

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108

HAROLD DOTTIN,
Appellant

v.

D-06-323

**CAMBRIDGE HOUSING
AUTHORITY,**
Respondent

Appellant's Representative:

Anthony Pini
Field Representative
7 Laborers Way
Hopkinton, MA 01748
(508) 435-4164

Respondent's Representative:

Susan C. Cohen, Esq.
33 Mt. Vernon Street
Boston, MA 02108
(617) 742-5226

Commissioner:

John E. Taylor

Decision

Pursuant to G.L.c. 31, § 43, the Appellant, Harold Dottin (hereafter "Dottin" or Appellant) filed an appeal claiming that the Cambridge Housing Authority (hereafter the "Authority" or "Respondent") did not have just cause to suspend him from his employment as a mechanic for a period of five days. Appellant's Notice of Appeal was timely and a full hearing was held on October 17, 2007. As no written notice was received from either party, the hearing was declared private. Two tapes were made of the proceedings.

FINDINGS OF FACT

Based on the documents entered into evidence (Joint Exhibits 1 through 16) and the testimony of Appellant; Pauline Coburn, tenant; Gloria Leipzig, Director of Operations; Faith Walker, Senior Manager; Monique Rowling, a Manager's Aide; and John Krupa, a Human Resources employee, I make the following findings of fact:

1. Appellant, Harold Dottin, was hired by the Cambridge Housing Authority on September 25, 1985. His job title is Mechanic. (Stipulation of Facts)
2. The business of the Authority includes providing decent, safe and sanitary public housing for various populations in the City of Cambridge. The Authority's Millers River Apartments, where the incidents that are the subject of this appeal occurred, houses an elderly and/or disabled population.
3. On September 6, 2006, at approximately 11:30 AM, Appellant went to the apartment of Pauline Coburn, a tenant at the Millers River Apartments. (Stipulation of Facts)
4. Prior to entering the unit, Appellant knocked on the door. Not getting a response, he knocked louder. When no one answered the door, Appellant used a master key and let himself into the unit. He proceeded to the bathroom, where he had a job assignment to caulk the tub. (Stipulation of Facts)
5. A few minutes after Appellant entered the apartment, Ms. Coburn arrived from having coffee at a neighboring apartment. Appellant said to her "Where the hell were you?" (Testimony of Coburn)
6. After Ms. Coburn had returned, Appellant became aware that the tub had not been prepared for caulking, as it was still wet, and he informed Ms. Coburn that he

would return between 12 and 1 PM that afternoon to perform the work.

(Stipulation of Facts)

7. When Appellant had not returned by 1:10 PM, Ms. Coburn called the office to find out where he was. Appellant was informed by a Manager's Aide in the office that Ms. Coburn had called. (Stipulation of Facts)
8. Appellant returned to Ms. Coburn's apartment soon after her phone call and, in a loud voice, told her not to call the office looking for him in the future.

(Testimony of Coburn)

9. When Appellant concluded his work, he shook his finger in the tenant's face and said, "I'm telling you, don't call the office anymore if I'm late." (Testimony of Coburn)

10. At this time, Appellant also received a phone call on his cell phone. He sat down at one of the tenant's chairs and spoke on his phone, using profanity. (Testimony of Coburn)

11. Ms. Coburn testified credibly that prior to September 6, 2006 she had had a very friendly relationship with Appellant over the past few years. She testified that on September 6, she became frightened by the above interactions with Appellant, so much so that she became physically ill and was shaking.

12. Faith Walker, Senior Manager and Appellant's immediate supervisor, and Gloria Leipzig, Director of Operations, the head of the department in which the Appellant worked, both testified that on September 6, 2006 Appellant was scheduled to, and did appear, at a Step 1 hearing with Leipzig and others in

connection with an August 4, 2006 written warning from Walker regarding poor performance by Appellant. (Testimony of Walker and Leipzig)

13. Walker and Leipzig were credible witnesses. They had a calm demeanor and were straight forward in their answers to all questions asked of them.

14. Monique Rowling, a Manager's Aide at Millers River Apartments, testified credibly that when she saw Appellant in the office on September 6, 2006, he seemed to be angry.

