

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

CARLOS GARZA, Jr.,

Appellant

v.

ABINGTON POLICE DEPARTMENT,

Respondent

Docket Number:

D1-23-229

Appearance for Appellant:

Thomas O'Loughlin, Esq.

Ernie Horn, Esq.

Horn & O'Loughlin Law Office, LLC

12 Asylum Street

Mendon, MA 01756

Appearance for Respondent:

Richard Massina, Esq.

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31 Schoosett Street, #405

Pembroke, MA 02359

Commissioner:

Angela C. McConney

SUMMARY OF DECISION

The Abington Police Department had just cause to terminate the Appellant from his position as a police officer, based on three specific incidences of misconduct, violative of the Department's Rules and Regulations.

DECISION

On November 4, 2023, the Appellant, Carlos Garza, Jr. (Appellant or Mr. Garza), pursuant to G.L. c. 31, § 43, appealed to the Civil Service Commission (Commission) the November 2, 2023 decision of the Abington Police Department (APD or Department) to terminate him from the position of permanent, full-time police officer (after a three-day Section 41 hearing on April 10, June 23, and June 27, 2023).

On the Commission appeal form, the Appellant alleged that the Respondent failed to follow procedural requirements when it suspended him for three days without pay and denied him a hearing on the matter.¹

The Commission conducted a remote pre-hearing conference on December 12, 2023.

On January 5, 2024, the Respondent filed a motion to dismiss the Appellant's right to raise an appeal based on the May 2022 suspension. On January 17, 2024, the Appellant filed a response.

I held a motion hearing on March 13, 2024. I recorded the motion hearing on the Webex platform, and forwarded copies to the parties via email.

The matter continued to the scheduled evidentiary hearing on March 20, 2024. On that date, the Appellant assented to the Respondent's motion to continue the matter so that counsel could confer with the union counsel for the three-day suspension matter.² I also agreed to hold the record open in order for the Respondent to submit a notice of investigation from the Internal Affairs Department.

On March 22, 2024, I conducted a status conference via the Webex platform with the counsel of record, Mr. Horn and Mr. Massina. Andrew J. Gambaccini, union counsel, also

¹ In his appeal, the Appellant wrote:

I was not afforded certain opportunities with my appeals process before I was terminated. I was suspended for three days without pay & was not allowed to appeal the suspension. I believe I am being discriminated against for a multitude of reasons, I am a disabled veteran & of Hispanic descent. I believe this played a significant role in my mistreatment & ultimate termination.

² Membership in the Massachusetts Police Association Legal Defense Fund (MPA LDF) is open to sworn law officers in the Commonwealth. Members of the APD have been in the MPA LDF as a group for many years. As a member of the MPA LDF, the Appellant was entitled to defense in connection with civil, criminal or administrative matters provided that the matters resulted from the performance of official police duties.

joined the call. At the status conference, Mr. Gambaccini made it clear that the union represented the Appellant in the three-day suspension, while the Appellant retained other counsel for the termination matter.³ The Respondent argued that Mr. Gambaccini had neither filed an appeal in the matter nor appearance before the Commission.

On April 16, 2024, Mr. Gambaccini filed an appeal for the three-day suspension pursuant to G.L. c. 31, § 42. That matter was docketed as D1-24-50 and proceeded to an expedited hearing. On May 18, 2024, the Commission allowed Mr. Garza's procedural appeal and rescinded the three-day suspension after finding that the Department violated civil service law by failing to conduct a local hearing as requested and then sought to use that suspension as the basis of progressive discipline in the instant termination matter. *Garza v. Abington Police Dep't*, Docket Nos. D1-24-050, D1-23-229 (May 30, 2024). However, the Respondent did not include the three-day suspension among the four reasons that formed the basis for the Appellant's Notice of Termination.

I conducted an in-person full evidentiary hearing at the offices of the Commission, located at 100 Cambridge Street, Boston MA on April 17, May 3, May 6 and June 20, 2024.⁴ I allowed the subpoena for the Appellant's witness, Abington police officer Ryan Gillan.

³ On March 12, 2024, Mr. Gambaccini swore in an affidavit that he never waived the Appellant's right to an Appointing Authority hearing, or any other procedural or substantive rights, for the three-day suspension docketed as D1-24-050.

⁴ The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

The hearing was recorded via Webex.⁵ The June 20, 2024 recording was compromised when the sound failed to record. I spoke to the parties and they agreed to accept this Commissioner's notes of the recording upon review.

The parties filed proposed decisions, whereupon the administrative record closed.

FINDINGS OF FACT

I admitted twenty exhibits from the Respondent (R. Exhibits 1-20). I admitted eight exhibits from the Appellant (A. Exhibits 1-8). I admitted the Appellant's appeal form as A. Exhibit 9. Based upon the documents submitted and the testimony of the following witnesses:

Called by the Respondent:

- David Del Papa, Chief, Abington Police Department
- Kevin Sullivan, Deputy Police Chief, Abington Police Department
- Aanton Lynch, Sergeant, Abington Police Department
- Paul L'Italien, Private Investigator

Called by the Appellant:

- Carlos Garza, Appellant
- Ryan Gillan, Detective, Abington Police Department

and taking administrative notice of all pleadings filed in the case, plus pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence, I make the following findings of fact:

1. Carlos Garza became a police officer for the Abington Police Department in March 2019. (R. Exhibit 16; Testimony of Garza)

⁵ The Commission provided a link to the parties. Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission's official recording.

2. Mr. Garza became a firearms instructor for the Department in 2020. (Testimony of Garza)

Disciplinary History

3. In August 2019, five months into his tenure as a police officer, the Internal Affairs Department (IAD) investigated Mr. Garza for an altercation that had taken place while he was training at the police academy. During the altercation, Mr. Garza challenged another academy officer to “handle it like men” and “make it physical.” (R. Exhibit 11)

4. That August 2019 IAD investigation (Docket #19-4-IA) sustained a charge of Rule 4.0 – Conduct Unbecoming an Officer and resulted in verbal counseling. (R. Exhibit 11; Testimony of Chief Del Papa).

