COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

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

CRAIG ERICKSON,
Appellant

v.

D1-07-332

TOWN OF OXFORD,
Respondent

Appellant's Attorney: James Triplett, Esq.
Law Offices of Triplett & Fleming
25 Camp Hill Drive
Oxford, MA 01540

Respondent's Attorney: Marc L. Terry, Esq.
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1700 West Park Drive
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Commissioner: Christopher C. Bowman

DECISION

The Appellant, Craig Erickson (hereinafter "Erickson" or "Appellant"), pursuant to G.L. c. 31, § 43, is appealing the decision of the Town of Oxford (hereinafter "Town" or "Appointing Authority") to terminate him as a reserve permanent police officer. The appeal was timely filed.

Hearings were held at the offices of the Civil Service Commission (hereinafter "Commission") on April 18, 2008; April 25, 2008; and July 9, 2008; and at the Oxford Town Hall on August 22, 2008 at Oxford Town Hall. As no written notice was received

from either party, the hearing was declared private. All witnesses, with the exception of the Appellant and Police Chief Michael Boss, were sequestered.

Eight (8) tapes as well as transcripts of the hearing were made. The transcripts were deemed to be the official record of the proceedings. Both parties subsequently submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT:

Eighteen (18) exhibits were entered into evidence at the hearings. Based on the documents submitted and the testimony of the following witnesses:

For the Appointing Authority:

- Diane Pare;
- Michael Pare;
- Chief Michael Boss; Town of Oxford Police Department;

For the Appellant:

- Sergeant Michael Hassett; Town of Oxford Police Department;
- Officer Robert Picard; Town of Oxford Police Department;
- Charles Noyes; former Police Chief, Town of Oxford;
- Philip Plasse;
- Donna Plasse;
- Henry Hicks;
- Craig Erickson, Appellant;

I make the following findings of fact:

1. The Appellant, Craig Erickson, had been a permanent intermittent police officer with the Oxford Police Department since 2001 prior to his termination on September 12, 2007. (Testimony of Appellant and Exhibit 2)
2. Prior to being employed by the Town of Oxford, the Appellant was a police officer for the Town of Webster from 1999-2001. He has an Associates degree in criminal justice. (Testimony of Appellant)
3. As an intermittent police officer, the Appellant worked, on average, 30 – 40 hours per week. (Testimony of Appellant)
4. In 2005, the Town bypassed the Appellant for appointment to the position of permanent full-time police officer. (*See* Erickson v. Town of Oxford, 21 MCSR 131, 135 (2008)).
5. Also in 2005, the Appellant worked part-time for New England Paving Company, which is owned by Philip Plasse. (Testimony of Appellant and Philip Plasse and Donna Plasse)
6. The Appellant and Mr. Plasse had been friends for approximately ten years. Philip Plasse and his wife, Donna Plasse, testified before the Commission. (Testimony of Appellant and Philip Plasse and Donna Plasse)
7. In regard to the extent of the friendship between the Appellant and Philip Plasse, I credit the testimony of Donna Plasse. She had no reason to overstate the extent of the friendship between the two men and she offered straightforward testimony that rang true to me. According to Ms. Plasse, the Appellant was frequently at their home, often watching sporting events on television with her husband. Ms. Plasse testified

that there were times when the Plasses would see the Appellant at their home multiple times in a week. (Testimony of Donna Plasse)

