

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JEFFREY GODERE,
Appellant

v.

D-15-99

CITY OF CHICOPEE,
Respondent

Appearance for Appellant:

Andrew J. Gambaccini, Esq.
Reardon, Joyce & Akerson, P.C.
4 Lancaster Terrace
Worcester, MA 01609

Appearance for Respondent:

Thomas J. Rooke, Esq.
Assistant City Solicitor
City of Chicopee
73 Chestnut Street
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The City suspended Sgt. Godere for five (5) days and demoted him from sergeant to police officer. The City failed to show that Sgt. Godere was untruthful in his written reports and/or during an investigation regarding what interaction he had with a private citizen when responding to a 911 call. The City did show, however, that Sgt. Godere failed to meet his responsibilities as a supervisor by failing to ensure that a decision on whether to arrest a suspect was based on factual information. Further, Sgt. Godere failed to ensure that a written report was filed of the incident. For the above reasons, the demotion is hereby rescinded, but the 5-day suspension stands.

DECISION

On May 22, 2015, the Appellant, Jeffrey Godere (Sgt. Godere), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Chicopee (City) to suspend him for five (5) days and demote him from sergeant to police officer in the City's Police Department (Department).

On July 21, 2015, I held a pre-hearing conference at the Springfield State Building in Springfield, MA. I held a full hearing at the same location on September 23, 2015.¹

CDs were made of the digitally-recording hearing. A copy was retained by the Commission and both parties were provided with copies as well. Following the hearing, the parties had the recording transcribed and a copy of the transcript was provided to the Commission. Both parties submitted post-hearing briefs.

FINDINGS OF FACT:

The City submitted City Exhibits 1 through 11B at the hearing and, at my request, submitted a recording of a 911 call that I have marked as City Exhibit 12. Sgt. Godere submitted Appellant Exhibits 1 through 4 at the hearing. By agreement of the parties, Sgt. Godere submitted an additional nine (9) exhibits which have been marked as Appellant Exhibits 5 through 13.

Based upon the documents entered into evidence, the testimony of:

Called by the City:

- Private Citizen²;
- Captain Lonny Dakin, Chicopee Police Department;

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

²Consistent with the Commission's approach in these matters, the identity of the private citizen involved in this matter is treated as confidential.

- Chief William Jebb, Chicopee Police Department;

Called by Sgt. Godere:

- Jeffrey Godere, Appellant;

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

1. Sgt. Godere is forty-three (43) years old and has lived in Chicopee for most of his life. He is married and has two children, ages twenty-one (21) and eighteen (18). He received an Associate's degree from Quincy College and a Bachelor's degree from Curry College. (Testimony of Sgt. Godere)
2. Sgt. Godere served as an auxiliary police officer in Chicopee from 1994 to 2001 before being appointed as a permanent, full-time police officer on February 5, 2001. He was promoted to the position of Sgt. on June 2, 2011 and served in that capacity until he was demoted to police officer on May 18, 2015. (Testimony of Sgt. Godere and Stipulated Facts)
3. For approximately six (6) years of his career, Sgt. Godere's direct supervisor was William Jebb, who is now the City's Police Chief. In 2012, when then-Captain Jebb was seeking election as the local union president, Sgt. Godere supported his opponent. (Testimony of Sgt. Godere)
4. Chief Jebb has been Chief of Police since July 2014. Despite being the highest ranked candidate on the civil service eligible list, he was not the chosen candidate of the prior Mayor, causing Chief Jebb to file a promotional bypass appeal with the Commission. Chief Jebb prevailed in that appeal; the former Mayor's appointment of

Police Chief was vacated; and Chief Jebb was appointed by newly-elected-Mayor Kos in July 2014. (Testimony of Chief Jebb; Administrative Notice: Jebb v. City of Chicopee, 27 MCSR 208 (2014))

5. Chief Jebb acknowledged that the dispute regarding his appointment caused divisions in the Police Department, with some individuals supporting him and others supporting the prior Chief. From Chief Jebb's perspective, while he does not believe that Sgt. Godere worked against him, Sgt. Godere did not support him either. (Testimony of Chief Jebb).

