

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

One Ashburton Place – Room 503  
Boston, MA 02108  
(617) 727-2293

BILLY FRENCH,  
*Appellant*

v.

Case No. D1-13-12

DEPARTMENT OF CORRECTION,  
*Respondent*

Appearance for Appellant:

Mark Goldstein, Esq.  
Law Office of Mark Goldstein  
The Olde Post Office Building  
144 Central Street  
Gardner, MA 01440

Appearance for Respondent:

Amy Hughes, Esq.  
Department of Correction  
Division of Human Resources  
One Industries Drive  
P.O. Box 946  
Norfolk, MA 02056

Commissioner:

Cynthia A. Ittleman, Esq.<sup>1</sup>

**DECISION**

Pursuant to the provisions of G.L. c. 31, §§ 41 and 43, the Appellant, Mr. Billy French (“Appellant” or “Mr. French”), filed a timely appeal with the Civil Service Commission (“Commission”) against the Massachusetts Department of Correction (“DOC,” “Respondent,” or “Appointing Authority”) on January 18, 2013, contesting the DOC’s decision to terminate him from his position as Industrial Instructor II at MCI-Shirley. A pre-hearing conference was held on February 5, 2013 at the offices of the Commission. A full hearing was held on April 2,

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Beverly J. Carey, Esq., in the drafting of this decision.

2013 at the same location. The witnesses were sequestered. The hearing was digitally recorded and the parties were provided with copies of the recording. The parties submitted recommended decisions on or about May 3, 2013. For the reasons stated herein, the appeal is denied.

## **FINDINGS OF FACT**

Based on the ten (10) exhibits entered into evidence, the three (3) documents submitted by DOC post-hearing as I requested regarding discipline of other COIs alleged to have committed conduct similar to that of the Appellant, the stipulations of the parties, the testimony of:

*Called by the DOC:*

- Officer Sean Lafrennie, Gardner Police Department;
- Chief Curtis Deveneau, Royalston Police Department;<sup>2</sup>
- Sgt. Donald Perry, Internal Affairs Unit, DOC;

*Called by Mr. French:*

- Mr. Billy French, Appellant;
- Mr. Edward Lane, Industrial Instructor III, DOC;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, and policies, a preponderance of the credible evidence and reasonable inferences therefrom, establishes the following findings of fact:

1. Mr. French was first appointed to the DOC in February 2008 as an Industrial Instructor.

After approximately three (3) years, Mr. French was promoted to the position of Industrial Instructor II in 2011. (Testimony of the Appellant)

2. On or about May 3, 2011, Mr. French received a Certificate of Recognition for Excellence in Job Performance by the DOC for his performance as an Industrial Instructor. (Ex. 10)

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<sup>2</sup> Chief Deveneau also works full-time for the DOC as a Captain at MCI-Concord.

3. Mr. French's father passed away in December 2011. (Testimony of the Appellant)
4. On or about February 10, 2012, Mr. French's wife<sup>3,4</sup> informed him that she wanted a divorce. Prior to this, Mr. French and his wife had been going to marriage counseling. Mr. French and his wife had been married for approximately seventeen (17) years and had a young son together. (Testimony of the Appellant)
5. On or about February 11, 2012, Mr. French and his son went ice fishing together. Mr. French told his son that his mother wanted to leave and that his son would have to live somewhere else and attend a different school. When Mr. French returned home at approximately 1:00 or 2:00 PM, his wife said that she did not like the things Mr. French was telling their son and, between 3:00 and 4:00 PM, his wife and son left and went to his wife's parents' house. (Testimony of the Appellant)
6. Later that evening, Mr. French made several attempts to contact his wife by telephone but she did not answer or return his phone calls. When Mr. French called his in-laws, they refused to tell him where his wife was located. (Testimony of the Appellant)
7. On or about the evening of February 11, 2012, Mr. French drove to his in-laws' house in Gardner, MA and took his son. Mr. French's in-laws objected to Mr. French taking his son but there was no probate court order or any other order in place preventing Mr. French from picking up his son at that time. (Testimony of the Appellant & Chief Deveneau)
8. Mr. French and his son returned to Mr. French's home that night in Royalston, MA and Mr. French put his son to bed shortly thereafter. (Testimony of the Appellant)
9. That night, Officer Lafrennie, at the Gardner Police Department, received a call from Mr. French's wife concerning Mr. French. She reported to Officer Lafrennie that Mr. French

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<sup>3</sup> Mr. French is no longer married. However, because he was married at all times relevant to this appeal and, in an effort to protect his former wife's identity, she is referred to as his wife in this decision.