8. At the time of the incident that led to the Appellant's termination, Mr. Plasse had an ongoing dispute with one of his customers, Michael Pare. (Testimony of Philip Plasse and Michael Pare)
9. In the fall of 2005, the Pares contracted with Mr. Plasse's company to install a driveway at a new home they were building. Specifically, Mr. Plasse was to grade the driveway and install the base coat. The base coat was put down while construction was ongoing to keep vehicles out of the mud. The top coat would not be put on until all construction was finished in 2006. The original contract between the Pares and Mr. Plasse did not include the top coat, and was for a price of approximately $7,000, which the Pares paid in full. (Testimony of Michael Pare)
10. Shortly after the base coat was put down, a sizeable dip developed as a result of settlement. Mr. Pare contacted Mr. Plasse, and advised him of the dip. Mr. Pare and Mr. Plasse agreed that the dip would remain through the winter as further settlement could occur and because construction would not be finished until after the winter. They agreed further that the dip would be fixed in the following year (2006). (Testimony of Michael Pare)
11. Michael Pare (the customer) and Philip Plasse (the owner of the paving company) offered divergent accounts in their testimony before the Commission regarding what subsequently transpired in 2006. (Testimony of Michael Pare and Philip Plasse)
12. According to *Mr. Pare*, he called Mr. Plasse a few times to arrange to have the dip repaired, and they finally agreed that it would be fixed in October of 2006. When Mr.

Plasse's company came to repair the dip, Mr. Pare testified that there was some left over material and that the parties agreed that the material would be used to create a small additional driveway for the cost of material, which was about $300. (Testimony of Michael Pare)

13. According to Mr. Pare, after the dip was repaired and the additional driveway area installed, the Pares remained dissatisfied with the repair work. Mr. Pare testified that there was a series of telephone calls back and forth between Mr. Pare and the Plasses in which Mr. Pare told the Plasses they would get paid for the extra $300 worth of material for the additional driveway area after they fixed the dip. (Testimony of Michael Pare)
14. According to *Mr. Plasse***,** Michael Pare called him back in the Fall of 2006 to obtain an estimate for a finished top coat, to pave an additional area of driveway, and to patch the low area. The cost of paving the additional driveway area and fixing the dip, according to Mr. Plasse, was $2502. ($2346 for the additional driveway area and $156 for the repair of the low spot). (Testimony of Philip Plasse)
15. Exhibit 5 is an unsigned document from New England Paving Company dated 10/18/06. Mr. Plasse testified that this document represents the $2502 quote for services to complete the additional area of driveway and repair the dip in the initial driveway. Although the document is unsigned, Diane Pare testified that she did have a copy of this document in her files. (Testimony of Diane Pare and Exhibit 5) However, the reference to a $156 charge is written in a different type of ink and I find that it was most likely added to the document sometime after the initial quote of $2346 was given to the Pares. (Exhibit 5)

16. Based on a careful review of the documents submitted and the testimony of Philip Plasse, Donna Plasse, Michael Pare and Diane Pare, I find that: 1) the Pares did receive an estimate for the additional area of driveway of $2346 from the Plasse's paving company; 2) the work regarding the additional area of driveway was completed by the Plasse's paving company; and 3) the Pares never paid the Plasses the $2346.
17. However, I find, based on the same testimony and documents referenced above, that it is most likely that: 1) the Pares were either not aware or did not agree to the additional charge of $156 to repair the dip in the driveway; and 2) the Pares, still not satisfied that the dip had been repaired, refused to pay either the $2346 or the $156, thus leading to the dispute between the parties.
18. The dispute regarding the repair and the Pares' refusal to pay ultimately led Mr. Plasse to contact the Appellant and the sequence of events outlined below.
19. On November 13, 2006, the Appellant was working as a police officer for the Town of Oxford. While on duty, at about 7:30 A.M., Mr. Plasse called the Appellant on his cell phone. The Appellant did not answer. Mr. Plasse called the Appellant again about 15 minutes later, and again the Appellant did not answer. On both occasions, the Appellant saw that Mr. Plasse had called him, but did not break away from his duties to answer. Shortly thereafter, however, the Appellant proceeded to Mr. Plasse's home to find out why Mr. Plasse had called. (Testimony of Appellant)
20. Prior to his arrival at the Plasse home, the Appellant radioed the dispatcher to indicate that he would be out of the cruiser with a portable radio at the Plasse address. (Testimony of Appellant)

