) day suspension for being off the payroll without accrued time on nine (9) different occasions. (Stip. Facts).

8. On November 1, 2007, the Appellant was counseled for driving dangerously after the Department received a complaint from a concerned motorist who claimed she witnessed the Appellant's vehicle driving erratically on Commonwealth Avenue. (Stip. Facts).

9. On November 11, 2007, the Appellant was counseled for reckless and dangerous driving. (Stip. Facts).

10. On November 27, 2007, the appellant was counseled for his driving dangerously after his supervisor witnessed him driving at an excessive rate of speed in the Southampton Street parking lot. (Stip. Facts).

11. On February 15, 2008 the Appellant received a written warning for his reckless and dangerous driving after his supervisor received a telephone call from a concerned motorist on January 24, 2008. (Stip. Facts).

12. On March 7, 2008, the Appellant was issued a verbal warning for using profanity on the two-way radio system. (Stip. Facts).

FIVE (5) DAY SUSPENSION, DOCKET NO D-09-192

13. On July 17, 2008, by letter, the Appellant was suspended for five days for conduct unbecoming a City employee, including insubordination towards a supervisor, use of inappropriate and offensive language in the workplace. These allegations stem from incidents that occurred on July 14, 15 and 16, 2008. (*Exhibit 1*).

14. On July 14, 2008, the Appellant approached Kevin Ruane, the Meter Operations Foreman, and asked where his supervisor was for the day. (T. Ruane, Ex. #1). Mr. Ruane responded that the Appellant's supervisor was out of the office and, therefore, he was the acting

supervisor. Upon hearing this, the Appellant told Mr. Ruane that he was not a supervisor, but merely a “foreskin foreman.” (T. Ruane, Ex. #1).

15. On the same day, at approximately 10:30 a.m., Mr. Ruane met the Appellant while he was on his second route for the day. (T. Ruane, Ex. #1). The Appellant indicated that he was uncertain as to whether he could complete his assigned routes for the day because he had encountered many out of order machines. (T. Ruane). Mr. Ruane informed the Appellant that he was scheduled to work from 6:30 a.m. to 2:30 p.m. and that he would have until 2:00 p.m. to complete the repairs. (T. Ruane). In response, the Appellant told Mr. Ruane that he always returned to the Operations Division shop between 1:15 p.m. and 1:30 p.m. (T. Ruane). Mr. Ruane informed the Appellant that he should only return to the shop early if he completed all of his scheduled routes. (T. Ruane).

16. At approximately 1:00 p.m., the Appellant “called off his route” and returned to the base. (T. Ruane, Ex. #1). When Mr. Ruane saw him back in the office he asked if had completed all of his routes for the day. (T. Ruane, Ex. #1). The Appellant responded that he had done enough for the day. (T. Ruane, Ex. #1). Mr. Ruane asked the Appellant to write a report as to why he had returned to the office early when he had not completed all of his scheduled routes. (T. Ruane, Ex. #1). In front of fellow co-workers, the appellant refused, pushed his paperwork in front of Mr. Ruane and called him a “fuckin’ jackass.” (T. Ruane, Ex. #1). Mr. Ruane asked the Appellant to document what had transpired. Although Mr. Ruane requested the report twice, the Appellant never produced one. (T. Ruane, Ex. #1).

17. On July 15, 2008, upon being told of the previous day’s events, the Appellant’s supervisor, Mr. Hallahan, asked the Appellant for a report. (T. Hallahan, Ex. #1). The Appellant

drafted a document which did not explain why he had not completed his routes, but rather discussed his negative personal opinions about Mr. Ruane. (T. Hallahan, Ex. #2).

18. On the morning of July 16, 2008, in front of co-workers and his supervisor, the Appellant pointed his left hand in a threatening manner at Mr. Ruane and said “it’s not over between me and him. It’s not over...” (Ex. #1). Upon witnessing this, Mr. Hallahan told the Appellant that he was “out of line” and that such behavior was unprofessional and would not be tolerated. (T. Hallahan, Ex. #1). Mr. Hallahan then told the Appellant to collect his equipment, proceed to the field and commence his work for the day. (T. Hallahan, Ex. #1). Mr. Ruane informed Mr. Hallahan that he had heard the Appellant’s remarks and that he understood them to be a threat and felt uncomfortable. (T. Ruane, Ex. #1).

19. On July 16th, Daniel Politano, Assistant Supervisor Parking Enforcement, notified Mr. McColgan that on June 24th he encountered the Appellant in the Frontage Yard parking lot. When Mr. Politano backed his car up, the Appellant, who was in the car behind him, “jumped out of [his] car and waved his arm wildly.” (Ex. #1). When Mr. Politano entered the office, the Appellant walked by Mr. Politano’s office made threatening gestures with his arms and told him to “go fuck [himself].” (Ex. #1). Mr. Politano told Mr. McColgan that he felt threatened and intimidated by the interaction. (T. McColgan, Ex. #1).

