

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JACK GARVIN,
Appellant

v.

D1-07-245

DEPARTMENT OF STATE POLICE,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

John E. Taylor

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43 and G.L. c. 22C, s. 13 as amended by Chapter 43 of the Acts of 2002, the Appellant, Jack Garvin (hereinafter "Garvin" or "Appellant"), is appealing the recommendation of a Department of State Police Trial Board (hereinafter "Board"), that he be terminated for multiple violation(s) of Department Policy occurring on dates on or about September 14, 2006 through January 1, 2007. The appeal was timely filed. A hearing was held on September 30, 2008 and October 1, 2008 at the offices of the Civil Service Commission (hereinafter "Commission"). The witnesses were sequestered. The hearing was

recorded on four (4) audiotapes which are retained by the Commission. The parties submitted post hearing briefs.

FINDINGS OF FACT

Twenty-one (21) Exhibits were accepted into evidence during the hearing. The record remained open in order for the Respondent to submit records in regard to the discipline of other officers. Based on these exhibits and the testimony of the following witnesses:

For the Massachusetts State Police:

- BB, female motor vehicle operator
- MD, female motor vehicle operator
- AM, female motor vehicle owner
- Jack L. Garvin, Appellant

For the Appellant:

- Jack L. Garvin, Appellant

I make the following findings of fact:

1. Before his July 2007 termination, the Appellant was employed by the Department of State Police (hereinafter “Department”) as a Trooper. (Testimony of Appellant & Exhibit 13).

September 2006 Interactions with CS and AM

2. On or about September 8, 2006, at approximately 3:30 p.m., the Appellant, uniformed and operating a marked cruiser, was returning home northbound on Washington Street (Route 1A) in South Attleboro when he abruptly reversed direction. He traveled south for a short time, then pulled into the parking lot at 967 Washington Street. (Testimony of Appellant, AM, Exhibits 4 and 20).
3. Two women, CS and AM were standing in the parking lot. The Appellant looked at them and then approached. (Testimony of AM, Exhibit 4: *IA interviews*, and Exhibit 20).

4. CS was the owner/operator of a beauty salon located at 967 Washington Street. AM worked for her. (Testimony of AM, Exhibit 4: *IA interviews*.)
5. Although he maintains that he reversed his direction to get to a tobacco store he had “been looking for,” the Appellant concedes that, upon entering the parking lot, he immediately approached the two women and started a conversation. (Testimony of AM, Exhibit 4: *IA interviews*, and Exhibit 20).
6. Although he described his actions as being “friendly,” the Appellant testified that he immediately questioned the women about the license plates on two vehicles parked in the lot. (Testimony of the Appellant, AM, Exhibit 4: *IA interviews*, and Exhibit 20).
7. When one of the women admitted ownership, the Appellant said that the frames surrounding “his plate” were illegal because the words “Massachusetts” and/or “Spirit of America” were obstructed. (Testimony of AM, Exhibit 4: *IA interviews*, and Exhibit 20).
8. The Appellant then told the women to remove the frames to “save [him] from writing a ticket.¹” (Testimony of AM, Exhibit 4: *IA interviews*, and Exhibit 20).
9. The Appellant testified that he did not believe there was anything negative about the interaction. (Testimony of the Appellant & Exhibit 4, *IA interview*).
10. The women interpreted the Appellant’s actions differently. They reported that the he “got nasty” and had “a cocky attitude.” (Exhibit 4: *IA interview*, Testimony of Ms. AM).
11. This interaction took place outside the Appellant’s assigned patrol area, at or after the end of the Appellant’s assigned shift of 7:30 a.m. to 3:30 p.m. (Testimony of Appellant, AM)
12. Approximately one week later, the Appellant in uniform, returned to 967 Washington Street. At approximately 3:30 p.m. to 4:00 p.m., he entered CS’s beauty salon, strode past a manned reception desk into the private area where customers were being served, and confronted her

and AM about their license plates. (Testimony of Appellant, AM, Exhibit 4: *IA interviews*, Exhibit 20).