<sup>4</sup> Mr. French's wife was also employed by the DOC and worked at NCCI/Gardner. (Testimony of Chief Deveneau) Chief Deveneau also worked at NCCI/Gardner until approximately January 29, 2012. (Id.)

had taken their son from her parents' house and that Mr. French had made statements a few weeks prior to this incident that he was going to hurt himself. Officer Lafrennie responded to the scene at the wife's parents' house in Gardner, where he spoke to her parents in person and he spoke to Mr. French's wife over the phone. Mr. French's wife informed Officer Lafrennie that Mr. French would likely go home to Royalston or to his brother's house in Gardner. (Testimony of Officer Lafrennie; Ex. 5)

10. Officer Lafrennie and two (2) other officers from the Gardner Police Department went to Mr. French's brother's home that night. Mr. French's brother reported that he had spoken to Mr. French approximately one (1) hour earlier and he agreed to inform the Gardner Police Department if Mr. French contacted him again. (Ex. 5; Testimony of Officer Lafrennie)

11. The Royalston Police Department and Massachusetts State Police were notified about the situation and given a description of Mr. French by the Gardner Police Department. (Testimony of Officer Lafrennie; Ex. 5)

12. Shortly after Mr. French arrived at his home in Royalston that night, there was a knock on the door. Mr. French observed that it was a police officer and when he answered, the officer told him that his wife wanted their son back. Mr. French woke his son and presented him to the officer, in compliance with the officer's request. (Testimony of the Appellant)

13. Shortly after Mr. French's son was taken into custody by the State Police, Mr. French went to his pickup truck on the property and then went for a walk in the woods behind his house. He generally enjoys being in the woods. Mr. French could not recall how long he was in the woods but he was very upset and remembers sitting on a stone wall and crying. At some point that night, Mr. French returned to his house, entering through the back door. (Testimony of the Appellant)

14. In the meantime, Officer Lafrennie returned to the Gardner Police Department, where he met Mr. French's wife. At this point, Officer Lafrennie was notified that the State Police were at Mr. French's residence in Royalston, where they found his vehicle, and that they had the Frenchs' son in custody. Officer Lafrennie and Mr. French's wife headed to the Frenchs' residence to pick up the Frenchs' son. (Testimony of Officer Lafrennie; Ex. 5)
15. While Officer Lafrennie and Mr. French's wife were en route to Royalston, there were several phone calls between Mr. French and his wife. Mr. French's wife became distraught while speaking to Mr. French and reported that, at one point, Mr. French told her that he had a handgun pointed at his head. (Testimony of Officer Lafrennie)
16. When Officer Lafrennie and Mr. French's wife arrived at the residence in Royalston, State Police officers were on the scene, behind their vehicles with their guns drawn. At this point, the Frenchs' son had already been taken into custody, so Officer Lafrennie and Mr. French's wife left the scene with the Frenchs' son. After dropping the Frenchs' son off at the home of Mr. French's in-laws, Mr. French's wife accompanied Officer Lafrennie to the Gardner Police Department, where she met with other State Police officers. (Testimony of Officer Lafrennie)
17. Chief Deveneau, of the Royalston Police Department, was notified about the incident concerning Mr. French and arrived at the scene at approximately 9:00 PM. At that point, two (2) State Police units were already on the street outside of Mr. French's residence. Chief Deveneau was informed by State Police officers that Mr. French had picked up his son from his in-laws' house, his wife reported that he had made threats to harm himself, and was refusing orders from the State Police to exit his home. (Testimony of Chief Deveneau)
18. Chief Deveneau called out to Mr. French using a public address system but Mr. French did not respond. (Testimony of Chief Deveneau)