20. On July 17, 2008, the Appellant was suspended for five (5) days for “conduct unbecoming a City of Boston employee on multiple occasions, including insubordination towards [his] supervisor, use of inappropriate and offensive language in the workplace and an incident that occurred at BTB’s Frontage Road facility.” (Stip. Facts). The suspension letter indicated in part that “this five (5) day suspension is being given so that you may have an

opportunity to correct your behavior. Any future incidents involving similar misconduct will lead to further discipline, up to and including termination.” (Stip. Facts).

TERMINATION, DOCKET NO. D1-08-260

21. On October 8, 2008, the Appellant was terminated for events that occurred on September 18 and September 24, 2008. (Exhibit #3)

22. The Appellant was scheduled to work from 6:30 a.m. to 2:30 p.m. on September 18, 2008, and was assigned to do repair work that day. (Stip. Facts). One of the Appellant’s routes contained meters on Washington Street. (Stip. Facts).

23. At approximately 1:00 p.m. on September 18, 2008, the foreman, Mr. Ruane, who was performing a routine inspection, contacted the Mr. Hallahan, to report that he had come to an area on Washington Street where nine (9) meters were unrepaired. (Stip. Facts). The meters that were unrepaired were located on the Appellant’s scheduled route that day. (Stip. Facts, T. Hallahan and Ruane).

24. At approximately 1:30 p.m. on September 18th the Appellant returned to the shop. (Stip. Facts). When Mr. Hallahan asked about the broken meters, the Appellant stated that he forgot to fix those meters. (Stip. Facts). Mr. Hallahan gave the Appellant a list the nine out-of-order meters with their corresponding serial numbers. (T. Hallahan). The Appellant was then asked to go back and fix the meters. (Stip. Facts). The Appellant said that he did not understand why he should fix the meters if Mr. Hallahan was going to document the incident anyway. (T. Hallahan). The Appellant then said that he would go and repair the meters and left the shop to go fix them. (Stip. Facts).

25. At approximately 2:10 p.m., the Appellant returned to the shop and indicated he had repaired the meters. (Stip. Facts).

26. On the following day, September 19, 2008 at approximately 8:15 a.m., Mr. Hallahan asked Mr. Ruane to go back to Washington Street and check that the broken meters he had inspected the day before had in fact been repaired by the Appellant. (Ex. #3). Upon inspection, Mr. Ruane observed the same nine meters from the day before were unrepaired and all the functioning meters remained in order. (T. Ruane, Ex. #3). All of the meters on Washington Street were in the same condition as the previous day. (T. Ruane, Ex. #1). Mr. Hallahan called the Appellant via radio and questioned him regarding why the meters had not been repaired. (T. Hallahan). The Appellant responded that he “must have repaired the wrong meters and wasn’t exactly sure where [the] meters were located.” (Ex. #1). The Appellant, however, testified before the Commission that he had in fact repaired the meters and that they must have broken during the night following his repair, as it is a high crime area. (T. Appellant). Mr. Hallahan instructed the Appellant to return to Washington Street and repair the meters. (T. Hallahan, Ex. #3).

27. The Appellant was scheduled to work from 6:30 a.m. to 2:30 p.m. on September 24, 2008, and was assigned to do repair work that day. (Stip. Facts). At approximately 10:30 a.m., the supervisor and foreman observed the Appellant walking his repair route while talking on his cell phone. (Stip. Facts). Mr. Hallahan and Mr. Ruane observed the Appellant who scanned meters with his right hand while he talked on the phone with his left. (T. Hallahan). Mr. Hallahan got out of his vehicle and checked the meters, whereupon he observed two broken meters the Appellant walked past without repairing. (Stip. Facts, T. Hallahan).

28. The Appellant was contacted by the supervisor who asked his location and told him he would meet him at his vehicle. (Stip. Facts) The supervisor questioned the Appellant about the two broken meters, a brief conversation ensued, and the Appellant was instructed to return to the shop. (Stip. Facts).

29. Approximately fifteen minutes later, Mr. Hallahan approached the Appellant on Hudson Street, while he was trying to unlock his car door with a coat hanger. (T. Hallahan). Mr. Hallahan asked the Appellant to explain why he had walked by two broken meters without repairing them. (T. Hallahan). The Appellant turned toward Mr. Hallahan and shouted, “What the fuck did I do to you? Why the fuck are you bothering me?” (T. Hallahan, Ex. #3). Following this conversation, the Appellant was told his language was inappropriate and he should return to the shop. (T. Hallahan, T. Ruane, Ex. #3).