13. Although the Appellant described his actions as calm, helpful and friendly, the witnesses thought otherwise. The clientele described him as rude, cocky, unprofessional, agitated, loud, obnoxious, boisterous, and arrogant. The clientele describe his manner as akin to conducting a raid. (Testimony of the Appellant, AM, Exhibit 4: *IA interviews*, Exhibit 20).
14. The testimony of CS and AM was credible.
15. Pursuant to Article 5.2 of the Department's Rules & Regulations, in effect on or about September 8, 2006 through September 4, 2006, "[m]embers [of the State Police] *shall conduct themselves at all times in such a manner as to reflect most favorably upon themselves and the Massachusetts State Police.*" (Exhibit 15).
16. The Rule also specifically identifies conduct "*which brings the Massachusetts State Police into disrepute or reflects discredit upon the person as a member of the Massachusetts State Police*" as "[c]onduct unbecoming [of a Massachusetts State Police officer]." (Exhibit 15).
17. Pursuant to Department Special Order 05-SO-011, in effect on or about September 8, 2006 through September 14, 2006, "*all members of the Department are required beginning July 6, 2005 to complete a Massachusetts Traffic Data Collection form for all stops of motor vehicles or all other interactions with motorists...*" (Exhibit 15).
18. The Board found that the interaction with the women was not "an interaction with a motorist" and found the Appellant not guilty of a specific rules violation. It is undisputed that the Appellant failed to make a record of his interactions (through the data collection form or any other report) with CS and AM. (Testimony of Appellant, Exhibits 4, 15, and 20).

December 24, 2006 Interaction with MD

19. On or about December 24, 2006, at approximately 3:00 p.m. - 3:30 p.m., the Appellant was in uniform and operating a marked cruiser outside his patrol area. He was also at the end of his shift or pretty close to it, and was returning home via Robinson Avenue, South Attleboro when he pulled over a motor vehicle. (Testimony of the Appellant, MD, Exhibits 6 and 20).
20. He asked the operator, MD, to produce her vehicle registration. (Testimony of Appellant, MD, Exhibits 6 and 20).
21. After she produced the documents, the Appellant leaned towards her and said “expired November 30th,” or words to such effect. (Testimony of Appellant, MD, Exhibits 6 and 20)
22. The Appellant then ordered her from the vehicle, saying that he had a few things to “go over with her.” (Testimony of MD, Exhibits 6 and 20).
23. When MD hesitated, the Appellant said “*we’re not on a highway. This is a safe road, get out.*” (Testimony of MD & Exhibits 6 and 20, *see also*, Testimony of the Appellant).
24. He then directed her to the front of her vehicle, and showing her the frame around the license plate, said “*do you see this fancy advertisement you are doing for this dealership ...you’re not supposed to obstruct any words on your license plate.*”² (Testimony of Appellant, MD, Exhibits 6 and 20)
25. MD described the Appellant’s behavior as “*just very aggressive in tone,*” the Appellant “*clapped his hands*” and was sarcastic and patronizing when he said, “*I’m seeing some words, how about you. You seeing some words under there.*” (Testimony of MD, Exhibits 6, 18, and 20).
26. When MD said that the car had been purchased with frame already on the plate, the Appellant mocked and said, “*I see the coat your [sic] wearing, the store [where] you bought it probably put...a price tag on it and I see ...you’ve managed to remove your price tag from*

your coat.” The Appellant also said “are you feeling lucky today[?]. Do you feel like gambling with me today[?].” (Testimony of Ms. MD & Exhibits 6, 18, and 20).

27. When MD replied that she “didn’t know what he wanted her to say (in response), the Appellant said *“let me put it this way. If you feel lucky today...because if I run your plate and it is an active registration, I ‘m just going to give you a ticket for not having the proper paperwork. But if I run your plate and its [sic] an inactive registration, I’m going gonna [sic] tow your vehicle now and give you a ticket for not having the proper paperwork...so which is it, are you feeling luck today. Do you fell like gambling with me today[?].”*

(Testimony of MD, Exhibits 6, 18, and 20).