5. In September 2021, IAD investigated (Docket #21 9-IA) Mr. Garza after a citizen complaint regarding the issuance of a traffic ticket. (R. Exhibit 12; Testimony of Chief Del Papa)

6. Shortly after Mr. Garza pulled over the operator, he let Mr. Garza know that he was a retired Braintree police officer, had worked with Chief Del Papa for twenty-five years and knew where the chief lived. After the operator became upset when Mr. Garza issued him a warning citation, Mr. Garza told the motorist that he would give him “a valid reason to be upset”. Mr. Garza then crossed off the box for warning on the citation and checked off the all-civil infractions box, adding a monetary fine. (R. Exhibit 12; Testimony of Chief Del Papa)

7. The IAD investigation sustained a violation of Traffic Safety & Control 2009-P35B. Mr. Garza was issued a written warning which was later reduced to a verbal counseling. (R. Exhibit 12; Testimony of Chief Del Papa)

8. On February 1, 2022, Mr. Garza was dispatched to perform a welfare check. Mr. Garza learned from Holbrook Dispatch that the involved parties suffered from mental health issues, and that the caller stated that the parties were “destroying the house.” (R. Exhibits 1 and 2; Testimony of Chief Del Papa, Testimony of Dep. Chief Sullivan)

9. When Mr. Garza and another officer arrived on the scene, a resident at the property would not allow them to enter. Instead, the resident used his cell phone to record the encounter. (R. Exhibits 1 and 2; Testimony of Dep. Chief Sullivan)

10. Mr. Garza engaged in a back-and-forth conversation with the resident, concluding with the statement, “OK, so we will just tell them we spoke with a crazy person holding a cell phone.” (R. Exhibits 1 and 2)

11. Mr. Garza and the other officer then cleared the scene without speaking to the other party at the home. Mr. Garza did not submit an incident report about the incident. (R. Exhibits 1 and 2)

12. IAD opened an investigation for the February 1, 2022 incident under Docket #22ABI-1-IA. (R. Exhibit 1)

13. On February 2, 2022, the resident complained to the Department that Mr. Garza had called him a “crazy person” during the previous day’s welfare check. (Docket #22ABI-2-IA) Chief Del Papa assigned Dep. Chief Sullivan, then a lieutenant, to conduct an internal investigation. (R. Exhibit 1; Testimony of Chief Del Papa)

14. Dep. Chief Sullivan had worked for the Department for 33 years, and served as a lieutenant in the IAD for 8 years. When he became deputy chief in 2021, he continued his IAD duties because there was no lieutenant available. (Testimony of Dep. Chief Sullivan)

14. Before the investigation got underway, Dep. Chief Sullivan drafted a letter informing Mr. Garza that he was under investigation. (Testimony of Dep. Chief Sullivan)

15. Mr. Garza was scheduled to work the evening of February 2, 2022 on desk duty, and Sgt. Aanton Lynch was the shift supervisor. Sgt. Lynch also served as the Court Prosecutor for the Department. Testimony of Sgt. Lynch)

16. Sgt. Brian Feeley and Officer Ryan Gillan were also scheduled to work that evening. (R. Exhibits 5 and 6; Testimony of Sgt. Lynch)

16. Dep. Chief Sullivan provided the letter to Sgt. Aanton Lynch in a sealed envelope, asked him to deliver it to Mr. Garza during his shift that evening, and to ensure that he read the letter, signed it and returned it to him. (Testimony of Dep. Chief Sullivan)

17. Sgt. Lynch was unaware of the letter's contents. (Testimony of Dep. Chief Sullivan; Testimony of Sgt. Lynch)

18. Mr. Garza was originally assigned to desk duty, until relieved by Officer Gillan in order to provide firearms training instruction to another officer. (R. Exhibits 5 and 6; (Testimony of Sgt. Lynch)

19. That evening, Sgt. Lynch and Sgt. Feeley reorganized the shift assignments, moving Mr. Garza from desk duty to cruiser 5 patrol in an assigned sector of Town. Both Sgt. Lynch and Sgt. Feeley informed Mr. Garza of the shift change. The shift change was within the authority of Sgts. Lynch and Feeley. (R. Exhibits 4, 5, 6 and 16; Testimony of Sgt. Lynch)

20. Mr. Garza was "bewildered" by the assignment change and believed that Sgt. Lynch had purposefully changed his shift assignment so that he would not have to take a motor vehicle accident call. (R. Exhibits 4, 5 and 6)

21. Mr. Garza was dispatched to the motor vehicle accident call, which had occurred in his assigned sector. (R. Exhibits 4, 5 and 6; Testimony of Sgt. Lynch)

22. While handling the motor vehicle accident, the Department received an additional call for service in Mr. Garza's assigned sector – a report of a past shoplifting at Walmart. Sgt. Lynch contacted Walmart's asset protection manager and learned that the call did not require an immediate response. Sgt. Lynch determined that Mr. Garza could respond to the Walmart call after handling the motor vehicle accident scene. (R. Exhibits 4, 5, and 6; Testimony of Sgt. Lynch)

23. Sgt. Lynch informed Mr. Garza that he would be responsible for the Walmart call, as it had occurred in his sector. Mr. Garza was upset about being dispatched to the Walmart call, believing that Sgt. Lynch had intentionally "stacked" (reserved or held over) calls, thereby creating more work for Mr. Garza. (R. Exhibits 4, 5 and 6; Testimony of Sgt. Lynch)

24. While at the motor vehicle accident scene, Mr. Garza called Sgt. Feeley on his cell phone to question his assignment to the Walmart call. Back at the police station, Sgt. Feeley placed the call on speaker phone. Sgt. Lynch overheard Mr. Garza speaking in an "angry" and "elevated" voice. Sgt. Lynch joined the telephone call and told Mr. Garza that he was assigned to the Walmart call because it was in his sector. Mr. Garza then ended the phone call by telling Sgt. Lynch – his commanding officer – "We're going to have a serious conversation about this." (R. Exhibits 4, 5 and 6; Testimony of Sgt. Lynch)

25. After Mr. Garza cleared the motor vehicle accident scene, Sgt. Lynch called him back to the police station. (R. Exhibits 4, 5 and 6; Testimony of Sgt. Lynch)

26. When he returned to the station, Sgt. Lynch spoke to Mr. Garza about the claim that the sergeant had intentionally “stacked” calls. Mr. Garza requested Officer Gillan’s presence as a witness to the conversation. (R. Exhibits 4, 5 and 6; Testimony of Sgt. Lynch)

27. Sgt. Lynch led Mr. Garza into the Court Prosecutor’s office. Officer Gillan stood nearby, while Sgt. Feeley remained in the dispatch area. Sgt. Lynch asked Mr. Garza to sit several times, but Mr. Garza insisted on standing. (R. Exhibits 4 and 6; Testimony of Sgt. Lynch, Testimony of Gillan)

28. Officer Gillan reported that Mr. Garza was “visibly upset” during the conversation in the Court Prosecutor’s office, raising his voice, pacing throughout the office and refusing to sit down. In contrast, Sgt. Lynch remained calm and seated. Sgt. Kevin Cutter reported that Mr. Garza later told him that he was “extremely angry” during the conversation. (R. Exhibits 4 and 6; Testimony of Sgt. Lynch, Testimony of Gillan).