6. At all times relevant to this appeal, Sgt. Godere was working as a sergeant assigned to the 12:00 Midnight to 8:00 A.M. shift. During that shift, there are typically two (2) sergeants out on patrol and one (1) lieutenant who is the "Officer in Charge." (Testimony of Sgt. Godere)

7. Chicopee Police Department Rules and Regulations that are applicable here are as follows:

"SECTION 200:67 FOR TRUTHFULNESS - An officer shall truthfully state the facts in all reports, as well as when he/she appears before any judicial, Departmental or other official investigation, hearing, trial or proceeding. He/she shall cooperate fully in all phases of such investigating, hearings, trials and proceedings.

SECTION 300:19 FOR INCOMPETENCE - An officer shall maintain sufficient competency to perform his/her duty and to assume the responsibilities of his/her position. Incompetence may be demonstrated, but is not limited to, the following:

- A. A lack of knowledge of the application of laws required to be enforced.
- B. An unwillingness or inability to perform assigned tasks.

C. The failure to conform to work standards established for the officers' rank, grade or position.

D. Repeated infractions of the rules and regulations.

SECTION 300:31 FOR NEGLECT OF DUTY - Being absent from assigned duty without leave; leaving post or assignment without being properly relieved; or failing to take suitable and appropriate police action when any crime, public disorder or other incident requires police attention or service.”(City Exhibit 10D)

8. Chicopee Police Department Policies and Procedures that are applicable here are:

“POLICY AND PROCEDURE NO. 1.05, SECTION III (7):

Report Writing

- a. The officer conducting a preliminary investigation shall make an accurate and complete written report of the incident in accordance with departmental procedures.
- b. An officer making a preliminary investigation should not rely on memory but should note all useful information obtained and, at minimum, should make a written record of the following data [(42.2.2(a))
 - i. Date and time of arrival at scene;
 - ii. Weather conditions and visibility, including the location and distance from the nearest street light or artificial lighting and whether the lights were on;
 - iii. Approximate time of commission of the crime and by whom it was discovered;
 - iv. Identity of other police officers present;
 - v. All necessary information concerning any physical evidence discovered;
 - vi. Name, address and telephone number of victims and witnesses;
 - vii. The identity or the best available description of the criminal suspect or suspects, particularly noting any unusual characteristics;
 - viii. The best available description of any vehicle used by the suspect or suspects;
 - ix. Any important measurements made at the scene and a rough crime scene sketch; the name of any police photographer who took pictures, the name and affiliation of any media photographer who took pictures, the name and address and any private individual who took pictures;

- x. The time and location of any interviews of the victim or witnesses and a brief statement as to what they heard or observed. If any such statement appears to be highly informative and the crime is of a serious nature, a verbatim record should be made; and
 - xi. Any other information that the officer believes may be useful for the apprehension of the criminal suspect and his/her subsequent prosecution.” (Appellant Exhibit 11)
9. On Thursday, February 26, 2015 at 7:16 A.M., a private citizen placed a 911 call to the Chicopee Police Department. The private citizen stated: “Hi, there’s a guy in my back yard and I think he’s trying to steal my snow blower.” The private citizen stated that the suspect was “standing in the driveway in the back” and that he was “a young kid, probably 20, with a blue hoodie ...standing by the car, a black BMW. He’s standing right near the snow blower.” (City Exhibit 12)
10. While the private citizen stayed on the call, the dispatcher can be heard conveying all of this information over the dispatch radio, describing the suspect as a “white male”. The private citizen corrected the dispatcher and told him that the suspect was Hispanic. (City Exhibit 12)
11. When the dispatcher asked the private citizen what the suspect was doing now, the private citizen stated that the suspect “was right in the back of the house near the back door.” The private citizen then stated that the suspect was walking around the back yard and then back toward the driveway. The private citizen expressed concern to the dispatcher that he didn’t want the suspect to see him in the house. (City Exhibit 12)
12. After a brief period of time, the dispatcher tells the private citizen that a police officer has arrived at the house. The call ends when the dispatcher then says, “they’re over there now.” (City Exhibit 12)

