

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

EDWARD GADAPÉE,
Appellant

v.

CASE NO: D1-12-150

CITY OF NEW BEDFORD,
Respondent

Appearance for Appellant:

Jaime DiPaola-Kenny
Associate General Counsel
AFSCME Council 93
8 Beacon Street
Boston, MA 02108

Appearance for Appointing Authority:

Jane Medieros Friedman
First Assistant City Solicitor
City of New Bedford Law Department
133 William Street
New Bedford, MA 02740

Commissioner:

Paul M. Stein¹

DECISION

The Appellant, Edward Gadapee, acting pursuant to the provisions of G.L. c. 31§ 43, duly appealed the decision of the Respondent-Appointing Authority, City of New Bedford, for demoting him from Diesel Engine Repairman Working Foreman to Diesel Engine Repairman. A hearing was held by the Civil Service Commission (the Commission) on July 6, 2012 and on July 13, 2012. As no request was made to make the hearing public, the hearing was declared private. The hearing was digitally recorded. Ten (10) exhibits were received in evidence and the

¹ The Commission acknowledges the assistance of Law Clerk Hannah Filkins in the drafting of this decision.

record was held open for the submittal of a blank form entitled Fire Repair Mechanic's Report, (hereinafter Exhibit 11) and Invoice No.173334 from Minuteman Trucks, Inc. (hereinafter Exhibit 12). Exhibits 11 and 12 were submitted by the respondent on July 23, 2012. Both parties submitted post hearing proposed decisions.

FINDINGS OF FACT:

Giving appropriate weight to the Exhibits, the testimony of the witnesses (Lawrence D. Worden, Donald Kennison, Rene St. Pierre, Albert D'Aguiar, Paul Coderre, Jr., Michael Gomes and Edward Gadapee) and the inferences reasonably drawn from the evidence as I find credible, I make the findings of fact set forth below.

1. The Appellant, Edward Gadapee (Appellant), was appointed to the position of Diesel Engine Repairman by the City of New Bedford Fire Department on October 26, 1997. Due to reorganization, Mr. Gadapee was involuntarily transferred to the Department of Public Facilities (DPF) on June 30, 2003. On May 11, 2009 he was promoted to the position of Diesel Engine Repairman Working Foreman. On April 2, 2012, Mr. Gadapee was demoted to Diesel Engine Repairman. (Exhibit A.A.1)
2. The DPF operates a Central Garage for city owned vehicles for various city departments. Following the City's reorganization of various departments, the Fire Department Garage and its employees became part of the DPF. (Testimony of Lawrence Worden)
3. Since July 2003, Mr. Lawrence Worden, DPF Commissioner, has served as the Appointing Authority for the DPF. Following the transfer of the Fire Garage, DPF Commissioner Worden designated a liaison between the Fire Department and the Fire Garage to coordinate work and dictate priorities and the DPF would maintain the budget. (Testimony of Lawrence Worden)

4. The Deputy Chief of the Fire Department is responsible for forwarding the maintenance requests from the firefighters to the Fire Garage. The Deputy Chief also maintains an on-going dialogue with the garage foreman regarding current or on-going maintenance.
(Testimony of Paul Coderre, Jr.)
5. The DPF also has a superintendent who is responsible for the Central Garage. This individual is primarily responsible for overseeing the work of the Central Garage but also acts in a supervisory capacity to the Police and Fire Garages. (Testimony of Albert D'Aguilar)
6. When the Fire Garage receives maintenance requests they have "Hard Cards" that contain the vehicle number, date of repair, the necessary repairs and the services performed. Following the completion of repairs, these cards are placed in the vehicle's file. The Fire Department receives a copy of these "hard cards" for their records. (Testimony of Albert St. Pierre)
7. Pursuant to City policy, any repairs that exceed \$300 need approval prior to the commencement of work from the City Auditor's office. (Testimony of Lawrence Worden)
8. Regular and routine scheduled maintenance of fire and EMS equipment regarding oil changes, tire rotation, etc. is the primary responsibility of the Fire Garage. The garage maintains a "grease board" which is designed to keep a running tally of when each piece of apparatus is serviced as well as the apparatus's next scheduled service date.
(Testimony of Michael Gomes)
9. Mr. Gadapee learned through the interview process of the responsibilities associated with being Diesel Engine Repairman Working Foreman. Specifically, the foreman was

responsible for purchase orders, vendor communications, scheduling, maintaining vehicle maintenance records and reporting necessary repairs to the appropriate authority.