19. Mr. French testified that he did not really understand why the police were still near his home as he had already turned the Frenchs' son over to them. He acknowledged that it was "possible" that the police wanted to see him but claims he did not understand what they wanted and did not see the point of going out to them. I do not find his testimony on this subject to be credible since he could have, and should have exited the home in response to police requests and addressed the police. (Testimony of the Appellant; Administrative Notice)
20. While Mr. French was in his home and he observed additional police officers arriving at the scene, he became scared and panicky and felt "sweaty" and like he was "overheating." As an avid hunter, Mr. French owned numerous guns and stated that he was becoming increasingly concerned about his weapons. He was afraid that the police were going to shoot him. (Testimony of the Appellant)
21. Mr. French decided to remove his weapons from the house. He put all his rifles out on the back patio and placed his three (3) handguns on or near a stone wall further away from the house. Mr. French asked his wife to tell the police that he did not have any guns in the home. (Testimony of the Appellant)
22. At various times throughout the evening, Mr. French was in contact with his wife via telephone. Mr. French claims he only learned that the police wanted him to come out of the house because his wife told him in their phone conversations that night. Mr. French testified that he did not hear any police instructions over the public address system to exit the house. However, given the proximity of the various police to his home and their repeated requests for Mr. French to exit the house, I do not find his testimony on this subject to be credible. (Testimony of the Appellant)

23. At some point that night, while Mr. French was speaking to his wife on the telephone, she “got snappy” so Mr. French “threw it out there” that he would rather burn the house down than come out of the house. He threatened to put a hole in the gas tank and light it on fire. Mr. French testified he said this to his wife “out of spite” and because he had been watching the news, which kept repeating a story about a father in Washington who had done something similar. Mr. French testified that the story was “playing in his head a lot” and he mentioned it to his wife to “piss her off.” Mr. French stated that he felt sympathy for the man in Washington but that he would never harm his own son. Mr. French’s son was already in police custody at the time he made these statements to his wife. (Testimony of the Appellant)
24. Shortly after Mr. French made statements to his wife about burning the house down, the State Police tightened the perimeter around Mr. French’s house and sent a special unit, known as the Stop Team, closer to the house, accompanied by an armored vehicle. (Testimony of Chief Deveneau)
25. Mr. French heard the engine of the armored vehicle outside of his home and then heard an officer speaking to him over a loudspeaker. At this point, Mr. French exited his house. Mr. French walked to the front of the armored vehicle without any weapons and informed the police that his guns were located behind the house so that they could take possession of them. Mr. French then lay on the ground and his hands were put in plastic restraints. (Testimony of the Appellant)
26. Mr. French testified that he does not know what happened to his mind or body that night and that he does not know what happened to him, mentally. Mr. French stated that he could have had a breakdown but acknowledged that he is probably not qualified to make that judgment. (Testimony of the Appellant)

27. Shortly after Mr. French was taken into police custody that night, he was taken to Hayward Hospital in Gardner, MA for a medical and psychological evaluation. (Testimony of the Appellant & Chief Deveneau)
28. After Mr. French was taken to the hospital, police entered the house to ensure there was no one else in the house and to check the oil tank. During a search, police officers confiscated approximately twenty (20) long guns (rifles and shotguns) from the rear deck of the home. After observing magazine clips for a semi-automatic handgun inside the residence, police asked Mr. French's wife how many guns she thought might be in the house. Mr. French's wife said that Mr. French had three (3) handguns and, following a search of the property, the police located the 3 (three) handguns over a stone wall, on neighboring property. (Testimony of Chief Deveneau)
29. When the police entered Mr. French's home, they also observed hundreds of rounds of ammunition "strewn" throughout the first floor. (Testimony of Chief Deveneau) Mr. French testified that he had been attempting to get the ammunition out of the house to place it even further away from the guns but while he was carrying the ammunition, the plastic grocery bags that he was using ripped and spilled the ammunition. When asked at this Commission's hearing why he did not just leave the ammunition where it was and move the guns, Mr. French responded that he did not know and that he was panicking. I do not find Mr. French's response on this matter to be credible since he could have simply left the ammunition where it was and exited the house. (Testimony of the Appellant)
30. In the early hours of February 12, 2012, at approximately 2:24 AM, following these events, Mr. French's wife sought a temporary restraining order against Mr. French on behalf of herself and her son, stating that the incident that occurred the previous day had placed her in



fear of imminent serious physical harm. The order was issued and subsequently extended to February 2013. (Ex. 5)