28. When she further explained that that the car was her husband’s and that he was usually “on top of these things”, the Appellant said *“oh really. Your husband’s on top of this stuff. Are you married to a man like me[?].”* When MD silently looked at him, the Appellant added, *“because if you’re married to a man like me, your husband is not on top of this stuff.”*

(Testimony of Appellant, MD, Exhibits 6, 18, and 20).

29. When she said she didn’t know what he wanted her to do and say, the Appellant said *“oh I don’t want you to say anything to me....I don’t want you to do anything. I just want to know, do you feel like gambling[?]”* (Testimony of MD, Exhibits 6, 18, and 20).

30. MD responded by saying “I don’t want my car towed” and the Appellant then said *“ya [sic] know what, I am feeling like gambling. So I’m gonna [sic] run your plate.”* (Testimony of MD, Exhibits 6, 18, and 20).

31. The Appellant returned to his cruiser for a period of time, and MD returned to her vehicle.

The Appellant MD’s car, leaned in and said *“not active”* and added, *“you had better find a legal way to get this car off the road.”* (Testimony of Appellant, MD, Exhibits 6, 18, and 20).

32. The Appellant then said, *"by the way, I wanted to talk to you about something else."*

(Testimony of MD, Exhibits 6, 18, and 20).

33. He asked her if she realized that he had been behind her while she was driving down the road. When she said yes, he said, *"you knew I was behind you and you were going forty miles an hour;" "you were going forty miles an hour in a thickly settled area and you knew I was behind you;" "do you have children;" "how would you like it if somebody drove through your neighborhood going forty miles an hour."* (Testimony of Appellant, MD, Exhibits 6, 18, and 20).

34. MD apologized, and the Appellant returned to his cruiser. (Testimony of Appellant, MD, Exhibits 6, 18, and 20).

35. Article 5.1 of the Department's Rules & Regulations provides that *"[m]embers shall not commit, nor cause to be committed, any act(s) or omit any act(s) which constitute a violation of any Massachusetts State Police Rule, Regulation, Policy, Procedure, Order or Directive."* (Exhibit 15).

36. Under Article 5.1.1, in effect on December 24, 2006, the Appellant was responsible for knowing and obeying all *"Rules, Regulations, Policies, Procedures, Orders and Directives"* of the Department. (Exhibit 15).

37. Pursuant to Department Special Order 05-SO-011, in effect on December 24, 2006, the Appellant was required to complete a Traffic Data Collection form in connection with his stop of Ms. MD. (Testimony of the Appellant & Exhibits 6, 15 and 20).

38. Pursuant to ADM-47 of the Department's Policies & Procedures (in effect on December 24, 2006), the Appellant was similarly required to *"[c]ollect data on race, gender"* in connection with his stop of MD.

39. It is undisputed that the Appellant made no record of the stop of (and interaction with) MD's and that, by failing to do so, he violated Article 5.1 of the Department's Rules & Regulations (Violation of Rules). (Testimony of Appellant & Exhibits 6, 15, and 20).
40. TRF-07 of the Department's Policies and Procedures, in effect on December 24, 2006, requires officers to "[a]void unnecessary conversation that may lead to verbal confrontations." (Exhibit 15).
41. It is clear, particularly since the Appellant admits he had no intention of issuing a citation and never even asked MD for her license, that most, if not all, of his "conversation" with MD was entirely unnecessary and potentially (if not intentionally) confrontational. (Testimony of Appellant, MD, Exhibits 6, 15, 18, and 20).
42. Accordingly, evidence of the Appellant's violation of TRF-07, which also constitutes a separate violation of Article 5.1, is also clear and convincing. (Testimony of Appellant, MD, Exhibits 6, 15, 18, and 20).
43. MD's testimony was credible.