(Testimony of Lawrence Worden)

10. Mr. Gadapee was promoted to Diesel Engine Repairman Working Foreman on May 1, 2009. He did not receive training with regard to the foreman position but continued to act in the same fashion as his predecessor. (Testimony of Edward Gadapee)

11. Mr. Gadapee knew of no formal process associated with scheduling regular maintenance for fire apparatus except that the previous foreman did his best to have each piece of equipment serviced approximately every six (6) months as did he. (Testimony of Edward Gadapee)

12. In or around late February, or early March of 2012, DPF Commissioner Worden gave two of the Mayor's assistants a tour of DPF facilities including the Fire Garage. At the time there were pieces of apparatus in the garage including Ladder 1. Mr. Gadapee explained to the mayoral staff members that Ladder 1 was a piece of front line equipment in for minor repairs but needed to be sent to Minuteman Trucks Inc. in order to have additional repairs made to the rear steer on the tiller. However, Mr. Gadapee noted that Ladder 1 would be back in service the following day. The following day, DPF Commissioner Worden called and confirmed with Mr. Gadapee that Ladder 1 was back in service. (Testimony of Lawrence Worden)

13. Deputy Fire Chief Coderre testified that Ladder 1 had problems in prior months; specifically, that Ladder 1 had been "sluggish". (Testimony of Paul Coderre, Jr.)

14. Mr. Gadapee knew there had been skipping in the engine prior to March 2012. He believed that there potentially was water in the fuel and put in treatment. There also was

an issue in the “regen system” which burns off soot from the engine. After several attempts to correct these “skipping” problems, Mr. Gadapee tried to have Ladder 1 serviced at Minuteman Trucks Inc. (Minuteman), but was unable to get an appointment immediately. (Testimony of Edward Gadapee)

15. Several weeks later, while Ladder 1 was en route to Minuteman, it lost power and had some difficulty making it to Minuteman. Once it arrived, Minuteman discovered the engine had blown. (Testimony of Lawrence Worden; Testimony of Edward Gadapee)

16. On March 26, 2012, upon DPF Commissioner Worden’s return from vacation, Fire Chief Gomes and Deputy Fire Chief Coderre informed the Commissioner that they believed there were potential problems regarding regular fire apparatus maintenance. They specifically were concerned about the blown engine on Ladder 1. (Testimony of Lawrence Worden; Testimony of Paul Coderre, Jr.; Testimony of Michael Gomes)

17. DPF Commissioner Worden informed Fire Chief Gomes and Deputy Fire Chief Coderre that the last he had heard, Ladder 1 was going to Minuteman for repairs on the rear tiller. DPF Commissioner Worden then asked whether this incident had occurred while he had been away on vacation because this was the first he had heard of any further problems to Ladder 1. Fire Chief Gomes and Deputy Fire Chief Coderre informed him that it had occurred prior to his vacation. (Testimony of Lawrence Worden)

18. Chief Gomes indicated that he had concerns regarding the accuracy of the grease board specifically, that according to the board, certain fire apparatus had not been serviced in quite some time. (Testimony of Michael Gomes)

19. Chief Gomes expressed that his primary concern was that lack of regular maintenance could have led to the blown engine on Ladder 1. Most importantly, other fire apparatus

could be similarly affected by the lack of regular maintenance. (Testimony of Michael Gomes)