31. On or about February 13, 2012, Mr. French was placed on paid leave from his position as Industrial Instructor II pending the outcome of an investigation by the DOC. (Ex. 5)
32. On or about February 15, 2012, an investigation was initiated by the Acting Chief of the DOC's Internal Affairs Unit regarding Mr. French's conduct on the night in question. (Ex. 5)
33. Mr. French had no prior discipline record with the DOC. (Ex. 5)
34. On or about February 24, 2012, the Royalston Police Department filed a criminal complaint against Mr. French for three (3) counts of improper storage of a non-large capacity firearm, a misdemeanor. These charges were brought against Mr. French based on the three (3) handguns found just beyond his property line, over a stone wall near the back of his residence following the incident that took place on or about the night in question. (Ex. 5; Testimony of Chief Deveneau) All three (3) weapons were recovered and secured by the Royalston Police Department. None of the weapons were loaded, nor did they have trigger locks as required by the Firearms Storage Act. (Ex. 5)(Testimony of Chief Deveneau)<sup>5</sup>
35. On or about April 10, 2012, a fitness for duty evaluation regarding Mr. French was sent to the DOC from Chandler Psychological Services. The procedures used for the evaluation included an intake interview, various psychological testing, a psychiatrist interview, a team interview, and data analysis/personnel file review. (Ex. 8) The doctor who conducted the intake interview with Mr. French determined that Mr. French was fit for duty under the condition that he continue with counseling. Similarly, the psychiatrist interview found that

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<sup>5</sup> I take administrative notice that Chief Deveneau's reference to the Firearms Storage Act appears to be a reference to G.L. c. 140, § 131L.

Mr. French had been “overwhelmed by situational factors” but found no reason that Mr. French could not return to duty with the recommendation that he continue with counseling. In addition, the clinical team interview agreed that Mr. French was fit for a full active return to duty, contingent upon continued counseling. (Id.)

36. On or about July 24, 2012, the investigation into Mr. French’s conduct was reassigned to Sgt. Perry. (Testimony of Sgt. Perry; Ex. 5)

37. On or about August 22, 2012, Mr. French admitted to sufficient facts with respect to each of the three (3) misdemeanor charges for the improper storage of a firearm and the case was continued without a finding. Mr. French was placed on probation for one (1) year. (Ex. 5)

38. On or about October 9, 2012, Sgt. Perry submitted his investigation report to the Acting Chief of the Internal Affairs Unit. (Ex. 5)

39. The investigation report concluded there was just cause to find, in summary:

- (1) On February 11, 2012 and/or February 12, 2012, Mr. French made disturbing statements threatening to harm himself and his home. His conduct on February 11 and/or February 12 resulted in an extensive police response to his home.
- (2) On February 11, 2012 and/or February 12, 2012, Mr. French failed to comply with repeated orders from the police, [including] orders to surrender.
- (3) On February 11, 2012 and/or February 12, 2012, Mr. French’s failure to cooperate with the police resulted in a lengthy standoff at his home with law enforcement officials.
- (4) In connection with Mr. French’s conduct on February 11 and/or February 12, 2012, an abuse prevention order was issued against him. The plaintiff in the abuse prevention order complaint was his spouse at the time . . . . On April 15, 2012, while [his wife] was removing property from the residence where the two previously resided, Mr. French appeared near the residence and yelled at [his wife]. This conduct violated the abuse prevention order. Accordingly, later that day he was arrested and subsequently charged criminally with violating the abuse prevention order. On August 22, 2012, he admitted to sufficient facts with respect to this charge and the case was continued without a finding until August 26, 2013, during which time he will remain on probation
- (5) On February 11, 2012 and/or February 12, 2012, Mr. French failed to properly store his firearms. Accordingly, on February 24, 2012, he was criminally charged with three (3) counts of improper storage of a firearm. On August 22, 2012, he admitted to sufficient facts with respect to these charges and the case was

continued without a finding until August 26, 2013, during which time he will remain on probation.