29. Mr. Garza’s angry tone was consistent. He continued to berate Sgt. Lynch, called him a “horrible leader,” stating that he “only respected the stripes on his uniform.” (R. Exhibits 4 and 6; Testimony of Sgt. Lynch)

30. Sgt. Lynch tried to de-escalate the situation, then ended the conversation in the Court Prosecutor’s office. Mr. Garza reported that Sgt. Lynch told him, “everyone was worked up, that we should all take a little time.” Sgt. Lynch, Officer Gillan and Mr. Garza then proceeded back to the dispatch area. (R. Exhibits 4, 5 and 6; Testimony of Sgt. Lynch)

31. Several minutes later, Sgt. Lynch followed Dep. Chief Sullivan’s directive to deliver the letter to Mr. Garza for acknowledgement and signature. Sgt. Lynch asked Officer Gillan and Mr. Garza to join him in the Court Prosecutor’s office. Sgt. Lynch then delivered the

letter from Dep. Chief Sullivan to Mr. Garza and gave him the instructions to open, read and sign in acknowledgement of receipt. (R. Exhibits 4, 5 and 6; Testimony of Sgt. Lynch)

32. Mr. Garza opened the letter immediately. He began walking towards Sgt. Lynch with his head down while reading the letter. Sgt. Lynch was standing near the exit of the Court Prosecutor's office, next to Sgt. Feeley's desk, but not directly in Mr. Garza's line of movement. (R. Exhibits 4 and 6; Testimony of Sgt. Lynch)

33. Without hesitation, Mr. Garza lowered his shoulder into Sgt. Lynch making forceful contact on his way out of the office. Officer Gillan also observed Mr. Garza, through his peripheral vision, make physical contact with his shoulder to Sgt. Lynch. (R. Exhibits 4 and 6; Testimony of Sgt. Lynch)

34. In immediate response to the contact, Sgt. Lynch exclaimed words to the effect, "Are you serious?" and, "Really, CJ?" Sgt. Lynch and Mr. Garza engaged in a brief conversation about Mr. Garza's contact with Sgt. Lynch. (R. Exhibits 4, 5 and 6; Testimony of Sgt. Lynch, Testimony of Appellant)

35. From his position at the dispatch desk, Sgt. Feeley observed that Mr. Garza was "extremely upset." Sgt. Feeley then took Mr. Garza into the breakroom to discuss what had occurred. (R. Exhibits 4, 5 and 6)

36. Twenty minutes later, Sgt. Lynch entered the breakroom hoping to resolve the conflict with Mr. Garza. When Sgt. Lynch asked Mr. Garza about the physical contact, Mr. Garza responded with words to the effect of, "If I'm going to assault somebody, I'm going to make sure it's worth it." (R. Exhibits 4, 5 and 6; Testimony of Sgt. Lynch, Testimony of Appellant)

37. Shortly thereafter, Sgt. Lynch contacted Dep. Chief Sullivan about the incident. Dep. Chief Sullivan told Sgt. Lynch to complete a written narrative of the incident, and they agreed to meet the next morning. (R. Exhibits 4 and 6; Testimony of Sgt. Lynch)

38. As a result of this February 2, 2022 incident, Chief Del Papa initiated a second internal affairs investigation (Docket #22ABI-2-IA) and placed Mr. Garza on administrative leave pending the outcome of both investigations: the first based on the civilian complaint (Docket #22ABI-1 IA) and the second, new investigation, into the incident involving physical contact with Sgt. Lynch. (R. Exhibit 3; Testimony of Chief Del Papa)

39. The first IAD investigation into the civilian complaint (Docket #22ABI-1-IA) resulted in sustained charges against Mr. Garza for ten separate violations of Department rules, regulations, policies and procedures. The Department issued a May 17, 2022 Notice of Unpaid Suspension for three days.⁶ (R. Exhibits 1 and 2; Testimony of Dep. Chief Sullivan)

40. The second IAD investigation regarding the Sgt. Lynch incident (Docket #22ABI-2-IA) resulted in sustained charges against Mr. Garza for the following:

- Workplace Violence Policy - #2012 – P04;
- Oath and Code of Ethics Policy - #2008 – P02B;
- Conduct Unbecoming an Officer – Rule 4.19;
- Courtesy – Rule 6.3;
- Insubordination – Rule 7.01;
- Policies and Procedure Compliance – Rule 10.5;
- Fighting/Quarreling – Rule 10.11.

(R. Exhibit 4; Testimony of Dep. Chief Sullivan)

41. After the second IAD investigation, Chief Del Papa, as the appointing authority for the Department, considered termination proceedings against Mr. Garza. Chief Del Papa

⁶ *Garza v. Abington Police Dep't*, Docket Nos. D1-24-050, D1-23-229 (May 30, 2024) (Commission rescinded the three-day suspension, finding that the Department violated civil service law when it failed to conduct the Section 41 hearing as requested).

stated that the Department has a zero-tolerance policy for workplace violence, and believed that the actions of Mr. Garza, established through the investigation, warranted termination. (Testimony of Chief Del Papa)

42. While preparing to issue a contemplated termination notice and schedule a Section 41 hearing, the Town received new information regarding Mr. Garza and additional instances of alleged misconduct. (Testimony of Chief Del Papa)

43. On or about July 27, 2022, Sgt. Babineau of the North Smithfield, RI Police Department informed the Department that his officers had arrested and charged Mr. Garza in the early morning hours for Domestic Violence – Disorderly Conduct. (R. Exhibits 7 and 8)

44. According to the North Smithfield, RI Arrest Report #22-316-AR, Mr. Garza engaged in a heated argument with his then-girlfriend while she was watering a plant. Mr. Garza's then-girlfriend reported that Mr. Garza raised his fist and made a threatening gesture towards her. The argument became physical when Mr. Garza knocked the watering container out of her hands. (R. Exhibit 8)

45. During the 911 call, in addition to relating the July 27, 2022 events, the girlfriend informed the dispatcher that Mr. Garza was under investigation in Abington for work-place violence and that she had called to figure out what to do to protect herself. Due to the nature of the charges, the North Smithfield Police Department went to the address and seized four firearms belonging to Mr. Garza for storage. (R. Exhibit 8)

46. When he was booked, Mr. Garza told the North Smithfield Police Department that his home address was [redacted] RI.⁷ (R. Exhibit 8; Testimony of Appellant)

⁷ Mr. Garza was arraigned on a misdemeanor charge of Domestic violence, Disorderly conduct, First offense. The matter was dismissed by the prosecution on August 9, 2022 when the

47. On or about July 27, 2022, Chief Del Papa instructed Dep. Chief Sullivan to conduct a third IAD investigation (Docket #22ABI-8-IA) into Mr. Garza's arrest in RI. Chief Del Papa also directed Sgt. Sean McCollem to suspend Mr. Garza's Class A Large Capacity License to Carry Firearms (LTC), as the Department was the issuing authority for Mr. Garza's LTC. (R. Exhibits 7 and 8; Testimony of Chief Del Papa, Testimony of Dep. Chief Sullivan)