21. When the Appellant arrived at the Plasse's residence, Mr. Plasse immediately came out of his front door, and according to the Appellant, looked "really upset about something." (Testimony of Appellant)
22. The Appellant and Mr. Plasse testified that Mr. Plasse initially inquired about the whereabouts of Police Chief Charles Noyes, indicating that Chief Noyes had not returned his phone calls. (Testimony of Appellant and Philip Plasse)
23. When the Appellant asked Mr. Plasse what was wrong, Mr. Plasse went back into his house and came back with a copy of an invoice for services provided to Michael and Diane Pare that had not been paid. (Testimony of Appellant and Exhibit 5)
24. Mr. Plasse then handed the Appellant the invoice, and, according to the Appellant and Mr. Plasse, Mr. Plasse told the Appellant that he felt that a "larceny" had been committed against him. I do not believe that Mr. Plasse referenced the word "larceny" to the Appellant on the morning in question. Mr. Plasse is a blunt-talking, shoot-from-the-hip, no-holds-barred person with a short fuse and he is unlikely to use the formal word "larceny", particularly when he was in a rage about an unpaid bill. Rather, I infer that Mr. Plasse used the same layperson language that he used during his testimony before the Commission, telling the Appellant that he had (allegedly) been "ripped off" by the Pares. (Testimony, demeanor of Philp Plasse) Further, assuming that the Appellant actually received what he considered a complaint of a larceny, standard procedure within the Oxford Police Department requires that he inform the dispatcher of the complaint. (Testimony of Chief Boss)

25. The Appellant never contacted dispatch to report that he had received a complaint of larceny nor did he notify his supervisor that he had received a report of larcency. (Testimony of Appellant)
26. It is undisputed that the Appellant took the unpaid invoice from Mr. Plasse on the morning in question and told him that he would look into it. (Testimony of Appellant)
27. Approximately one hour later, after completing routine building checks in the Pares' neighborhood, the Appellant made the following radio transmission to dispatch: "Please be advised; I'm going to be out of the car for a moment at the big house at the end of the road there; that new big house across the pond…I'm not sure what number it is; I don't think there's a number down there." (Exhibit 17)
28. The Appellant drove up the driveway to the Pare residence. Having seen the Appellant's cruiser pull into her driveway through her window and being concerned that someone might be hurt, Ms. Pare met the Appellant at the door before he could knock. The Appellant first asked to speak to Mr. Pare and she told the Appellant that her husband was not home. (Testimony of Diane Pare) The Appellant and Diane Pare offered divergent testimony regarding what happened next. (Testimony of Appellant and Diane Pare)
29. According to Ms. Pare, the Appellant, who had a piece of paper in his hand, "said that he had been to Mr. Plasse's house and was asked to stop by and ask about his bill and whether or not we were going to pay it. And at that point, I looked at it and was immediately taken aback and was very – I'm not sure what the right word is, but I couldn't understand why he was asking about a bill that had nothing – it wasn't a police issue, but I immediately started explaining to him why we weren't paying it.

He [Mr. Plasse] had repaired a puddle in our driveway. It wasn't – it was a bill – he had given a bill for a repair. There wasn't supposed to be a bill. It was a repair. You don't charge somebody for something you fix. You're supposed to fix it." (Testimony of Diane Pare)

30. Asked if the Appellant, while standing in her driveway, ever told her that Mr. Plasse had made a criminal complaint, Ms. Pare stated, "No. He just said that he does work for Mr. Plasse, and he had just come from his house and he was doing him a favor. He said he wanted to see – he asked me to talk to Mike [her husband] and see if he was going to take care of the bill. Then after I explained and showed him what he [Mr. Plasse] had done wrong, he kind of – he pretty much agreed with me and said, well, I don't want to get involved then." (Testimony of Diane Pare)
31. Ms. Pare testified before the Commission that she felt "bullied" by the Appellant stating, "Mr. Erickson understands when you're wearing a badge and a gun, what that means to other people that look up to the police department, and the amount of respect you have for those people…you just can't go by and hand somebody a bill and think that you can do that, because it was very intimidating, and I felt very bullied. And it made me very much afraid. We just moved to Oxford to start a new life…and it made me afraid for my child that just got his learner's permit about whether he was now going to get pulled over, what if the rest of the Oxford Police Department did things like that?" (Testimony of Diane Pare)
32. According to the Appellant, after getting out of his cruiser on the morning in question, he explained to Ms. Pare that he was looking into the facts of a possible larceny. The Appellant testified before the Commission that, "I explained to her that