(Ex. 7)

40. On or about October 10, 2012, Mr. French's therapist reported that Mr. French had been attending regularly scheduled psychotherapy sessions since February 14, 2012 and had been "open and cooperative" about his issues and was "learning to communicate his feelings and thoughts in better ways." (Ex. 9)
41. On or about October 17, 2012, as a result of the investigation, the Acting Deputy Commissioner of the DOC found that Mr. French's actions violated the following rules and regulations: General Policy and Standards of Correction and the 103 DOC 238 Prohibition of Sexual Assault, Domestic Violence, and Harassment policy. (Ex. 5)
42. On or about October 19, 2012 Mr. French was provided with written notification that, pursuant to G.L. c. 31, § 41, a hearing was to be held to determine if he violated the DOC's rules and regulations and, if so, to determine the appropriate level of discipline to be imposed against him, up to and including termination of his employment. (Ex. 1)
43. On or about November 8, 2012, the hearing was held by the DOC in accordance with G.L. c. 31, § 41. (Ex. 7)
44. On or about November 13, 2012, following Mr. French's § 41 hearing, the hearing officer reported her findings to the Commissioner of the DOC via letter. With respect to the allegations against Mr. French following the investigation, the hearing officer found that the allegations were proved more likely than not, with the exception of part of the fourth charge.<sup>6</sup> (Ex. 7) The hearing officer concluded that Mr. French violated the Rules and

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<sup>6</sup> At Mr. French's hearing at DOC, the hearing officer found, "Notwithstanding his admission to sufficient facts when in court, in view of his testimony at the Commissioner's Hearing, I do not find that a preponderance of evidence shows Mr. French actually appeared . . . and violated the Abuse Prevention Order. While this occurrence is certainly possible, the evidence did not persuade me that the person shouting to [the wife] was actually Mr.

Regulations Governing All Employees of the Massachusetts Department of Correction (“DOC Rules and Regulations”) General Policy I and Rule 1, as well as the DOC’s Policy for the Prohibition of Sexual Assault, Domestic Assault, Domestic Violence and Harassment (“DOC Domestic Violence Policy”) at 103 DOC 238.01 and 103 DOC 238.04(3)a. (Id.)

45. On or about January 3, 2013, Mr. French was informed via letter that, following his § 41 hearing, the DOC was terminating his employment, effective immediately. The Commissioner of the DOC agreed with the hearing officer’s findings. Accordingly, the Commissioner of the DOC determined that Mr. French’s conduct violated the DOC Rules and Regulations General Policy I and Rule 1 and the DOC Domestic Violence Policy 103 DOC 238.01 and 103 DOC 238.04(3)a. (Ex. 2)

46. DOC Rules and Regulations, General Policy I states, in pertinent part:

Nothing in any part of these rules and regulations shall be construed to relieve an employee of his/her primary charge concerning the safe-keeping and custodial care of inmates or, from his/her constant obligation to render good judgment [and] full and prompt obedience to all provisions of law, and to all orders not repugnant to rules, regulations, and policy issued by the Commissioner, the respective Superintendents, or by their authority. All persons employed by the Department of Correction are subject to the provisions of these rules and regulations. Improper conduct affecting or reflecting upon any correctional institution or the Department of Correction in any way will not be exculpated whether or not it is specifically mentioned and described in these rules and regulations. Your acceptance of appointment to the Massachusetts Department of Correction shall be acknowledged as your acceptance to abide by these rules and regulations.

(Ex. 3)

47. Rule 1 of the DOC Rules and Regulations sets forth the Standards of Correctional Service and provides the following:

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French. However, I find that a preponderance of evidence shows that the remainder of the fourth charge is true.” (Ex. 7) In the face of Mr. French’s admission to sufficient facts in this regard, it is difficult to understand the DOC hearing officer’s statement in this regard. Nonetheless, DOC did not rely on Mr. French’s violation of the abuse prevention order to support its decision to terminate Mr. French’s employment.

You must remember that you are employed in a disciplined service which requires an oath of office. Each employee contributes to the success of the policies and procedures established for the administration of the Department of Correction and each respective institution. Employees should give dignity to their position and be circumspect in personal relationships regarding the company they keep and places they frequent.

(Ex. 3)

48. DOC Domestic Violence Policy 103 DOC 238.01 states:

The Commonwealth has a zero-tolerance policy for sexual assault, domestic violence and harassment occurring within or outside the workplace. It is the Department's policy that all employees work in an environment free from all forms of sexual assault, domestic violence and harassment. These acts undermine the integrity of the work place and the personal safety of the individual.