13. Chicopee Police Officer Michael Kotowski arrived at the home of the private citizen at 7:19:21.(City Exhibit 4) Officer Kotowski has been a Chicopee police officer for twenty-four (24) years. (Testimony of Chief Jebb)
14. Sgt. Godere arrived at the residence twenty-three (23) seconds later, at 7:19:44. (City Exhibit 4)
15. After the 911 call ended, the private citizen walked out to his front porch and saw two (2) police cruisers. The private citizen saw two (2) police officers walking up his driveway. When one (1) of the police officers asked the private citizen, “where is he now?”, the private citizen responded in a low voice by saying “he’s around the back.” (Testimony of Private Citizen)³
16. Shortly thereafter, the private citizen heard a person say “get out of the shed.” Upon hearing this, the private citizen went back into his house, proceeded to the kitchen and looked outside. When the private citizen looked outside from his kitchen, he saw a police officer (Officer Kotowski) with his gun drawn and the suspect with his hands up. Sgt. Godere was standing behind Officer Kotowski. (Testimony of Private Citizen)
17. The private citizen heard Officer Kotowski tell the suspect to identify himself and ask the suspect what he was doing in the shed. The private citizen heard the suspect tell Officer Kotowski that he was in the shed looking for gas. (Testimony of Private Citizen)
18. The private citizen eventually saw Officer Kotowski walk the suspect down the driveway and into the back of a cruiser. The private citizen returned to the front of his

house and heard Officer Kotowski and Sgt. Godere having a conversation.

(Testimony of Private Citizen)

19. Sgt. Godere told Officer Kotowski that he [Kotowski] could “go with a B&E daytime or a misdemeanor, because he [the suspect] was inside the shed.” (Testimony of Sgt. Godere)

20. The private citizen and Officer Kotowski checked the shed to see if anything was missing (there was not) and then Officer Kotowski asked the private citizen some questions, including his name and date of birth. (Testimony of Private Citizen)

21. While Officer Kotowski and the private citizen were checking the shed in the back of the house, the suspect sat in the back of Officer Kotowski’s cruiser, not handcuffed. During this time, Sgt. Godere sat in the driver’s seat of his own cruiser. (Testimony of Sgt. Godere)

22. Officer Kotowski submitted a query to determine if there were any outstanding warrants against the suspect. There were not. (Testimony of Sgt. Godere)

23. Sgt. Godere ran the suspect’s “S number” to verify his identity. (Testimony of Sgt. Godere)

24. Neither Sgt. Godere or Officer Kotowski conducted a Board of Probation (BOP) inquiry of the suspect. (Testimony of Sgt. Godere)

25. There is no policy in the Chicopee Police Department stating explicitly when a BOP check should be done. (Testimony of Captain Dakin)

26. Had a BOP check been done, it would have shown that, at the time, the suspect had been charged as a juvenile with breaking and entering on four (4) separate occasions

³ Central to this appeal is whether, at some point prior to going to the side and back of the house, Sgt. Godere had any additional conversation with the private citizen. The analysis contains a detailed

and had once been committed to a Department of Youth Services (DYS) detention center. (Testimony of Captain Dakin)

27. The private citizen resides in a neighborhood that is located in Chicopee Police Department District 4. Between March 1, 2014 and March 18, 2015, there were 117 breaking and entering incidents in District 4. This number exceeded any number of burglaries in any other district in the City. (City Exhibit 9 and Testimony of Captain Dakin)
28. Officer Kotowski told Sgt. Godere that he (Kotowski) believed that the suspect had only entered the shed to hide and not to steal anything. Officer Kotowski told Sgt. Godere that he did not plan on charging or arresting the suspect. (Testimony of Sgt. Godere)
29. The private citizen subsequently saw the two (2) police cruisers leave his property with the suspect in the back seat of one (1) of the cruisers. (Testimony of Private Citizen) The private citizen assumed that the suspect had been arrested. (City Exhibit 3A)
30. Had a BOP check been done, revealing the suspect's criminal history, that information would have reinforced Sgt. Godere's opinion that the suspect should have been charged and arrested. (Testimony of Sgt. Godere)
31. Officer Kotowski drove the suspect away from the private citizen's property and released him without filing any criminal charges against him and/or arresting the suspect. (Exhibit 6)