I was looking into the facts of a possible larceny. And she said in regard to what? I told her that it was in regards to some paving work and that – at this point, this is when she said to me, she says, oh, no. I says well, the guy, you know, came to me and said you were ripping him off, that you weren't going to pay him for the services. At this point, this is when she told me that we're going to pay him for his services after he comes back and repairs the driveway…once she told me the driveway needed to be repaired, it was at this time that I told her that this was not a criminal matter, this was a civil issue, and that I'd also be explaining that to Mr. Plasse, that there's some repairs that need to be done. It's a civil issue. I said if she wanted her driveway fixed, she's going to have to take him to court or work it out with him, and if he wanted to take her to court for non-payment, they would have to go to Dudley District Court. The Oxford Police Department doesn't handle civil issues." (Testimony of Appellant)

33. It is undisputed that at some point during the conversation between the Appellant and Ms. Pare, the Appellant was dispatched to an active fire alarm at a local bank and he got in his cruiser and left to respond to that call. (Testimony of Appellant and Diane Pare)
34. After receiving the call for the fire alarm, the Appellant radioed to dispatch, "I'll be clearing here en route to Webster…Bank." (Exhibit 17)
35. Ms. Pare immediately contacted her husband via cell phone after the Appellant left her property for the fire alarm call and told him what had just happened. Mr. Pare, in turn, immediately called Mr. Plasse and asked him why he had sent the police to his house. (Testimony of Diane Pare and Michael Pare)

36. The Appellant testified that sometime later that afternoon he returned to the Plasse residence and informed Philip Plasse that the Pares claimed that the driveway needed to be repaired and that this was a civil, not a criminal matter. According to the Appellant, Mr. Plasse stated to him that he knew nothing about a repair job being needed. (Testimony of Appellant)
37. Later that same day, Mr. Plasse drove to the Pare house and confronted them. According to Mr. Pare, they engaged in a heated conversation in which Mr. Pare challenged Mr. Plasse as to why he sent the Appellant to his house as a "collection agency." Mr. Plasse responded by telling Mr. Pare that he was connected in Town and that the Appellant was doing him a favor because he (the Appellant) worked for him. Mr. Plasse also indicated that the Appellant's father was the former Chief of Police and that he knew Hank LaMountain, the current Chair of the Board of Selectmen. (Testimony of Diane Pare and Michael Pare) There was no testimony offered to contradict the Pares account of this verbal exchange with Mr. Plase or to suggest any other way in which the Pares would have known who Hank LaMountain was or that the Appellant's father had previously been the Chief of Police.
38. According to Ms. Pare, she was unable to sleep that night as a result of her interaction with the Appellant earlier in the day. (Testimony of Diane Pare)
39. The next day, Diane Pare went to the Oxford Police Department and filed a complaint against the Appellant. In her written statement to the Oxford Police Department, dated November 14, 2006, Ms. Pare wrote, "Off. Erickson said that Phil Plasse asked him to come down and talk to Mike (my husband) about it. I took this to mean about paying the bill. Off. Erickson commented that he's a builder and does work with Phil

and he implied that he was doing Phil a favor. He implied he didn't want to get involved, but only after I explained why we weren't paying for it." (Exhibit 3)