(Ex. 4)

49. DOC Domestic Violence Policy 103 DOC 238.04(3)a provides: "Department employees shall ensure that they do not participate in any form of sexual assault, domestic violence or harassment, either within or outside the workplace." (Ex. 4)

50. Following the hearing at the Commission, at my request, the DOC submitted documentation of other employees who were terminated from the DOC for behavior deemed similar to Mr. French's. I summarize here the DOC examples:

- The first example involved an employee who had engaged in a physical altercation with his wife. Following the physical altercation, the employee then threatened his wife. As a result of this conduct, the employee was arrested and charged with Assault and Battery. The employee was also charged with Intimidation of a Witness. The charges were later dropped after the wife invoked her marital privilege not to testify. The employee did not properly report the dismissal of the charges against him and was "less than truthful" when interviewed by a DOC investigator regarding the matter. The DOC determined that the employee violated the following DOC Rules and Regulations: General Policy I, Rule 1, Rule 2(b), Rule 19(c). In addition, the DOC determined that the employee also violated DOC Domestic Violence Policy 103 DOC 238. The employee was terminated in 2009.
- The second example involved an employee who suspected that his wife was having an affair with another man. The employee made arrangements to meet this man in a parking lot. After making these arrangements, the employee then went to his home and retrieved a firearm for which he did not have a valid license. The employee later

confronted the man in the parking lot. He pulled the firearm from behind his back, raised the firearm towards the man's face and threatened to kill him. The employee was arrested and charged with Assault with a Dangerous Weapon (Firearm), Threatening to Commit a Crime (murder), and Carrying a Firearm Without a License. An emergency restraining order was issued against the employee by his wife and the trial court found the employee was a "danger to society" and held him without bail. He later admitted to sufficient facts with respect to the charges of Assault with a Dangerous Weapon and Threatening to Commit a Crime. These charges were continued without a finding and the employee was placed on probation and required to attend an anger management program. The DOC terminated the employee in 2009 because his conduct was found to have violated DOC Rules and Regulations General Policy I and Rule 1.

- The third example involved an employee who was arrested and charged with Assault and Battery (domestic) for physically assaulting his live-in girlfriend. In addition, the employee was later arrested and charged with Intimidation of a Witness. Sufficient facts were found with respect to the Assault and Battery charge and the case was continued without a finding. The Intimidation of a Witness charge was dropped by the Commonwealth. The employee failed to report all of his court appearances to the DOC as required by the DOC Rules and Regulations. In addition, the employee was less than truthful when questioned about this matter by DOC investigators. The employee was found to have violated the following DOC Rules and Regulations: General Policy I, Rule 2(b), Rule 19(c). His behavior also violated the DOC Domestic Violence Policy 103 DOC 238. As a result, the employee was terminated in 2010.

(Post-Hearing documents filed by DOC)

## **DISCUSSION**

### *Applicable Law*

Pursuant to G.L. c. 31, § 43, a "person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission . . . ." The statute provides, in pertinent part:

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 the 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 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.

G.L. c. 31, § 43.

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.” Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304 (1997); Comm’rs of Civil Serv. v. Mun. Ct. of Bos., 359 Mass. 211, 214 (1971); 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. of Brockton v. Civil Serv. Comm’n, 43 Mass.App.Ct. 486, 488 (citing 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).

While the Commission makes *de novo* findings of fact, “the Commission’s task, however, is not to be accomplished on a wholly blank slate.” Town of Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). “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. at 823-24 (citing Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983)).

### *The Respondent's Argument*

The DOC argues that there is “overwhelming” evidence demonstrating that Mr. French engaged in substantial misconduct which adversely affects the public interest by impairing the efficiency of public service. The DOC states that Mr. French “failed to use good judgment” during the incident with law enforcement officials and by making threatening statements to his wife about burning down his house. The DOC argues that it cannot continue to employ someone who engages in such behavior.

