

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

LOUIS DeBENEDICTIS,
Appellant

v.

D-18-073

BOSTON FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Louis DeBenedictis

Appearance for Respondent:

Kate M. Kleimola, Esq.
Boston City Hall
Room 624
Boston, MA 02201

Commissioner:

Christopher C. Bowman

DECISION

On May 2, 2018, the Appellant, Louis DeBenedictis (Firefighter DeBenedictis or Appellant), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Fire Department (BFD) to suspend him for sixty (60) days for: conduct prejudicial to good order; and conduct unbecoming a member, whether on or off duty, which tends to lower the service in the estimation of the public.

A pre-hearing conference was held at the offices of the Commission on June 5, 2018 and a full hearing was held at the same location on April 26, 2019. A digital recording was created of the hearing and both parties were provided with a CD of the proceeding.¹ Following the close of

¹ The Commission subsequently had a transcript of the hearing prepared.

the hearing, the BFD submitted a proposed decision on May 29, 2019. The Appellant did not submit a proposed decision.

FINDINGS OF FACT

Based upon the documents admitted into evidence (Exhibits 1-22) and the testimony of:

Called by the BFD:

- Civilian A: Manager at a general contracting company;
- Civilian B: Employee at a general contracting company;
- Lt. William Gillis, Boston Fire Department;

Called by Firefighter DeBenedictis:

- Louis DeBenedictis, Appellant.

I make the following findings of fact:

1. The Appellant has been a Boston firefighter since 2014. He was a firefighter in another community for several years before joining the BFD. (Stipulated Facts) He is currently out on medical leave and does not anticipate returning as a firefighter. (Testimony of Appellant)
2. In October 2016, the Appellant, per his request, was transferred to a fire house in the North End of Boston. He had fond memories of this firehouse, as his grandfather and uncles, who were residents of the North End, would take him there when he was a child to watch the fire apparatus leave the building. (Testimony of Appellant)
3. In December 2016, the Appellant moved from Dorchester, where he had off-street parking, to the North End. Although he obtained a resident parking sticker, parking was always a problem in this congested part of the City, often requiring the Appellant to circle around looking for a parking spot for up to 30-60 minutes and park up to a $\frac{3}{4}$ mile away from his residence. (Testimony of Appellant)

4. From July 2016 to March 2018, a general contracting company was building a large, single-family residence on Moon Street in the North End, not far from where the Appellant resided. (Testimony of Civilian A)
5. At some point, the general contracting company, at a cost of \$668 per month, received a permit from the City to occupy four (4) parking spaces in front of or near the Moon Street project from 7:00 A.M. to 4:00 P.M. Monday through Friday. (Testimony of Civilian A and Civilian B and Exhibit 8)
6. The contracting company was provided signs by the City to place on posts along Moon Street clearly stating that the parking spots were reserved for construction vehicles only from 7AM to 4PM, Monday to Friday. (Testimony of Civilian A and Exhibit 8)
7. The permit, renewed monthly, stated in part: “Stand 2 Trucks at Curb // 7AM – 4 PM”. (Exhibit 8)
8. The manager for the contracting company, whose office was only steps away from the construction project, stated that this “stand” language was ambiguous and that he received conflicting information from the City regarding its meaning. At times, he was told that trucks could only park in these spots while loading and unloading and at other times he was told that no such restriction applied. (Testimony of Civilian A)
9. On any given day, several trucks driven by contractors (i.e. – plumbers, electricians, welders, etc.) would come and go, temporarily using the reserved parking spots. (Testimony of Civilian A)
10. The Appellant, who lived nearby, was frustrated that four (4) parking spots were effectively being taken off-line for a long period of time and he questioned whether the general

contracting company was complying with the “stand” language of the permit. (Testimony of Appellant)