40. The Appellant never advised dispatch that he was following up on a report of a larceny when he arrived at the Pare residence nor did he advise dispatch that his investigation was complete and that no larceny had been committed. (Exhibit 17)
41. Chief Boss and Sergeant Hassett testified that once a complaining party indicates that there is a written contract at the heart of the dispute, as there was here, the complaint is, by definition, a civil complaint over which the Oxford Police Department has no jurisdiction and can not be involved. (Testimony of Chief Boss and Sergeant Hassett)
42. The Appellant testified that, as a police officer, he may use his discretion to determine if a matter is a criminal or civil issue and that is it not uncommon for a log entry or a report not to be done when an officer seeks to resolve a matter informally. However, when asked whether he could identify any other situation in which he resolved a matter using the informal methodology such as he did here, the Appellant was unable to give another example. (Testimony of Appellant)
43. Asked during cross examination if it was "proper police procedure" to first investigate a citizen's complaint, as the Appellant did in this case, to find out if the complaint is criminal (or civil) in nature, the Chief stated, "…the first question should be asked to the person making the complaint, not to the person that's being accused. I would ask the question, did you enter into a contract with this person? If he said yes, I would say, you have a civil complaint. Contact your attorney. If he said no, then I would say well – I would follow up with certain other questions I would have to ask. Were you coerced? Do you feel certain other things happened as a result of your

conversation that would lend you to believe that it was a – possibly of a criminal nature?" (Testimony of Chief Boss)

44. The Appellant's failure to report his purported investigation into a larceny contrasted with his actions just two months earlier at the same residence. (See Findings 45 - 47 below)

45. Prior to the incident on November 13, 2006, the Appellant and the Pares were known to one another. In September 2006, an individual came into the Oxford Police Department to file a complaint against the Pares regarding a bounced check. The Appellant spoke with the individual and asked if he (the complainant) would agree to the Appellant handling the matter "informally" by speaking with the Pares. The complainant agreed. (Testimony of Appellant)

46. The Appellant then visited the Pares' residence and spoke to them about the matter. Mr. Pare explained that it was a mix-up with one of their accounts and he would take care of it by Monday. The Appellant explained that when he returned to work on Monday he would confirm if it had been taken care of, and if it had not, they would be filing complaints for larceny by check. (Testimony of Diane Pare)

47. After the Appellant spoke with the Pares in September 2006, he contacted dispatch and reported his actions so a log entry could be made. (Exhibit 6)

48. The Oxford Police Department maintains Rules and Regulations. The Rules and Regulations provide in relevant part as follows:

> **Rule 4.2 - Conduct Unbecoming an Officer**
>
> Officers may be disciplined for conduct which is not otherwise prohibited by law or by these rules where that conduct falls in to the category of conduct unbecoming an officer. Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to

continue as a member of the department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the department or its members….

Rule 4.3 – Conflict of Interest

Officers shall not violate General Laws c. 268A. Officers should read and become familiar with the provisions of Massachusetts G.L. c. 268A concerning conduct of public officials and employees. The following provisions are especially relevant to police officers:
…
§ 23(b) "No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:
…
(2) use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals…

Rule 4.14 – Abuse of Position

Officers shall not use the prestige or influence of their official position, or use the time, facilities, equipment or supplies of the Department for private gain or advantage of themselves or another. (Exhibit 1)

49. Former Chief Noyes (Chief at the time of the incident) testified that he instructed Sergeant Hassett to conduct an investigation into the complaint filed by the Pares. (Testimony of former Chief Noyes and Sergeant Hassett and Exhibit 8)

50. Following the investigation by Hassett, the Appellant was placed on administrative leave and charged with violating the 3 rules referenced in finding 48 above. (Exhibit 2)

51. The Board of Selectmen, the Appointing Authority in Oxford, designated a hearing officer who conducted a local hearing for the purpose of considering the evidence and making findings and recommendations. (Exhibit 2)

52. The local hearing officer conducted a hearing and, on July 20, 2007, issued a report to the Board of Selectmen in which she concluded that the Appellant violated the three above-referenced rules and that there was just cause for termination. (Exhibit 2)

53. The Board of Selectmen, after meeting with the Appellant and his attorney regarding an appropriate penalty, subsequently accepted the findings and recommendations of the local hearing officer and, on September 12, 2007, terminated the Appellant. (Exhibit 2)[1]

54. Prior to his retirement in June 2007, former Chief Noyes became aware of a situation in which a supervisor of the Oxford Police Department conducted a motor vehicle stop involving a civil employee of the Department. According to Chief Noyes, "there was a question that there might be alcohol involved and an intoxicated operator and there was no arrest made in that particular case and the person was brought home." No investigation was conducted of the supervisor and no disciplinary action taken against him. (Testimony of former Chief Noyes)

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.