20. In response to these allegations, DPF Commissioner Worden called Mr. Gadapee and the Shop Steward into his office to discuss their concerns. DPF Commissioner Worden told Mr. Gadapee about the Fire Chief and Deputy Chief's concerns regarding the "grease board". Mr. Gadapee responded that the "grease board" was not accurate but the records were accurate. (Testimony of Lawrence Worden)

21. DPF Commissioner Worden proceeded to question Mr. Gadapee about Ladder 1 being out of service due to a blown engine. Mr. Gadapee responded that the engine had blown a couple of weeks prior while being transported to Minuteman for rear tiller repair. (Testimony of Lawrence Worden)

22. When DPF Commissioner Worden asked Mr. Gadapee why he had not made him aware that Ladder 1 was out of service, he responded that the parts were under warranty. Since they did not exceed the \$300 approval requirement, Mr. Gadapee was under the belief he did not have to report the repairs to the Commissioner. (Testimony of Lawrence Worden)

23. DPF Commissioner Worden informed Mr. Gadapee that he was upset he had not been informed that a major piece of equipment was out of service regardless of whether the parts were under warranty. (Testimony of Lawrence Worden)

24. DPF Commissioner Worden, Fire Chief Gomes and Deputy Fire Chief Coderre went across the street to the Fire Garage so Mr. Gadapee could produce the records proving Ladder 1's last service date. (Testimony of Lawrence Worden)

25. When Mr. Gadapee was asked to produce maintenance records for Ladder 1 he was unable to produce any written record of the last maintenance. DPF Commissioner

Worden then requested the records for both Engine 8 and Engine 1. Mr. Gadapee again was unable to produce any written records regarding routine maintenance for Engine 8 or Engine 1. (Testimony of Lawrence Worden; Testimony of Paul Coderre, Jr.)

26. Mr. Gadapee asserted that the maintenance services had been performed on the vehicles.

Mr. Gadapee admitted the record failed to reflect these services because he had either misplaced or forgotten to fill out the forms. (Testimony of Edward Gadapee)

27. Mr. Gadapee acknowledged the importance of record maintenance for these vehicles in his testimony. (Testimony of Edward Gadapee)

28. Proper maintenance records are not only important to ensure that routine maintenance is being performed, but also for warranty purposes. If the records indicate neglect then parts could potentially be denied coverage under the warranty. (Testimony of Lawrence Worden)

29. Following Mr. Gadapee's failure to produce service records, DPF Commissioner Worden asked Mr. Gadapee to vacate the garage and called in the other two mechanics, Rene St. Pierre and Donald Kennison to discuss regular maintenance of Ladder 1, Engine 1, and Engine 8. Both men indicated that Mr. Gadapee was responsible for keeping the records for fire equipment. Mr. Kennison noted that he kept the records for the EMS vehicles at his desk. Neither of them had any recollection of the last time these pieces of fire apparatus had been serviced. (Testimony of Lawrence Worden)

30. Mr. St. Pierre recalled Ladder 1 being brought into the Fire Garage to have its oil changed in March of 2012. When changing the oil Mr. St. Pierre noticed that a Caterpillar filter was still in Ladder 1 indicating that the oil had not been changed recently since these

filters only come directly from the manufacturer. The Fire Garage uses filters that come from local vendors. They do not stock Caterpillar filters. (Testimony of Rene St. Pierre)

31. Mr. Kennison found documentation establishing that Ladder 1's oil had been changed by Minuteman Trucks Inc. back in March of 2010. There was no other documentation of Ladder 1's oil being changed between March of 2010 and March of 2012. (Testimony of Donald Kennison; Testimony of Edward Gadapee; Exhibit 7)

32. Both men indicated in their testimony that they did not recall any regular inspection schedule for fire vehicles or vehicles being brought in specifically for routine maintenance. (Testimony of Rene St. Pierre; Testimony of Donald Kennison)

33. Deputy Chief Coderre does not recall receiving any requests for Ladder 1 to be taken out of service for routine maintenance. His testimony reflects similarly for Engine 8 and Engine 1. The only time he recalls apparatus being taken out of service was pursuant to repair requests. (Testimony of Paul Coderre, Jr.)