11. From October 2016, when the Appellant began working in the North End, until on or around September 2017, the manager of the general contracting company noticed that a passenger vehicle, not associated with the construction project, was regularly parking in one of the reserved spots prior to 4:00 P.M., usually starting at or around 3:00 P.M. At times, he observed the passenger vehicle parked in a reserved parking spot three (3) times per week. At other times, it was two (2) times per week. Although there may be short periods of time when the vehicle would not be parked there before 4:00 P.M., the practice would resume shortly thereafter. (Testimony of Civilian A)
12. The manager of the contracting company noticed that the passenger vehicle always had a placard on the front dashboard with a Boston Fire Department logo and the words “Fire Detail” typed on it. (Testimony of Civilian A)
13. The Boston Fire Department does not issue placards and/or decals to Boston firefighters who are on details. (Testimony of Lt. Gillis)
14. The manager of the contracting company also observed that the driver of the passenger vehicle was always wearing a Boston Fire Department shirt and hat, along with “swat pants and boots”. At the hearing before the Commission, the manager identified the Appellant as the driver of the passenger vehicle that was regularly parking in the reserved spots before 4:00 P.M. on weekdays. (Testimony of Civilian A)
15. Having concluded that the Appellant was a Boston firefighter, the manager of the contracting company instructed contractors to try and work around the Appellant’s vehicle because the manager “didn’t want any trouble”. (Testimony of Civilian A)

16. The manager was told by multiple contractors that the Appellant was harassing them and taking pictures of them and their vehicles. (Testimony of Civilian A)
17. In May 2017, the Appellant was assigned to detail duty for this residential project in order to monitor a welding project. (Testimony of Appellant and Civilian A)
18. While working this detail, the Appellant observed what he described as a “large fabric” being thrown onto the sidewalk from an upper level of the project. [The manager testified that it was a rope being thrown into the back of a contractor’s truck.] The Appellant walked across the street from where he was standing, put his hands up and told the construction crew that he was shutting the project down. (Testimony of Appellant)
19. The welding foreman, who had been eating lunch in his truck, got out of his truck and walked over to find out what was going on. Shortly thereafter, the manager of the contracting company walked over and observed a heated conversation between the Appellant and the welding foreman. (Testimony of Civilian A)
20. The manager from the contracting company, concerned that the project would be shut down, asked the welding foreman to walk away so that he could talk to the Appellant privately. At that point, the Appellant told the manager that this was the “worst welding job he had ever seen” and then alleged that the welding foreman was drunk. The manager of the contracting company was shocked by the Appellant’s allegation, as he has known the welding foreman for fifteen (15) years and is aware that he doesn’t drink alcohol. (Testimony of Civilian A)
21. The construction project was not shut down that day. (Testimony of Civilian A) The Appellant never filed a verbal or written report to anyone at the BFD regarding his allegation that the welding foreman on this construction project was drunk. (Testimony of Appellant)

22. On September 8, 2017, the Appellant opened the front door of the construction company's office in the North End and started screaming, stating that the construction company was abusing the system and that he (the Appellant) was going to get it fixed. (Testimony of Civilian A; Exhibit 5A)
23. After the September 8th incident, the construction manager contacted a longtime friend, and former BFD member, for assistance in resolving the situation with the Appellant. (Testimony of Civilian A)
24. An investigation was conducted by the BFD and the Boston Police Department. (Testimony of Lt. Gillis)
25. On April 9, 2018, the BFD preferred disciplinary charges against the Appellant. After a disciplinary hearing on April 19, 2018, the BFD suspended the Appellant for sixty (60) days. (Exhibits 15A, 16 and 17)

Prior Discipline

26. In 2015, the Appellant was suspended for two (2) weeks for being argumentative in front of a patient during an active emergency call. The Appellant acknowledged violating BFD rules and accepted the suspension. (Exhibit 11)
27. In 2016, the Appellant was suspended for two (2) tours and removed temporarily from details for violating standard operating procedures. (Exhibit 12)
28. In 2017, the Appellant was suspended for thirty (30) days for engaging in an argument outside the fire house (in the North End) with a member of the public over a parking spot. (Exhibit 13)²

² The Appellant appealed this discipline to the Commission and the decision is still pending.

Applicable Civil Service Law

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; *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 BFD has shown that the Appellant engaged in substantial misconduct which adversely affected the public interest. Over a period of months, while in uniform, the Appellant repeatedly parked his private vehicle in a parking spot reserved for construction vehicles. When parking there, he displayed an unauthorized BFD decal on his dashboard. Further, he made a false and damning allegation against a member of the construction crew working at this same site, alleging that the contractor was drunk. This misconduct violates BFD rules regarding conduct prejudicial to good order; and conduct unbecoming a member, whether on or off duty, which tends to lower the service in the estimation of the public.