48. On or about July 27, 2022, Sgt. McCollem directed Sgt. Jim McNeil of the Quincy Police Department to serve Mr. Garza's July 27, 2022 LTC suspension letter at his Department-listed address in Quincy. (R. Exhibit 8)

49. Sgt. McNeil later informed Sgt. McCollem that there was a new resident at that Quincy address. When Quincy police checked the previous Quincy listed address for Mr. Garza, he was not living there either. (R. Exhibit 8)

50. Chief Del Papa recalled a November 9, 2021 conversation with Mr. Garza, where Mr. Garza inquired about moving to RI because homes were more affordable there in comparison with house prices in Massachusetts. After consulting with HRD's Civil Service unit, on November 11, 2021, Chief Del Papa informed Mr. Garza that moving to RI would be a violation of Civil Service law and the corresponding clause in the collective bargaining agreement between the Town and the Police Union. (R. Exhibit 8; Testimony of Chief Del Papa)

51. Chief Del Papa employed private investigator Paul L'Italien to conduct surveillance and gather information on Mr. Garza's domicile. In addition to the investigation into Mr. Garza's residency, Chief Del Papa asked Mr. L'Italien to investigate two additional

girlfriend refused to cooperate. The district court sealed the record on September 27, 2022. (A. Exhibit 8; Testimony of Appellant)

unrelated matters. Those matters involved a firearms training in Epping, NH while Mr. Garza was on administrative leave, and a local martial arts class from which Mr. Garza was reportedly banned from for purposefully injuring others. (R. Exhibit 8; Testimony of Chief Del Papa, Testimony of L'Italien).

52. As part of the Abington Police Department's July 27, 2022 suspension of his LTC, Mr. Garza was required by law to surrender his firearms license and all firearms, rifles, shotguns, machine guns, large capacity feeding devices, and ammunition in his possession to that police department. (R. Exhibit 8; Testimony of Appellant)

53. After the RI arrest, but before receipt of the Abington LTC suspension letter, Mr. Garza enlisted his mother to travel to Massachusetts and remove his remaining firearms to the state where she lived. (R. Exhibit 8; Testimony of Appellant)

54. On August 5, 2022, Mr. Garza attended an investigatory interview conducted by Dep. Chief Sullivan and Investigator L'Italien. In advance of the interview, the Department issued Mr. Garza a letter, which served as a notice to Mr. Garza that he must be truthful during the interview, or he could be subject to discipline, up to and including termination. (R. Exhibit 8)

55. During the August 5, 2022 interview, Mr. Garza admitted to striking a water-filled container out of his then-girlfriend's hands during their argument on or about July 27, 2022. Mr. Garza refused to characterize the conversation with his girlfriend as a heated argument, contrary to his description to the North Smithfield, RI Police Department. Mr. Garza also denied raising his fists to the woman, contrary to her report to both the 9-1-1 dispatcher and the responding officers. (R. Exhibit 7; Testimony of Dep. Chief Sullivan)

56. Based on the Domestic Violence – Disorderly Conduct charge and Mr. Garza’s behavior surrounding the same, in addition to the information gathered and analyzed throughout the internal investigation (Docket #22ABI-8-IA), Dep. Chief Sullivan sustained the following charges against Mr. Garza:

- Conduct Unbecoming an Officer – Rule 4.1;
- Criminal Conduct – Rule 10.13;
- Officers Involved in Domestic Violence Policy – #2008 – P02B;
- Oath and Code of Ethics Policy – #2008 – P02B;
- Testifying at Investigation – Rule 9.20;
- Truthfulness – Rule 6.9;
- Internal Affairs Policy – #2009 – P18.

(R. Exhibit 7; Testimony of Dep. Chief Sullivan)

57. On August 5, 2022, during his investigatory interview with Dep. Chief Sullivan, Mr. Garza denied that the North Smithfield, RI home served as his primary residence. Mr. Garza told Dep. Chief Sullivan that he had moved from Quincy, MA sometime around December of 2021. When asked if he had filed a change of address form with the United States Postal Service (USPS) , Mr. Garza stated, “yes,” noting that he informed the Postal Service that he had moved to a new address in Quincy. However, Investigator L’Italien learned from the U.S. Postal Inspector Service that Mr. Garza changed his address from Quincy to North Smithfield, RI on December 23, 2021. There is no record of Mr. Garza ever reporting to the USPS that he lived at a second address in Quincy, MA. (R. Exhibits 7 and 8; Testimony of Officer Garza)

58. Mr. Garza stated on multiple occasions that his primary address was in Quincy, MA. Mr. Garza’s driver’s license and vehicle registration list Quincy, MA as his address. (R. Exhibits 7, 8 and 19; Testimony of Appellant)

59. In August 2022, Investigator L’Italien visited Mr. Garza’s alleged home in Quincy, MA on four separate days to conduct surveillance of the property. Neither Mr. Garza

nor his registered vehicle was present at the address in Quincy during any of those occasions. (R. Exhibit 8; Testimony of L'Italien)

60. On August 17, 2022, Investigator L'Italien had a telephone conversation with the owner of the home in Quincy, MA. Investigator L'Italien asked the owner of the home if Mr. Garza had a rental lease for her property. On the following day, the owner of the home informed Investigator L'Italien that Mr. Garza was not the renter of the property. (R. Exhibit 8)

61. On August 19, 2022, Investigator L'Italien traveled to an address in North Smithfield, RI. Investigator L'Italien observed a truck matching Mr. Garza's Registry of Motor Vehicles (RMV) vehicle description stationed in the driveway of the home while observing the home over the course of two hours. (R. Exhibit 8; Testimony of L'Italien)

62. On August 23, 2022, Investigator L'Italien knocked on the door of the Quincy address. Investigator L'Italien spoke with an individual who identified himself as Mr. Garza's supervisor in the United States Coast Guard. This person confirmed that he was the only person listed on the lease. Further, he informed Investigator L'Italien that Mr. Garza spent very few nights at the Quincy address, and that other Coast Guard members regularly used the bedroom set aside for Mr. Garza. The individual stated that Mr. Garza did not have many personal belongings at the Quincy address. (R. Exhibits 8 and 18; Testimony of L'Italien)

63. IAD obtained a copy of Mr. Garza's deed and mortgage for the address in North Smithfield, RI. Mr. Garza's name and signature appear on both instruments. Mr. Garza is listed as the sole owner of the property. On December 17, 2021, Mr. Garza purchased the property with a Veterans Affairs Guaranteed Loan (VA Loan) mortgage, with the proviso that he occupy the property within sixty days of execution of the mortgage. The mortgage further states, in part, that "Borrower shall occupy, establish, and use the Property as Borrower's principal residence

for at least one year after the date of occupancy”. Despite that language, Mr. Garza claims he did not establish a residency in RI and testified under oath on more than one occasion that, contrary to the terms of his VA loan, he never intended to establish his primary residency in RI when he signed the mortgage agreement. (R. Exhibits 8 and 19; Testimony of Appellant)