34. On several occasions, Garage Foreman and Albert D'Aguiar asked Mr. Gadapee if he was up to date regarding the maintenance and Mr. Gadapee responded that he was. Mr. D'Aguiar would occasionally visit the Fire Garage, time permitting, but was not responsible for overseeing their record maintenance. (Testimony of Albert D'Aguiar)

35. On March 27, 2012, DPF Commissioner Worden issued a letter to Mr. Gadapee informing him that he was contemplating demoting him from Diesel Engine Repairman Working Foreman, citing his failure to provide proper routine maintenance as well as maintain accurate documentation and records of that maintenance on City-owned Fire Apparatus. (Exhibit A.A 3)

36. On April 2, 2012, DPF Commissioner Worden issued a letter to Mr. Gadapee informing him that as a result of the hearing held on March 29, 2012, he had found that just cause existed for his demotion to Diesel Engine Repairman. (Exhibit A.A 4)
37. Mr. Donald Kennison is now the Diesel Engine Repairman Working Foreman. (Exhibit A.A. 4, Testimony of Donald Kennison)
38. Since Mr. Kennison became Working Foreman, he has implemented a routine walk-through inspection for vehicles. Mechanics walk from the front to back of the vehicle writing down any potential issues or repairs on a legal pad. Mr. Kennison also found that, upon becoming Acting Working Foreman, a majority of the vehicles brought into the garage have needed new front brakes, rear brakes, or springs. (Testimony of Donald Kennison)
39. This is the first and only disciplinary action taken against Mr. Gadapee throughout his employment with the DPF. His evaluations reflect that Mr. Gadapee had performed adequately in the position he has held. (Exhibit 8; Exhibit 9; Exhibit 10)

CONCLUSION

A tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L.c.31, §41, may appeal to the Commission under G.L. c.31, §43, which 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.

Under Section 43, the role of the Commission is to determine, under a de novo “preponderance of the evidence” test, “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997). Compare Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, rev.den., 440 Mass. 1108 (2003) (affirming de novo decision to reject appointing authority’s evidence of appellant’s failed polygraph test and prior domestic abuse orders and crediting appellant’s exculpatory testimony) with Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814,823 (2006) (inconsequential differences in facts found did not make appointing authority’s justification unreasonable). See also Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411 (2000); McIsaac v. Civil Service Comm’n, 38 Mass. App.Ct. 473, 477 (1995); Watertown v. Arria, 16 Mass.App Ct. 331, rev.den., 390 Mass. 1102 (1983).

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." E.g., Commissioners of Civil Service v. Municipal Ct. 359 Mass. 211,214 (1971); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477,482 (1928); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997). 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, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983). 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.’” ” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of the “merit principle” which governs Civil Service Law that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “separating employees whose inadequate performance cannot be corrected.” G.L.c.31,§1.

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); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1982). The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001

It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003)

Applying these principles to the facts of this appeal, the City of New Bedford had just cause for demoting Mr. Gadapee for failing to provide proper routine maintenance for city owned fire apparatus, failing to maintain adequate records and documentation of the maintenance being provided, and failing to properly communicate with the proper authority.

Despite this being the only disciplinary action taken against Mr. Gadapee while employed at the DPF, given the circumstances, the city had just cause in issuing a demotion. Mr. Gadapee, albeit a seasoned mechanic, demonstrated that he was not adequately prepared to take on a supervisory position.

First, it is of utmost importance that City-owned fire apparatus is properly serviced as a safety precaution. Improper maintenance of safety vehicles not only jeopardizes the safety of those who operate the equipment, but also the public. Even by Mr. Gadapee's account of the events, he was neglectful in fulfilling the duties required of him as Diesel Engine Repairman Working Foreman. Mr. Gadapee had a duty to ensure that the fire apparatus was being properly serviced. The evidence indicates that there was no uniformity as to scheduled routine maintenance nor was there an accurate record of such maintenance. Upon request to produce documentation of services performed for Ladder 1, Engine 1, and Engine 8, Mr. Gadapee was unable to do so. Even though Mr. Gadapee testified he tried, as did his predecessor, to service the fire apparatus approximately every six months, the evidence indicates as much as a potential two-year lapse in one of the vehicles oil changes.² Although Mr. Gadapee was adequately responding to maintenance requests, when they were specifically brought to his attention, he failed to take the initiative to perform routine service schedule for the department's fire apparatus.