30. Upon returning to the shop the Appellant was instructed to write an incident report about what occurred. (Stip. Facts). The Appellant signed out of work and left at 11:00 a.m., without writing a report. (Stip. Facts, T. Hallahan).

31. The Appellant reported to work on September 25th, but signed out and left at 7:00 a.m. (Stip. Facts). Prior to leaving, the Appellant told his supervisor that he had not written his report of the incident that had occurred the previous day. (T. Hallahan).

32. The Appellant called in later that day and informed his manager that he would not be coming in to work the following day. (T. Hallahan, Ex. #3).

33. On October 2, 2008, the Appellant was notified by a certified letter that he would be suspended for five (5) days and a hearing was scheduled for October 7, 2008 to contemplate further discipline up to and including discipline. (Stip. Facts).

34. The disciplinary hearing was held on October 7th and on October 8th, 2008; the Appellant was notified that he was being terminated effective immediately. (Stip. Facts).

35. The Appellant was terminated from employment for “insubordination, conduct unbecoming a City of Boston employee, and failure to perform [his] job” following two separate incidents in September of 2008 (9/18 and 9/24). (Stip. Facts).

36. Witness Paul McColgan, Director of Operations for the Boston Transportation Department testified in a forthright and professional manner. He is big man with a heavy-set build. He appeared in a suit and tie and carried himself in a way that projected a responsible manner. His answers indicated that he is bright and experienced; having risen up through the ranks at the Department. He explained how he and the other supervisory staff have been trained to timely document insubordination or other misconduct for the sake of clarity and reliability. His answers were unhesitant and his language tone and delivery rang true. I detected no bias or ill will toward the Appellant. I find him to be a credible and reliable witness. (Exhibits, testimony and demeanor of McColgan)

37. Witness Kevin Ruane, Meter Forman for the Boston Transportation Department is neat in appearance and attire. He is quiet, polite and unassuming in demeanor; projecting a strong quiet type personality. He described the relevant incidents in a clear unequivocal manner. He appears to have a good memory, did not equivocate and held up well under cross examination. I detected no bias or ill will toward the Appellant. He seemed genuinely offended by the Appellant's claim that he treated him unfairly. I find him to be a credible and reliable witness. (Exhibits, testimony and demeanor of Ruane)

38. Witness Timothy Hallahan, Parking Meter Maintenance Supervisor for the Boston Transportation Department is a big man with a neat and appropriate attire and demeanor. He also described the relevant circumstances clearly, in appropriate detail. He is very precise and professional in his responses and appeared to have good memory. He seems to be able to control and address contentious situations appropriately. He described the Appellant's attempt at intimidation and the insubordinate behavior. The Appellant clearly showed poor judgment by exhibiting inappropriate behavior and language in this witness's presence. This witness is a take

charge, no-nonsense person and unlikely to be intimidated. He described how Ruane's facial expressions and demeanor reflected that he was under an intimidating attack by the Appellant. His responses to questions were unequivocal, rang true and he held up well under cross-examination. The witness had a good prior working and social relationship with the Appellant, exclusive of these disciplinary matters. I detected no bias or ill will toward the Appellant. I find him to be a credible and reliable witness. (Exhibits, testimony and demeanor of Ruane)

39. The Appellant, Michael Crowley, appeared as a witness in a shirt and tie. He projects a rough, "chippy", and chip on his shoulder attitude in language, appearance and demeanor. He is bigger than and acts rougher than Ruane. His answers are spontaneously those of a "Wiseguy". He is aware of this tendency and noticeably tried to retract and reform himself as he testified. His effort was not convincing. He admitted to some of the statements he made, in the face of the solid, corroborated evidence of them. He claims unconvincingly that the "foreskin foreman" remark to Ruane was intended as a joke. He made a great effort to describe the variety and frequency of damage to meters ("high crime area") as a defensive explanation. He denied shouting or attempting to intimidate during these incidents. He attempted to deflect blame on to the others involved, especially Ruane. He described the complainant employee Politano in the previous driving incident on July 16, 2008, as a "raving lunatic". He even invoked the name of his ill mother to induce sympathy. The negative testimonial language, tone, attitude and demeanor that he displayed toward the City's witnesses is extreme and contradictory to my positive assessment of those witnesses. The Appellant testified here that he did not previously testify at any of the City's disciplinary hearing in this matter. I find that the Appellant's testimony at this hearing lacks credibility or reliability, except for his factual adverse admissions.