64. On August 18, 2022, Investigator L’Italien received a letter from the Massachusetts Registry of Motor Vehicles (RMV) indicating that Mr. Garza changed his address to Quincy, MA on April 8, 2022, several months after being placed on administrative leave. (R. Exhibit 8; Testimony of L’Italien)

65. On August 30, 2022, Investigator L’Italien completed his investigatory report on Mr. Garza’s residency, concluding that Mr. Garza did not live in Quincy. (R. Exhibit 8; Testimony of L’Italien)

66. On September 5, 2022, based on the information gathered and analyzed on Mr. Garza’s residency, Dep. Chief Sullivan sustained the following charges against Mr. Garza as to the residency issue in the investigation (Docket #22ABI-8-IA):

- G.L. c. 31, § 58 – Municipal police officers and firefighters, Qualification
- Conduct Unbecoming an Officer – Rule 4.1
- Residency – Rule 10.1
- Home Address and Telephone Number – Rule 10.2
- Oath and Code of Ethics Policy – #2008 – P02B
- Testifying at Investigation – Rule 9.20
- Truthfulness – Rule 6.9
- Insubordination – Rule 7.01
- Internal Affairs – #2008 – P18

(R. Exhibit 7)

67. On September 15, 2022, Mr. Garza received notice from the Department of the two additional allegations that became part of the investigation (Docket #22ABI-8-IA): one involving a firearms training in Epping, NH while Mr. Garza was on administrative leave, and

the other, a local martial arts class that Mr. Garza was reportedly banned from for purposefully injuring others. (R. Exhibit 10)

68. As a condition of his administrative leave, Mr. Garza was prohibited from performing “any work related to [his] employment with this Department” during the pendency of his leave. (R. Exhibits 3, 9 and 10; Testimony of Chief Del Papa, Testimony of L’Italien, Testimony of Appellant)

69. Dep. Chief withdrew Mr. Garza’s name from a previously scheduled August 19, 2022 Sig Sauer armorer’s training in Epping, NH., and assigned two other officers instead. (R. Exhibit 16)

70. Mr. Garza registered for the training with his personal email, and attended the training on August 19, 2022 without notifying anyone in the Department. Mr. Garza participated in the hands-on firearms training knowing that his Abington LTC had been suspended the day of his July 27, 2022 RI arrest. (R. Exhibits 3, 9 and 10; Testimony of Appellant)

71. Despite this restriction, Mr. Garza admitted to Investigator L’Italien and at the present hearing that he attended the work-related firearms training in Epping, NH on August 19, 2022, during his period of administrative leave. Chief Del Papa testified that Mr. Garza would not receive email to his Department address while on administrative leave. (R. Exhibits 3, 9 and 10; Testimony of Chief Del Papa, Testimony of L’Italien, Testimony of Appellant)

72. Mr. Garza testified at the current hearing that he attended the August 19, 2022 training in New Hampshire while on administrative leave because Dep. Chief Sullivan had previously allowed him to conduct a firearms training in July 2022 in Hanson with police officer Gladys Morgan. (R. Exhibit 9; Testimony of Appellant)

73. Dep. Chief Sullivan told Investigator L'Italien that it was very clear that the incident Mr. Garza referred to in July 2022, conducted on off-duty time at a private gun range, was not a formal firearms training. Mr. Garza previously testified that he was not assigned by the Department to conduct the July 2022 training, and that Officer Morgan asked Mr. Garza to train her, and he agreed to do so. (R. Exhibits 9 and 19)

74. Investigator L'Italien obtained a sign-in log from the August 19, 2022 firearms training that included Mr. Garza's name. Investigator L'Italien interviewed two Braintree police officers on the sign-in log who attended the training with Mr. Garza. The Braintree police officers stated that Mr. Garza introduced himself as an Abington Police Officer at the firearms training. (R. Exhibits 9 and 10; Testimony of L'Italien)

75. On October 6, 2022, based on the information gathered and analyzed on Mr. Garza's attendance at the firearms training in Epping, NH, Investigator L'Italien sustained the charge against Mr. Garza that he violated the Department's rule for Insubordination – Rule 7.1 as part of the investigation (Docket #22ABI-8-IA). (R. Exhibit 9; Testimony of L'Italien)

76. Investigator L'Italien received an email sent by a Department member who attended a Jiu Jitsu class with Mr. Garza in Weymouth. In 2021, Mr. Garza was reportedly banned from the class by the instructor, and later made statements to the Department member indicating that he wanted to hurt the instructor at a Jiu Jitsu camp that he planned to attend. Mr. Garza denied making those statements. Investigator L'Italien was unable to ascertain relevant facts related to the claim because the instructor failed to cooperate. (R. Exhibit 9; Testimony of L'Italien)

77. Based on all of the findings of the two Internal Affairs investigations occurring between February 2, 2022 and the present – Docket #22ABI-2-IA (contact with Sgt. Lynch) and

Docket #22ABI-8-IA (domestic violence/residency issue), combined with Mr. Garza's prior incidents – Docket #19-4-IA (academy altercation), Docket #21-9-IA (traffic stop incident), and Docket #22ABI-1-IA ("crazy" comment at welfare check), Chief Del Papa was determined to seek termination, seeing a pattern of violent outbursts, intentional escalation of arguments and untruthfulness. (Testimony of Chief Del Papa)

78. Chief Del Papa was required to conduct an oral interview with Mr. Garza, and attest to his standing and good character for his recertification for the Peace Officer Standards and Training Commission (POST). Chief Del Papa did not conduct the oral interview because Mr. Garza was on paid administrative leave at the time the Department's recertification packet was submitted to POST. As part of the recertification process, Chief Del Papa submitted all the internal affairs investigation reports related to the charges against Mr. Garza. (R. Exhibit 20; Testimony of Chief Del Papa)

79. On April 5, 2023, Chief Del Papa issued a Notice of Contemplated Termination to Mr. Garza (the final notice, as previous versions were sent in attempts to set a date for the hearing) stating all the reasons for the contemplated discipline and listing the specific Department Rules, Regulations, Policies and Procedures allegedly violated. (R, Exhibits 13, 14 and 15)

80. On April 10, 2023, June 23, 2023, and June 27, 2023, an appointing authority hearing was convened to address the contemplated discipline and alleged rule violations. Chief Del Papa designated James Lampke, Esq. as the hearing officer. Chief Del Papa, Dep. Chief Sullivan, Investigator L'Italien, and Mr. Garza testified at the hearing. (R. Exhibit 16)

81. The hearing officer considered three charges:

Item A: Interaction between Mr. Garza and Sgt. Lynch including their dialogue and the alleged unpermitted physical contact, violating