Appellant's January 1, 2007 Interaction with BB

44. On or about January 1, 2007, at approximately 3:30 p.m., the Appellant was uniformed and operating a cruiser on his way home, outside his assigned patrol area when he pulled over a motor vehicle on Route 24. (Testimony of the Appellant, BB, Exhibits 5 and 20).
45. BB saw the cruiser pull directly behind her, and with the flashing lights on. (Testimony of the Appellant, BB, Exhibits 5 and 20).
46. When BB rolled down her passenger window, the Appellant asked "*Do you know why I'm pulling you over [?].*" She said, "*no I don't.*" (Testimony of BB, Exhibits 5 and 20).

47. After a brief exchange, the Appellant said *"it's raining, I'm getting wet, unlock the door, let me in."* (Testimony of BB, Exhibits 5 and 20).
48. BB unlocked the front passenger door and Appellant entered. He told her to *"turn the radio down"* and said he *"could...give [her] a ticket for failure to signal."* He also told her to *"turn the heat down"* because it was *"too hot"* in the car. (Testimony of BB, Exhibits 5 and 20).
49. He then abruptly exited, and said *"consider this a warning."* (Testimony of the Appellant and BB, Exhibits 5 and 20).
50. BB testified that she feared for her safety and well-being. (Testimony of BB, Exhibits 5 and 20).
51. The Appellant never asked for her license or registration. (Testimony of the Appellant, Exhibits 5 and 20).
52. BB's testimony was credible.
53. The Appellant failed to comply with the data collection requirements of ADM-47 and Special Order 05-SO-011, a violation of Article 5.1 of the Department's Rules & Regulations by. His conduct is also a violation of Article 5.2 of the Department's Rules & Regulations, which requires that *"[m]embers [of the State Police] shall conduct themselves at all times in such a manner as to reflect most favorably upon themselves and the Massachusetts State Police."* (Testimony of the Appellant, BB, Exhibits 4, 15, and 20).
54. His conduct was such ... *"which brings the Massachusetts State Police into disrepute or reflects discredit upon the person as a member of the Massachusetts State Police"* and is, undeniably, *"[c]onduct unbecoming [of a Massachusetts State Police officer]."* (Testimony of the Appellant, BB & Exhibits 4, 15, and 20).

55. Article 5.8 of the Department's Rules & Regulations (Unsatisfactory Performance) requires members to "*maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions [and further require them to]... perform their duties in such a manner as will maintain the highest professionally accepted performance standards.*" (Exhibit 15).

56. The Rule identifies "*the failure to conform to work standards established for the member's rank, title, or position*" and also provides that "*repeated infractions of State Police Rules, Regulations, Policies, Procedures, Orders, Directives, or any combination of them shall be considered prima facie evidence of unsatisfactory performance.*" (Exhibit 15).

57. The conduct of the Appellant was "*far below the high professional standards required in carrying out the objectives of the State Police.*" (Testimony of the Appellant & Ms. BB & Exhibits 4, 15 and 20).

Appellant's History of Misconduct and Discipline

58. The Appellant record shows the following disciplinary actions:

- a. 1991, Loss of 10 days-off (Exhibit 2);
- b. 1993, Written Reprimand (Exhibit 1);
- c. 2001, Loss of 15 days-off (Exhibit 12);
- d. 2001, Loss of 15 days-off (*Separate charges from Ex. 12*)(Exhibit 11);
- e. 2003, Loss of 30 days-off (Exhibit 10);
- f. 2005, Reduction in Rank from Sergeant to Trooper, Transfer, Anger Management & other stipulations (Exhibit 9);
- g. 2005, Reduction in Rank from Sergeant to Trooper, Transfer, Anger Management & other stipulations (*Separate Charges from Ex. 9*)(Exhibit 8);
- h. 2005, Reduction in Rank from Sergeant to Trooper, Transfer, Anger Management & other stipulations(*Separate Charges from Exs. 8 & 9*)(Exhibit 7); and
- i. 2006, Suspension for 30 days, (Exhibit 3).