15. On September 7, 2006, Ms. Coburn called and lodged a complaint about Appellant's conduct with the Authority's Management office. (Testimony of Coburn and Walker)

16. In a meeting the next day with Walker and Leipzig, Ms. Coburn reported that she was "deathly afraid" of Appellant, so much so that she would avoid the common areas of the building and the laundry area if she thought he was present.
(Stipulation of Facts)

17. In a meeting on September 11, 2006, with Walker, Leipzig, and John Krupa of Human Resources, Ms. Coburn repeated her allegations. (Testimony of Walker)

18. At a meeting on September 11, 2006, with Appellant, Walker, the Area Maintenance Supervisor, and union steward Danny Sheehan, Appellant stated that he had gone to Ms. Coburn's unit twice on September 6, 2006, but denied that he raised his voice or intimidated her. (Stipulation of Facts)

19. Appellant testified that he had stated many of the words that Ms. Coburn alleged he did, but denied that he said them in an intimidating manner. Appellant is approximately six feet, two inches tall and 225 pounds. (Testimony of Appellant)

20. Appellant was suspended for five days based upon this incident and in light of prior conduct. Walker testified that she transferred Appellant to a different location, effective September 25, 2006, due to liability concerns. (Testimony of Walker)
21. On October 26, 2006, a Step II hearing was held before the Executive Director. On November 9, 2006, the Executive Director upheld the five- day suspension, but indicated it would be modified to three days if Appellant would make a written apology to Ms. Coburn, agree to complete an anger management course within the next six months, and sign an agreement that any additional incidents of intimidation or verbal abuse of a resident will result in his immediate termination. (Exhibit 5)
22. Appellant rejected this offer. However, Appellant apologized to Ms. Coburn at the Commission hearing.
23. Appellant's prior disciplinary history with the Authority includes his inappropriate verbal challenge of an Area Maintenance Supervisor on October 31, 2003, during the course of his evaluation. On January 30, 2006, Appellant was notified by memorandum from Walker that a complaint had been made against him that he had been sticking his tongue out at a tenant and the tenant believed he was watching her. This incident followed a prior incident in the presence of a social worker who witnessed Appellant deliberately stepping in front of a tenant and when the tenant moved to one side, stepping in front of her again so that she could not pass. (Stipulation of Facts)

24. Appellant also received warnings on November 4, 2003 and June 10, 2005, for poor attendance. He received a notice of insufficient productivity on October 20, 2005. On August 4, 2006, Appellant received a written warning for poor performance. (Stipulation of Facts)

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). Discipline is “justified” if it is “done upon adequate reasons sufficiently supported by credible evidence, when weighted by an unprejudiced mind, guided by common sense and correct rules of law.” Sullivan v. Municipal Court of Roxbury District, 342 Mass. 612 (1948), Police Comm’r of Boston v. Municipal Court of West Roxbury District, 368 Mass. 501 (1975) The Appointing Authority’s burden of proof is one of a preponderance of the evidence which is established “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).

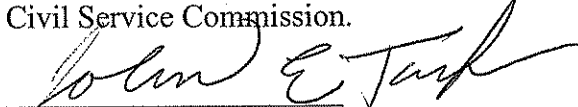
The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The action here, the Authority’s suspending Appellant for five days, was shown to have been taken based upon adequate reasons sufficiently supported by credible evidence. Specifically, credible testimony demonstrated that Appellant intimidated and frightened Ms. Coburn, an elderly tenant, by reprimanding her in a loud and intimidating manner on September 6, 2006. Although Appellant denied that he acted in an intimidating manner, Ms. Coburn’s demeanor, which exhibited great distress and anxiety even at the hearing, was consistent with her testimony that Appellant’s conduct caused her to be greatly frightened during their interactions on September 6, 2006. Additionally, the credible testimony of Walker and documentary evidence showed that Appellant had a prior disciplinary history that included a problem with his anger and an incident with a tenant, as well as other discipline. In sum, Respondent showed by a preponderance of the evidence that it had just cause to suspend the Appellant from employment for five days.

For the above reasons, the Appeal under Docket No.D-06-323 is hereby

dismissed.

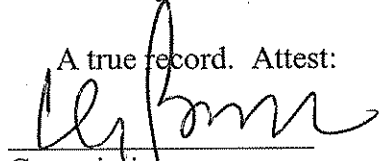
Civil Service Commission.



John E. Taylor, Commissioner

By vote of the Civil Service Commission (Chairman Bowman, Commissioner Guerin, Commissioner Marquis, Commissioner Taylor, Commissioner Henderson) on February 14, 2008.

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 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:

Anthony Pini

Susan Cohen, Esq.