I am not unsympathetic to the frustration felt by the Appellant regarding the loss of on-street parking spaces in a congested neighborhood of Boston where the number of vehicles greatly outnumbers the number of available spaces. I also find no fault in the Appellant’s attempt, as a private citizen, to ensure that the contracting company was abiding by the restrictions on the permit that took four (4) parking spaces off-line each weekday for almost two (2) years to build

one single family residence in the North End. In fact, a review of the record appears to show that the contractor was, at a minimum, interpreting ambiguity in their favor regarding how long construction vehicles could remain parked in one of those reserved spots.

What is not ambiguous, however, is that the Appellant was not permitted to park his private vehicle in those spots from Monday through Friday between the hours of 7:00 A.M. and 4:00 P.M. While the Appellant himself, during this testimony before the Commission, acknowledged that he parked his private vehicle in those reserved spots at least five (5) times during the restricted hours, I credit the testimony of the manager of the construction company that, over a period of months, the Appellant regularly parked in those spots two (2) or three (3) times per week during restricted hours. Importantly, there was no question that the Appellant, when he parked his private vehicle there during restricted hours, was a Boston firefighter. According to the credible testimony of the two (2) civilian witnesses, the Appellant was always wearing a Boston Fire Department shirt and hat. Further, he displayed his own custom-made placard with the BFD insignia with the words “BFD Detail”. Not only was this placard unauthorized, it is undisputed that, except on one (1) occasion, the Appellant was *not* on a BFD detail when he parked in these reserved spaces. I reach the reasonable conclusion that the Appellant displayed this unauthorized placard in an attempt to avoid being ticketed and to discourage the contractor from filing a complaint. For many months, this tactic worked. As stated by the manager of the contracting company in his testimony before the Commission: “ ... you know, my job is to keep that job moving and I didn’t – the last thing we wanted was someone from the fire department to shut this job down because God knows how they could shut it – you know, how long it would take to get shut – you know, get back up again.” No private contractor in Boston should be

forced to tolerate a Boston firefighter who abuses his position for personal advantage in the manner that the BFD proved that the Appellant did in this appeal.

The Appellant took things one step further in May 2017. Regrettably, he accepted a detail to monitor welding work at the same construction site that had been causing him so much consternation as a private citizen. Accepting the testimony of the Appellant, he saw a piece of fabric being thrown on the sidewalk while he was working the detail. He crossed the street, waived his hands, and announced he would be shutting the project down. When the construction manager arrived and tried to resolve the matter, the Appellant made the damning allegation that the welding foreman was drunk on the job. The construction manager was shocked at the Appellant's allegation, as he has known that foreman for fifteen years and knows that he does not drink alcohol. Importantly, the Appellant permitted the project to go forward that day and never reported his allegation to any BFD officials. Thus, he either made a false allegation against the foreman or he jeopardized public safety by failing to report that a foreman working at a construction with welding going on was drunk. Either way, his actions constitute egregious misconduct.

Having determined that the Appellant did engage in misconduct, I must determine whether the level of discipline was warranted.

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

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

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

--

“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 572. (citations omitted).

My findings do not differ significantly from those reported by the BFD. While I have not concluded that the Appellant’s complaints to contractors and employees of the general contracting company constituted actionable harassment, I have, similar to the BFD, found that the Appellant repeatedly engaged in misconduct that violated BFD rules regarding conduct prejudicial to good order; and conduct unbecoming a member, whether on or off duty, which tends to lower the service in the estimation of the public.

Further, I considered that the Appellant had engaged in similar misconduct in the past, thus justifying a lengthy sixty (60)-day suspension.

Conclusion

For all of the above reasons, the Appellant’s appeal under Docket No. D-18-073 is hereby *denied*.

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 September 12, 2019.

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:

Louis DeBenedictis (Appellant)

Kate Kleimola, Esq. (for Respondent)