- Workplace Violence Policy, #2012 - P04
- Oath and Code of Ethics Policy, #2008 – P02B
- Conduct Unbecoming an Officer – Rule 4.02
- Courtesy – Rule 6.3; Insubordination – Rule 7.01
- Policies and Procedure Compliance – Rule 10
- Fighting/Quarreling – Rule 10.11

Item B: The arrest by the North Smithfield, RI Police Department for “Domestic Violence-Disorderly Conduct,” which raised the issue of whether Mr. Garza was also in violation of the residency rule for Massachusetts police officers, violating

- Conduct Unbecoming an Officer – Rule 4.02
- Residency – Rule 10.1
- Home Address and Telephone Number – Rule 10.2
- Criminal Conduct – Rule 10.15
- Officers Involved in Domestic Violence Policy - #2008 – P06
- Oath and Code of Ethics Policy, #2008 – P02B
- G.L. c. 31, § 58 – Municipal Police Officers and Firefighters, Qualifications
- Testifying at Investigations – Rule 9.20
- Truthfulness - Rule 6.9
- Insubordination – Rule 7.01
- Internal Affairs Policy #2009-P18

Item C: Mr. Garza’s attendance of the armorer’s training by Sig Sauer in New Hampshire while he was on paid administrative leave.

- Insubordination – Rule 7.1.

(R. Exhibit 16)

82. The hearing officer issued an October 30, 2023 report finding that the appointing authority had just cause to “impose discipline and adverse employment actions, up to and including termination ... ,” for the charges as listed under Items A, B and C and the complementing violations of the General Laws and Department rules and regulations. (R. Exhibit 16)

83. *Item A* – When Mr. Garza engaged in dialogue and unpermitted physical contact with Sgt. Lynch, he violated the rules and regulations for the Workplace Violence Policy, the Oath and Code of Ethics Policy, Conduct Unbecoming an Officer, Courtesy, Insubordination, Policies and Procedure Compliance and Fighting/Quarreling. (R. Exhibit 16)

84. *Item B* – When the North Smithfield, RI police arrested Mr. Garza for Domestic Violence-Disorderly Conduct after he struck a water container from his then-girlfriend’s hands, he was in violation of Conduct Unbecoming an Officer, the residency rule for Massachusetts police officers, Home Address and Telephone Number, Officers Involved in Domestic Violence Policy, Oath and Code of Ethics Policy, G.L. c. 31, § 58 – Municipal police officers and firefighters; Qualifications, Testifying at Investigation, Truthfulness, Insubordination. (R. Exhibit 16)

85. *Item C* – Mr. Garza’s unauthorized attendance at the Sig Sauer August 19, 2022 armorer’s training while he was on paid administrative leave was a violation of the rule and regulation against Insubordination. (R. Exhibit 16)

86. Chief Del Papa accepted the findings of the hearing officer that Mr. Garza had violated Department rules and regulations in each of the cited incidents. In a November 3, 2023 letter enclosing his appeal rights, Chief Del Papa terminated Mr. Garza from his position of police officer with the Department. As reason therefor, the chief cited a “series of events over the last two (2) years ...”

1. *The February 2, 2022 act of workplace violence against Sgt. Lynch*
Workplace Violence Policy, #2012 - P04; Oath and Code of Ethics Policy, #2008 – P02B; Conduct Unbecoming an Officer – Rule 4.02; Courtesy – Rule 6.3; Insubordination – Rule 7.01; Policies and Procedure Compliance – Rule 10; Fighting/Quarreling – Rule 10.11
2. *The July 26, 2022 RI domestic violence arrest*
Conduct Unbecoming an Officer – Rule 4.02; Residency – Rule 10.1; Home Address and Telephone Number – Rule 10.2; Officers Involved in Domestic Violence Policy - #2008 – P06; Oath and Code of Ethics Policy, #2008 – P02B; G.L. c. 31, § 58 – Municipal Police Officers and Firefighters, Qualifications; Testifying at Investigations – Rule 9.20; Truthfulness - Rule 6.9; Insubordination – Rule 7.01; Internal Affairs Policy #2009-P18
3. *Maintaining a primary residence in RI*
Residency – Rule 10.1; and

4. *Unauthorized attendance at August 19, 2022 Sig Sauer training (Epping, NH)*

Insubordination – Rule 7.1.

(A. Exhibit 9)

87. On November 4, 2023, Mr. Garza appealed to the Commission. (A. Exhibit 9)

Applicable Legal Standard

A tenured civil service employee may be discharged for “just cause” after due notice and hearing upon written decision “which shall state fully and specifically the reasons therefor.”

G.L. c. 31, § 41. An employee aggrieved by the decision may appeal to the Commission. G.L. c. 31, § 43. Under section 43, the appointing authority carries the burden to prove to the Commission by a “preponderance of the evidence” that there was “just cause” for the action taken. *Id.* See, e.g., *Falmouth v. Civil Service Comm’n*, 447 Mass. 814, 823 (2006); *Police Dep’t of Boston v. Collins*, 48 Mass. App. Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000).

In performing that function, the commission does not view a snapshot of what was before the appointing authority. Were that determinative, this case would resolve in favor of the city...

In performing its § 43 review... the commission hears evidence and finds facts anew. Examining an earlier but substantially similar version of the same statute, the court in *Sullivan v. Municipal Ct. of the Roxbury Dist.*, 322 Mass. 566, 572, 78 N.E.2d 618 (1948), said: “We interpret this as providing for a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer. *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

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 [C]ommission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the [C]ommission to have existed when the appointing authority made its decision.” *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). The Commission determines just cause 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 must take account of all credible evidence in the entire administrative record, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law, including whatever would fairly detract from the weight of any particular supporting evidence. *See Commissioners of Civil Service v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971) citing *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928); *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.” *Leominster v. Stratton*, 58 Mass. App. Ct. at 729. *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).

The Commission has also consistently held police to a high standard of conduct even in the absence of indictable conduct or a criminal conviction. For example, in *Zorzi v. Norwood*, 29 MCSR 189 (2016), the Commission noted:

An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion.” *McIsaac v. Civil Service Comm’n*, 38 Mass. App. Ct. 473, 475 (1995) (negligent off-duty handling of firearm). “When it comes to police officers, the law teaches that there is a special ‘trust reposed in [a police officer] by reason of his employment 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.’ *Police Comm’r v. Civil Service Comm’n*, 22 Mass. App. Ct. 364, 371, *rev. den.*, 398 Mass. 1103 (1986).

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 Service Comm’n*, 447 Mass. 814, 823 (2006) and cases cited.

Section 43 of G.L. c. 31 also vests the Commission with the authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated “considerable discretion” in this regard, albeit “not without bounds” so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. *See, e.g., Police Comm’r v. Civil Service Comm’n*, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; *Falmouth v. Civil Service Comm’n*, 61 Mass. App. Ct. 796, 800 (2004); *Faria v. Third Bristol Div.*, 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). However, the Supreme Judicial Court has added that, in the absence of “political considerations, favoritism, or bias,” the same penalty is warranted “unless the commission’s findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way.” *Falmouth v. Civil Service Comm’n*, 447 Mass. at 824.