Colonel's Decision to Terminate and Revoke the Appellant's License to Carry Firearms

59. On July 9, 2007, Colonel Mark F. Delaney (hereinafter "Col. Delaney") adopted the Findings and Recommendations of a State Police Trial Board (recommending termination) of Jack

Garvin. He found that the Appellant had an engaged in “an escalating pattern of egregious misconduct” and that he should be terminated and dishonorably discharged from the Department of State Police. (Exhibits 13 and 20)

60. That same day, Col. Delaney, pursuant to his authority under M.G.L. c. 140, §131, revoked the Appellant’s license to carry firearms, finding that Jack Garvin “was no longer a suitable person to possess a firearms license.” (Exhibits 13 & 20).

61. Under Article 5.4.5 of the Department’s Rules & Regulations, the Appellant “*must possess a valid, unrestricted Massachusetts firearms license* in order to perform his duties.

CONCLUSION

Discipline by a public employer is appropriate when an “employee has been guilty of substantial misconduct which adversely affects the public interest...” *See, e.g., Murray v. Second District Court of E. Middlesex*, 389 Mass. 508, 514 (1983). Accordingly, the Commission must sustain disciplinary measures when, by a preponderance of the evidence, it finds just cause for the action taken by an appointing authority. *Falmouth v. Civil Serv. Comm’n*, 61 Mass. App.Ct. 796, 800, 814 N.E.2d 735 (2004). “[T]he question [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 to have existed when the appointing authority made its decision.” *Leominster v. Stratton*, 58 Mass.App.Ct. 726, 727-728, 792 N.E.2d 711, *citing, Watertown v. Arria*, 16 Mass.App.Ct. 331, 334, 451 N.E.2d 443 (1983).

In the instant matter, the question 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 at 727-728 (2003).

These three incidents from September 8, 2006 – January 1, 2007, portray an individual who, despite twenty years of police service and fifteen years of attempted corrective action, fails execute his duties in a professional manner. Such behavior shall not be tolerated. When a twenty-year male veteran gets into the motor vehicle operated by a female motorist on a dark road, the situation is seriously amiss. When said Trooper continues to abuse the privilege of being an officer and repeatedly brings discredit upon himself and the Department, termination is not only justified but required. "[P]olice officers are required to adhere to a high standard of conduct." Boston Police Dep't v. Jane Dean et al, 56 Mass.App.Ct. 1111 (Rule 1:28 Decision, 2002 WL 31686245) (2002) *citing*, Police Comm'r. of Boston v. Civil Serv. Comm'n, 22 Mass.App.Ct 473, 476 (1995).

In each incident, the Appellant chose to target young women. Each of the witnesses: BB, MD, and AM testified credibly. I believe that he petrified CS, AM and the female customers in the salon at 967 Washington Street in South Attleboro. I believe that he terrified MD and placed her in an uncomfortable situation, wherein she was unsure of what to say or do. Words are inadequate to describe the Appellant's interaction with BB. The fact that he got into a motor vehicle, operated by lone female driver - absent the other incidences that are also the subject of this appeal and his prior disciplinary history - may be grounds for termination. I believe that BB was in fear for her safety and well-being.

The Appellant has repeatedly failed to adhere to any acceptable standard of behavior, nevermind the high standard established by the Department Rules & Regulations. Accordingly,

“the [C]ommission must respect [the Department’s] action in enforcing such a code of conduct for its police officers” and must dismiss the Appellant’s Appeal. Id. citing, Police Dep’t. of Boston v. Collins, 48 Mass.App.Ct 408, 412, (2000).

The Department has shown by a preponderance of the evidence, that the Board had reasonable justification to recommend the Appellant’s termination. Further, there is no evidence of inappropriate motivations or objectives that would warrant a reduction in the penalty recommended by the Board. The Board’s recommendation of termination is consistent with the Department’s Discipline Guidelines (See, Exhibit 15, Appendix A to Article 5 of the Department’s Rules & Regulations).

For all of the above reasons, the appeal filed under Case No. D1-07-245 is hereby *dismissed*.

Civil Service Commission



John E. Taylor, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Taylor, and Stein, [Marquis – absent] Commissioners) on January 7, 2010.

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)(I), 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:

Scott W. Dunlap, Esq. (for the Appellant)

Michael B. Halpin, Esq. (for the Appointing Authority)