[1] As stated in finding 37, Philip Plasse, the owner of the paving company, allegedly boasted to the Pares that he knew Hank LaMountain, a member of the Town's Board of Selectmen. At the local hearing regarding this matter, Mr. Pare testified that Mr. Plasse told him that he gets favorable treatment from the local police partly because he does all the paving for a business owned by Mr. LaMountain. While there is absolutely no evidence to suggest wrongdoing on the part of Selectman LaMountain, it may have been more appropriate for the selectman to recuse himself from the disciplinary proceedings and the 4-0 decision by the Board of Selectmen to terminate the Appellant.

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 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 which 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). 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 Commission is also mindful of the standard of conduct expected of police officers. "An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion." McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 474 (1995). "[P]olice officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens." Attorney General v. McHatton, 428 Mass. 790, 793 (1999). As stated in Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986):

> Police officers must comport themselves in accordance with the laws that they are sworn to enforce *and* behave in a manner that brings honor and respect for, rather than public distrust of, law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

The Appellant is a likeable, good-natured individual whose father was the former Chief of Police in the Town of Oxford. He has an Associates degree in criminal justice and, until his termination, had been working 30-40 hours each week as a permanent intermittent police officer for the Town.

For approximately a decade prior to 2006, the Appellant had been friends with Philip Plasse, the owner of New England Paving Company and worked part-time for Mr. Plasse in 2005.

After a careful review of all of the testimony and exhibits, I conclude that the Appellant, while in full police uniform, visited the home of Michael and Diane Pare, for the purpose of helping his friend and former employer, Philip Plasse, collect an unpaid bill with the Plases totaling $2502. Further, I conclude that Ms. Pare felt bullied and intimidated by the Appellant as a result of the Appellant's visit to her home. She was clearly still shaken as she retold the events before the Commission, almost two years after they occurred. Her testimony in regard to being fearful as a result of the Appellant's visit to her home rang true to me. Having just moved to Oxford, she was concerned that the Appellant's behavior may be reflective of the Town's police department as a whole and instinctively worried that her son, who had recently obtained his drivers' permit, may be subject to traffic stops by other Oxford police officers.

The Appellant's testimony that he told Ms. Pare that he was investigating a larceny is not credible in light of the clear procedures the Appellant violated during the incident. It is the function of the hearing officer to determine the credibility of the testimony presented before him. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission, 401 Mass. 526, 529 (1988); Doherty v. Retirment Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Department of Social Services, 439 Mass. 766, 787 (2003); (In cases where live witnesses giving different versions do testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing); Connor v. Connor, 77 A. 2d. 697 (1951) (the opportunity to observe the demeanor and appearance of witnesses becomes the touchstone of credibility).

The Town provided unrebutted testimony from Chief Boss and Sergeant Hassett, which was also supported by Officer Picard, who was called by Erickson, that as soon as Mr. Plasse indicated to him that he and the Pares had a written contract, his involvement in the matter should have stopped. If there was any doubt in his mind as to possible criminal activity he should have informed his supervisor, which he did not do. Assuming, for the sake of argument, that Mr. Plasse's complaint of a "larceny", if indeed that is what Mr. Plasse said, legitimately warranted further investigation, the Appellant was required to report the complaint to dispatch so it could be logged. Similarly, when he visited the Pares' residence he was required to inform the dispatcher that he was following up on the complaint. Finally, when he determined the complaint was a civil matter, he was required to inform dispatch of the same. The Appellant did not report any of these things, evidencing his intent to use the weight of his office and the authority of the Oxford Police Department to perform a favor for a friend.

The September 2006 incident concerning the investigation of an alleged larceny by check again provides a helpful contrast. The complaint, investigation, and resolution is noted clearly on the dispatch log whereas the November 13, 2006 incident is not.