ANALYSIS

The Department, by a preponderance of the evidence, has proven that it had just cause to terminate Mr. Garza for engaging in misconduct in violation of several Department rules and regulations. Chief Del Papa cited four reasons in the November 3, 2022 termination letter: 1) The February 2, 2022 act of workplace violence against Sgt. Lynch; 2) the July 26, 2022 North Smithfield, RI domestic violence arrest; 3) the maintenance of a primary residence in RI; and 4) Mr. Garza's unauthorized attendance at the August 19, 2022 Sig Sauer armorer's training in Epping, NH.

Reason 1: The February 2, 2022 act of workplace violence against Sgt. Lynch

After the February 2, 2022 physical and verbal interaction with Sgt. Lynch, Chief Del Papa placed Mr. Garza on administrative leave. Chief Del Papa testified that the Department has a zero-tolerance policy against workplace violence. As a result of Mr. Garza's anger, profanity and physical interaction with Sgt. Lynch, the hearing officer deemed Mr. Garza's contact intentional. While the contact was insignificant, the issue was that a subordinate touched a superior officer. Further, Mr. Garza's conduct caused a disruption of workplace productivity.

The hearing officer found violations of the following rules and regulations:

Workplace Violence Policy, #2012 – P04 – The Department has a zero tolerance policy for workplace violence. Workplace violence, per the policy, includes “intimidation or threats communicated by any means”, “physical assault and/or battery”, “threats and/or acts of intimidation communicated by any means that cause an employee to be in fear of their own safety” and “disruptive or aggressive behavior that causes a reasonable person to be in fear of their own safety or that of a colleague or that causes the disruption of workplace productivity.”

Oath and Code of Ethics Policy, #2008 – P02B - [Officers] ... will keep [their] private life unsullied ... and behave in a manner that does not bring discredit to me or my agency.

Conduct Unbecoming an Officer – Rule 4.02 - [Conduct that] ... would alert a reasonable officer that his conduct under the circumstances would be inappropriate.

Courtesy – Rule 6.3 - This rule requires officers to not engage in dissoluteness to their superior officers.

Insubordination – Rule 7.01 - Abington Police Officers shall not be insubordinate. Insubordination shall include: any failure or deliberate refusal to obey a lawful order (written or oral) given by a Superior Officer or as otherwise specified above. *It shall also include any disrespectful, mutinous, insolent, or abusive language or action toward a superior whether in or out of the presence of the superior.* (Emphasis added)

Policies and Procedure Compliance – Rule 10 - [Officers are required to] read and be familiar with and *comply* with the requirements of the Abington Police Department's Policies and Procedures Manual. (Emphasis added)

Fighting/Quarreling – Rule 10.11 - Abington Police Officers shall not fight or quarrel with one another.

Mr. Garza's disciplinary history is limited to two instances of verbal counseling for conduct while at the police academy (August 2019) and for an interaction with a motorist who was out of order (September 2021). (Findings of Fact 5 and 7) Mr. Garza's third discipline (May 17, 2022 Notice of Unpaid Suspension), a three-day suspension, was rescinded by this Commission after the City failed to conduct a Section 41 hearing as requested by the Appellant. (Finding of Fact 39)

Chief Del Papa testified that Mr. Garza's conduct on February 2, 2022 provided sufficient reason for termination from his position as a police officer. However, progressive discipline does not support this result.

I find that the events of February 2, 2022 sustained violations of the Department rules and regulations as found by the Hearing Officer, but do not on their own provide the City with just cause for terminating Mr. Garza. If this were the only disciplinary incident before the Commission, it is likely that the Commission would consider a modification of the penalty. But

before scheduling a Section 41 hearing on the termination, the Town was alerted to additional misconduct by Mr. Garza.

I next examine Reasons 2, 3 and 4, which in the aggregate provide the Town with just cause to terminate Mr. Garza.

Reason 2: The July 27, 2022 RI domestic violence arrest

On July 27, 2022, North Smithfield, RI police informed the Department that they had arrested Mr. Garza for Domestic Violence – Disorderly Conduct after he knocked a watering container out of his then-girlfriend’s hands. During the arrest, Mr. Garza gave a RI address as his home address, well beyond the Department’s fifteen (15) mile residency limit. As a result of the July 27, 2022 incident, the hearing officer found violations of the following statute, rules and regulations:

Conduct Unbecoming an Officer – Rule 4.02 - [Conduct that] ... would alert a reasonable officer that his conduct under the circumstances would be inappropriate.

Residency – Rule 10.1 - Abington Police Officers shall comply with any residency requirement specified by any applicable statute, by-law/ordinance, civil service requirement or collective bargaining agreement.

Home Address and Telephone Number – Rule 10.2 - Abington Police Officers shall have a telephone in their place of residence, or where they can be reached, and shall report any change of telephone number or home address to the Chief within twenty four hours of such change. The home telephone numbers or home addresses of Department personnel shall not be given out to anyone outside the Department without the approval of the Police Chief. In the event of an emergency request, the officer’s telephone numbers will be called with a notification to call the person making the request.

Officers Involved in Domestic Violence Policy - #2008 – P06 – Domestic violence includes an act of violence committed against someone with whom the officer has a dating relationship. The Department will adhere to a zero-tolerance policy toward police officer domestic violence and will not tolerate violations of this policy.

Oath and Code of Ethics Policy, #2008 – P02B - [Officers] ...Safeguard lives ... Protect the weak against oppression and intimidation ... will keep [their] private

life unsullied ... and behave in a manner that does not bring discredit to me or my agency.

Municipal Police Officers and Firefighters, Qualifications – G.L. c. 31, § 58 – among other requirement, police officers are to establish residence in the Town they work for or within 10 miles of the same.

Testifying at Investigations – Rule 9.20 - Abington Police Officers shall truthfully testify or state the facts as they know them when they appear or are involved in any judicial, departmental or other official investigation, hearing, trial or proceeding and in all other ways cooperate fully during such.

Truthfulness - Rule 6.9 - Abington Police Officers shall speak the truth at all times. In cases in which an officer is not allowed by the regulations of the Department to divulge facts within his knowledge, he will decline to speak on the subject.

Insubordination – Rule 7.01 - Abington Police Officers shall not be insubordinate. Insubordination shall include: any failure or deliberate refusal to obey a lawful order (written or oral) given by a Superior Officer or as otherwise specified above. *It shall also include any disrespectful, mutinous, insolent, or abusive language or action toward a superior whether in or out of the presence of the superior.* (Emphasis added)

Internal Affairs Policy #2009-P18 – Generally, the policy provides the following -

3.c- An internal administrative investigation may inquire into a department employee's on-duty or off-duty conduct if such inquiry is reasonably and directly related to the employee's performance of duty, if such conduct affects the employee's fitness or ability to continue in the police service, or reflects discredit on the department. ...