### *The Appellant's Argument*

Mr. French concedes that his behavior on or about February 11 and February 12, 2012 was in violation of DOC Rules and Regulations General Policy I, but it was a “personal matter” and not a reflection on the DOC. In addition, while Mr. French claims that he did not hear multiple orders given to him by law enforcement personnel over the PA system, Mr. French acknowledges that he “should have had a discussion with the authorities at an earlier time in the evening to avoid the continued escalation of the situation.” Appellant's Post-Hearing Brief, p. 7. In addition, Mr. French admits that he violated General Policy I by not having safety locks on the three (3) handguns that were found near the stone wall. However, Mr. French argues that his actions did not violate Rule 1 of the DOC Rules and Regulations and that he did not violate the DOC Domestic Violence Policy.

### *Analysis*

Applying these principles to this appeal, I conclude that the DOC has met its burden of proof and had just cause to discipline Mr. French. A preponderance of the evidence establishes that Mr. French violated the DOC Rules and Regulations, General Policy I and Rule 1, in addition to the DOC Domestic Violence Policy 103 DOC 238.01 and 103 DOC 238.04(3)a. Although DOC obtained a fitness for duty evaluation of Mr. French and the evaluation found



that Mr. French could return to work as long as he continued counseling and it appears that Mr. French continued counseling, DOC did not rely on the fitness evaluation in order to discipline him. As an employee of the DOC, a para-military organization, Mr. French was required and expected to render good judgment and comply with all provisions of law on and off the job. Mr. French's conduct during the incident that occurred between February 11 and February 12, 2012 demonstrated poor judgment and disrespect for the law. While it is certainly understandable that Mr. French was feeling significant pressure from events in his personal life, including the recent death of his father and his wife's request for a divorce, these events do not relieve him of his obligations under the DOC Rules and Regulations. In addition, Mr. French's actions during the events that transpired over the evening of February 11, 2012, which included disregarding orders from law enforcement officials from multiple departments surrounding his home, making highly disturbing statements threatening to harm himself and his home, and improper storage of his firearms reflect poorly on the DOC, regardless of the fact that the incident occurred when Mr. French was not on duty. Furthermore, Mr. French's behavior caused his wife to fear for her safety and that of their child. Because Mr. French's behavior violated the cited DOC Rules and Regulations and DOC Domestic Violence Policy, the DOC had just cause to discipline him.

Having determined that discipline was warranted, I must determine if the DOC was justified in the level of discipline imposed, which, in this case, was termination. The Commission is guided by "the principle of uniformity and the equitable treatment of similarly situated individuals" [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system . . . to guard against political considerations, favoritism and bias in governmental employment decisions." Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 824 (2006) (citing Police Comm'r of Bos. v. Civil Serv. Comm'n, 39

Mass.App.Ct. 594, 600 (1996); Falmouth v. Civil Serv. Comm'n, 61 Mass.App.Ct. 796, 800 (2004)). Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune an employee's discipline to ensure perfect uniformity. See Bos. Police Dep't v. Collins, 48 Mass.App.Ct. 408, 412 (2000). "[T]he power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority." Falmouth v. Civil Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (2004) (quoting Police Comm'r of Bos. v. Civil Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (1996)).

In addition,

[u]nless the commission's findings of fact differ significantly from those reported by the [appointing authority] 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 [appointing authority] on the basis of essentially similar fact finding without an adequate explanation.

Town of Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 824 (2006) (citing Police Comm'r of Bos. v. Civil Serv. Comm'n, 39 Mass.App.Ct. 594, 600 (1996)). Here, after a de novo hearing, at which I reviewed all of the documentary evidence and listened to the testimony of the witnesses, I have concluded that modification is not warranted in this instance. The Commission's findings of fact do not differ significantly from those reported by the DOC, nor does the Commission interpret the law differently than the DOC has in this case. In addition, there is no evidence of disparate treatment in regard to the penalty imposed nor has there been evidence of any ulterior motives that would warrant the Commission's intervention in regard to the penalty imposed.

### Conclusion

For the foregoing reasons, Mr. French's appeal under Docket Number D1-13-12 pursuant to G.L. c. 31, § 43 is hereby *denied*.

Civil Service Commission

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Cynthia A. Ittleman, Esq.  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein - Commissioners) on August 7, 2014.

A True Record. Attest:

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Commissioner

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.

Notice:

Mark Goldstein, Esq. (for the Appellant)  
Amy Hughes, Esq. (for the Respondent)