Otherwise, I attribute little or no weight to his testimony. (Exhibits, testimony and demeanor of Michael Crowley)

CONCLUSION

The role of the Civil Service Commission is to determine “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is “justified” when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The Commission determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority’s burden of proof is one of a preponderance of the evidence “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). In reviewing an appeal under

G.L. c. 31, § 43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an appellant, the Commission shall affirm the action of the appointing authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). Furthermore, it is the function of the Commission to determine the credibility of testimony presented before it and what degree of credibility should be attached to a witness testimony. See School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978); Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission, 401 Mass. 526, 529 (1988); Doherty v. Retirement Board of Medford, 425 Mass. 130, 141 (1997).

In the present case, it is determined that the Appointing Authority did demonstrate by a preponderance of the credible evidence in the record that there was just cause for the Appellant’s five-day suspension. In addition, it is determined that the Appointing Authority did demonstrate by a preponderance of the credible evidence in the record that there was just cause to support the termination of the Appellant.

Here, the Commission is charged with reviewing whether the City had just cause for giving the Appellant a five-day suspension on July 17, 2008 and terminating him on October 8, 2008.

A five day suspension was appropriate where the Appellant's behavior was egregious and unmitigated by known circumstances. The Appellant made repeated threats towards a superior and failed to perform his basic job responsibilities. The Appellant testified before the Commission that on July 14, 2008 he called Mr. Ruane a "foreskin foreman," however, he said that such speech was customarily spoken in the shop. Both Mr. Hallahan and Mr. Ruane testified that was not the case and a professional tone was used in the department. In fact, the Appellant had previously received a written warning for using profanity in the office, indicating that he was aware that offensive and inappropriate speech was unacceptable. In addition to his profane speech, the Appellant did not perform his basic job responsibilities. The Appellant disregarded direct instructions from his superior to complete his assigned routes daily routes. The Appellant returned to the office an hour early despite specific instructions to remain in the field until 2:00 p.m. Upon returning to the office without having completed his assigned work, the Appellant again directed profane language at Mr. Ruane in the presence co-workers, which created a tense and unpleasant work environment for both Mr. Ruane and his co-workers. The Appellant's outbursts were unprovoked and he provided no credible explanation for either his behavior or ignoring his superior's direction. Therefore, just cause existed for the Appellant's five-day suspension.

The Appellant's multiple failures to perform work assignments properly, insubordination towards a superior, use of profane language and acts of misconduct, clearly establish the reasonable justification of the Appointing Authority in discharging the Appellant. The Appellant had eleven prior incidents of counseling or discipline. The Appellant not only failed to repair meters on his scheduled route on September 18th, but upon returning to the route, he failed to repair them.

The Appellant's testimony is not believable. He has presented at least two explanations why the meters were unrepaired; 1) that he did not know that the nine meters were on his route, and 2) the meters were tampered with after having been repaired. Neither explanation is credible. Despite being asked to write a report of what had occurred on the route, the Appellant disregarded his supervisor's request and did not document what transpired. The Appellant was a ten year employee and had been assigned this route previously. There is no explanation for why the meters which he asserts he fixed at 2:00 p.m. on September 19th would be in the same condition at 8:15 a.m. the following morning. Two work days later, the Appellant was observed skipping over several broken meters while on his route. When questioned by Mr. Hallahan, the Appellant became defensive and responded to his supervisor with profane language.

The Appointing Authority had just cause to terminate the Appellant, who despite having been repeatedly disciplined, continued to fail to perform his job responsibilities, act insubordinately, and direct inappropriate language at his superiors.

The Appointing Authority has demonstrated just cause for the suspension and termination of the Appellant based on his insubordination and poor work performance long term prior discipline. The Appellant has been disruptive and disagreeable employee for a significant period of time. Over the course of approximately ten years, the Appellant has proved that he lacks the ability to correct his behavior. Accordingly, the Appellant's appeal on Docket No. D-09-192 is hereby *dismissed* and his appeal on Docket No. D1-08-262 is hereby *dismissed*.

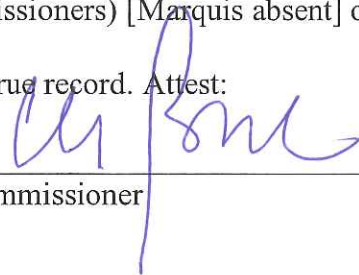
Civil Service Commission,



Daniel M. Henderson,
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell, and, Stein, Commissioners) [Marquis absent] on March 24, 2011.

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice sent to:

Michael Maccaro, Atty. (for Appellant)

Jordan N. Ablon, Atty. (Appointing Authority)