3.f- All department employees, when requested by the Chief, or by a superior officer designated by the Chief, *must respond fully and truthfully* to all questions regarding their performance of official duties or their off-duty misconduct which affects their fitness or ability to remain in the police service, and any failure to answer completely and truthfully to such inquiries may be punished by appropriate disciplinary action, including dismissal from the department. (Emphasis added) ...

3.g.4- The omission of significant and pertinent facts will be considered untruthful and will be treated as such. Untruthfulness and/or deceitful answers will result in discipline up to and including dismissal from the police department.

The hearing officer found that Mr. Garza did not violate the following rule:

Criminal Conduct – Rule 10.15 - Abington Police Officers shall not commit any criminal act (felony or misdemeanor), or violate the criminal laws or statutes of

the United States or of any state or local jurisdiction (by-law/ordinance), whether on or off duty.

Mr. Garza's criminal charges were later dismissed because his then-girlfriend refused to cooperate, and Mr. Garza had the court records sealed.

The Commission has held that the absence of a criminal conviction does not eliminate the possibility of a finding established by the preponderance of the evidence that criminal misconduct has occurred in a fashion that independently establishes the just cause for discipline. *Kraus v. Falmouth*, 29 MCSR 340 (2016). Police officers are held to a "higher standard of conduct than that imposed on ordinary citizens," and, as such, Mr. Garza's belligerent behavior should not be excused.

The Town has proven by a preponderance of the evidence that Mr. Garza engaged in domestic violence – disorderly conduct on July 27, 2022.

Reason 3: Maintaining a primary residence in RI

Residency – Rule 10.1 - Abington Police Officers shall comply with any residency requirement specified by any applicable statute, by-law/ordinance, civil service requirement or collective bargaining agreement.

After learning that Mr. Garza had provided the North Smithfield, RI police with a local address during booking, Chief Del Papa recalled that in November 2021 Mr. Garza had sought his counsel about purchasing a home in RI because of that state's lower real estate prices. After making inquiries, the chief reported back to Mr. Garza that living in RI would be in violation of the CBA and the 10-mile limit for residency. Mr. Garza purchased the RI home one month after the chief had informed him that he could not have a primary residence in that state.

Mr. Garza has asserted disparate treatment, noting that the chief allowed Sgt. Lynch to live in a town beyond the residency limit for several months, while his future home within the residency limit was under construction. Sgt. Lynch admitted that he had not been truthful with

the chief when he first moved out of the residency limits, but that the chief allowed him to *temporarily* live beyond the residency limit when he informed him of the home construction.

Investigator L'Italien found that Mr. Garza was not living at either of the Quincy, MA addresses that he had provided to the Department but that he had purchased and was living at a home in North Smithfield, RI. Living in RI was a violation of the Department's residency requirement, Residency – Rule 10.1 - “Abington Police Officers shall comply with any residency requirement specified by any applicable statute, by-law/ordinance, civil service requirement or collective bargaining agreement.”

Mr. Garza acknowledged that he did not report his move to RI to the Department concomitantly in December 2021. Mr. Garza also engaged in a subterfuge to the Department that he was residing in Quincy, MA. As the hearing officer wrote, “There is a purpose behind the residency law and Garza's staying in Quincy from time to time in a rented room is inconsistent with the purpose behind the residency law.” The SJC has stated that “... the clear objective of the residency requirement is to ensure that police officers (and fire personnel under Section 48A) can be mobilized quickly in times of need. To this end, it is required that police (and fire) personnel reside within ten miles of the city or town of employment.” *Doris v. Police Comm'r of Boston*, 374 Mass. 443, 448 (1978).

I find that the Town has proven by a preponderance of the evidence that Mr. Garza was living in RI, in violation of the Department's residency requirement.

Reason 4: Unauthorized attendance at the August 19, 2022 Sig Sauer training (Epping, NH)

Insubordination – Rule 7.01 - Abington Police Officers shall not be insubordinate. Insubordination shall include: any failure or deliberate refusal to obey a lawful order (written or oral) given by a Superior Officer or as otherwise specified above. It shall also include any disrespectful, mutinous, insolent, or abusive language or action toward a superior whether in or out of the presence of the superior. (Emphasis added)

It is undisputed that Mr. Garza attended the Sig Sauer armorer's training on August 19, 2022. Mr. Garza testified at the evidentiary hearing that he attended the training in order to maintain his status as the Department's armorer, and to train on a new weapon that the Department would be adopting soon. He also asserted that he was never expressly told that he could not attend the training. Mr. Garza used his personal email address to register for the training program.

However, it is undisputed that Mr. Garza was on administrative leave at the time of the armorer's training – and restricted from performing any police duties for the Town. This restriction was explicitly noted within the February 4, 2022 Notice of Paid Administrative Leave issued on February 4, 2022. Mr. Garza's Department issued LTC had been suspended on July 27, 2022. (Finding of Fact 47) Indeed, Dep. Chief Sullivan had removed his and Mr. Garza's names from the attendance for the program and assigned two other personnel to attend in their stead.

I find that the Town has proven by a preponderance of the evidence that Mr. Garza was insubordinate to the chief when he attended the armorer's training without Department authorization. He failed to clear his attendance with the Department, and further attempted to conceal his attendance by registering with his personal email address.

CONCLUSION

The Town has proven by a preponderance of the evidence that Mr. Garza committed multiple violations of Department rules, regulations, policies and procedures upon investigating the facts surrounding his Domestic Violence–Disorderly Conduct arrest in July 2022 and his August 19, 2022 unauthorized attendance at the armorer's training in Epping, NH.

Having determined that it was appropriate to discipline Mr. Garza for his various instances of misconduct as documented in Reasons 2-4, I must determine if the Department was justified in the level of discipline imposed here; that is, termination. The Commission must consider that “unless the [Commission’s] findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty.” *Falmouth v. Civil Serv. Comm’n*, 447 Mass. at 824.

I find that Mr. Garza engaged in a pattern of troubling behavior that constitutes conduct unbecoming an officer and untruthfulness, among other Department violations. The Commission has consistently upheld discharges of police officers based on their dishonesty alone. E.g., *Diaz v. Somerville*, 32 MCSR 156 (2019).

For all of the above reasons, the discipline appeal of Mr. Garza filed under Docket No. D1-23-229 is hereby *denied*. I find that the Abington Police Department has proven by a preponderance of the evidence that it had just cause to terminate Carlos Garza.

CIVIL SERVICE COMMISSION

/s/ Angela C. McConney

Angela C. McConney
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on January 23, 2025.

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 C.M.R. § 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Ernie Horn, Esq. and Thomas O'Loughlin, Esq. (for Appellant)

Richard Massina, Esq. (for Respondent)