The Town ultimately found that the Appellant's above-referenced behavior violated the following three rules of the Oxford Police Department: 1) Rule 4.2: Conduct Unbecoming an Officer; 2) Rule 4.3: Conflict of Interest; and 3) Rule 4.14, Abuse of Discretion.

In regard to the first charge, Conduct Unbecoming an Officer, the Appellant argues that since the initial charge letter by the Town to the Appellant references New England Paving Company as the Appellant's *other* employer, implying that he was employed by

New England Paving Company at the time of the alleged offense, the charge is factually incorrect and can not stand. This argument has no merit. While the charge letter may have referenced the words *other* employer, the Town, after conducting a hearing in which several witnesses testified and multiple documents were submitted, concluded that New England Paving Company was a *former* employer of the Appellant and that the Appellant had not worked for Philip Plasse since 2005. The termination from the Board of Selectmen also uses the words former employer. In short, the Town, when making its decision regarding this charge, had an accurate understanding of the relationship between the Appellant and Philip Plasse.

In regard to the second charge, regarding a violation of the state's conflict of interest law, the Appellant argues that the Town can only pursue this charge against an employee after a finding by the State Ethics Commission that there has been a violation of state ethics laws, citing Sciuto v. City of Lawrence, 454 N.E.2nd 1148, 1152. As part of a Motion to Strike Portions of the Appellant's Proposed Decision, the Town argues that at no point during the proceedings did the Appellant argue this point and, hence, has waived his right to argue the point in a post-hearing brief to the Commission.

The Appellant is correct that neither the Town, nor the Commission, can determine whether there was a violation of the state's conflict of interest laws. Rather, the Town may refer any alleged violation to the State Ethics Commission for investigation and a determination. Since the second charge explicitly references a violation of the state's conflict of interest laws, for which there does not appear to be any determination by the State Ethics Commission, the upholding of that charge by the Town is not supported by substantial evidence.

However, the third charge against the Appellant, regarding "abuse of discretion" ultimately gets at the same underlying issue and does not reference or require a determination that state ethics laws have been violated, stating:

> Officers shall not use the prestige or influence of their official position, or use the time, facilities, equipment or supplies of the Department for private gain or advantage of themselves or another. (Exhibit 1)

The Appointing Authority appropriately made a determination on this third, more-encompassing charge. Further, it is clear from reading the local hearing officer's report that she would have recommended termination even if the charges were limited to the more encompassing first and third charges.

In regard to the third charge, the Appellant's argument relies on proposed credibility assessments that are contrary to those reached by this Commissioner. Specifically, the Appellant argues that he was solely investigating a possible larceny and was not using his position as a police officer to assist his friend and former employer. For the reasons referenced above, I have reached an opposite conclusion.

The Appellant also sought to show disparate treatment by eliciting testimony regarding another matter purportedly involving misconduct by an officer. Generally, the incident involved a decision by a police officer not to bring criminal charges against a civilian employee of the Department for operating under the influence of alcohol. While I find the failure to investigate this matter more thoroughly by former Chief Noyes to be troubling, I do not find the facts of that incident sufficiently analogous to the one before me to suggest disparate treatment. Specifically, the other incident does not have the capacity to so deeply undercut the integrity of the Oxford Police Department in the

manner that the Appellant did here by causing a citizen to question whether the services of the Department are available for the purpose of collecting private debts.

The Town of Oxford, therefore, has proven, by a preponderance of the evidence, that it had just cause to terminate Craig Erickson from the Oxford Police Department. Moreover, there is no evidence in the instant matter of inappropriate motivations or objectives that would warrant the Commission modifying the discipline imposed upon him.

For the all of the above reasons, the Appellant's appeal under Docket No. D1-07-332 is hereby ***dismissed.***

Civil Service Commission

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Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on January 8, 2009.
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:
James B. Triplett, Esq. (for Appellant)
Marc L. Terry, Esq. (for Appointing Authority)