² Exhibit 7 indicates that Minuteman Trucks performed an oil change on Ladder 1 in March of 2010 and testimony from both Rene St. Pierre and Edward Gadapee indicates the last oil change for Ladder 1 was in March of 2012. There is no other evidence of an oil change in the interim period.

Mr. Gadapee not only lapsed in diligent recordkeeping for one fire apparatus but failed to maintain proper records for other frontline equipment as well. Mr. Gadapee admitted that he must have forgotten or misplaced these records. This is not a situation in which Mr. Gadapee merely forgot once or twice to make proper documentation of routine services to vehicles, but it seems to be a habitual practice of his. Mr. Gadapee further acknowledged the importance of recordkeeping for these vehicles. Proper record keeping not only ensures that fire apparatus is routinely being maintained but, as DPF Commissioner Worden indicated in his testimony, it is also important for warranty purposes of these vehicles. Even though there was no uniform procedure for recording service performed on vehicles amongst the fire garage mechanics, assuring that some form of adequate records was an obvious necessity and remained the primary responsibility of the Diesel Engine Working Foreman.

Mr. Gadapee points to the confusion as to the proper reporting authority of the Fire Garage personnel. While there is some merit to this point, Mr. Gadapee clearly knew that DPF Commissioner Worden was in charge of the approval for repair work. Mr. Gadapee assumed, perhaps correctly, that prior approval was not necessary for repair work under warranty. Nevertheless, a manager should know that it was important to keep DPF Commissioner Worden advised of important issues, of which a blown engine that took a front-line fire apparatus out of service for an extended period of time, was clearly one. The failure to keep his superiors informed shows poor judgment. It was reasonable to expect that Mr. Gadapee would ensure that he would have kept Commissioner Worden aware of the ongoing situation. Mr. Gadapee had been informed through the interview process that DPF Commissioner Worden expected to be advised of any major issues. Even though DPF Commissioner Worden primarily handles those budgetary aspects of maintenance, it is clear he established an expectation that he be informed of

any issues with front line service equipment. As Working Foreman, Mr. Gadapee was responsible to show an initiative to report and communicate with DPF Commissioner Worden regarding the service of fire apparatus. The evidence shows that he was not fulfilling this duty in accordance with DPF expectations.

A demotion is justified based on the severity of Mr. Gadapee's actions by failing to provide scheduled maintenance, maintain adequate records, as well as failing to communicate with the proper authority regarding issues with such fire apparatus. DPF Commissioner Worden indicated in his testimony that he had considered terminating Mr. Gadapee but based on his good performance as a mechanic he felt that was unwarranted. It seems to be a situation in which Mr. Gadapee was a qualified mechanic not quite equipped to take on a managerial position within the Fire Garage. This is not to say in due time that Mr. Gadapee cannot improve upon these skills and in the future be more adequately prepared to take on both the job's mechanical requirements in equal weight to the managerial duties required of a Diesel Engine Repairman Working Foreman.

For the above stated findings of fact and conclusion, the Commission determines that, by a preponderance of evidence, there is just cause for the demotion of the Appellant from the position of Diesel Engine Repairman Working Foreman to Diesel Engine Repairman.

The Appellant's appeal in Docket No. D1-12-150 is hereby **dismissed**.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on June 13, 2013.

A True Record. Attest:

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)(1), 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 as stated below.

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 from the effective date specified in 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 to:

Jaime DiPaola-Kenny (Appellant)

Jane Mederios Friedman, Esq. (for Respondent)