32. Neither Sgt. Godere or Officer Kotowski filed an incident report regarding the incident at the private citizen's residence. (Testimony of Captain Dakin)⁴
33. Chicopee Police Department Policies and Procedures 1.05, Section III B.7a. states that an officer conducting a preliminary investigation "shall make an accurate and complete written report of the incident in accordance with departmental procedures." (Appellant Exhibit 11)
34. Chicopee Police Department Policies and Procedures 1.05, Section III B.7b. provides a detailed list of data that should be included in the written report. (Appellant Exhibit 11)
35. On February 27, 2015, one (1) day after the incident at his home, the private citizen, whose father once served as the City's Police Chief, contacted the City's Police Department to obtain the identity of the suspect so that he could obtain a no trespass order against him. (Testimony of Private Citizen and Captain Dakin)
36. Lonny Dakin has been a police officer in Chicopee since 1990 and has served as a Captain since April 2011. He received the initial call from the private citizen and conducted the internal affairs investigation regarding this matter. (Testimony of Captain Dakin)
37. In attempting to respond to the private citizen's call to the Police Department, Captain Dakin saw from the dispatch records that a call had been generated at that address, but was unable to locate an arrest report and/or incident report regarding the incident

⁴ Sgt. Godere testified that he told Kotowski to enter the suspect's information into the "call narrative" such that, if there were other breaks in the area, the suspect's information would be available to further an inquiry. In his report, Officer Kotowski wrote that he did enter the information into the call narrative screen and believed that he saved it, but when advised that there was no information in the call narrative the next day, Officer Kotowski indicated that it was possible that the information was not saved mistakenly, or that there was a computer issue in saving the information. Even if I accept this testimony as true, for

being described by the private citizen. Captain Dakin did not understand why an incident report had not been completed if, as conveyed by the private citizen, a police officer had drawn his gun at the suspect. (Testimony of Captain Dakin)

38. Also on February 27, 2015, the private citizen came to the Police Department and gave a statement to a detective. The detective committed the private citizen's statement to paper and had the private citizen review and sign the statement.

(Testimony of Private Citizen and City Exhibit 3A)

39. The private citizen's statement states in relevant part, "The cops arrived and I hung up the phone. I went to the front of the house to see the officer that arrived. They were already by me, so I went back into the house and walked to the back of the house." The statement does not reference either of the officers asking the private citizen where the suspect was or the private citizen telling the officer(s) that the suspect was "around the back." The statement also does not reference the conversation that the private citizen had with Officer Kotowski when the two of them inspected the shed to see if anything was missing. (City Exhibit 3A)

40. That same day, on February 27, 2015, Captain Dakin sent an email to Sgt. Godere and Officer Kotowski ordering them to "complete a full and detailed report of your involvement in call 15-6412. Include suspects name and information. Have the report on my desk by 0900 on 3/06/2015." (City Exhibit 4)

41. On March 2, 2015, Captain Dakin had a detective run a BOP check on the suspect at which time he learned that the suspect was eighteen (18) years old; that he had four juvenile adjudications for breaking and entering and that the suspect had been

reasons discussed in the analysis, I find that there is a distinction between a "call narrative" and a written incident report.

committed to a DYS detention facility as recently as February 2013. (Testimony of Captain Dakin and City Exhibit 4)

42. Also on March 2, 2015, Captain Dakin had a phone conversation with the private citizen at which time Captain Dakin asked the private citizen to clarify what contact he (the private citizen) had with the officers on the scene that morning. At that time, the private citizen conveyed the conversation that he had with Officer Kotowski during the shed inspection, but did not reference the initial, brief interaction with the police officer(s) when they first arrived at his residence. (City Exhibit 4)
43. Also on March 2, 2015, Captain Dakin sent a follow-up email to Sgt. Godere and Officer Kotowski asking them to ensure that their written reports, due on March 6th, were detailed and that they include any references to any contact that the officers had with the suspect or the private citizen. (Testimony of Captain Dakin and City Exhibit 4)
44. On March 5, 2015, Sgt. Godere submitted a report in response to Captain Dakin's orders. Prior to submitting the report, Sgt. Godere had his attorney review and edit the report. (Testimony of Sgt. Godere and City Exhibit 5)
45. Subsequent to the hearing before the Commission, and after I inquired about the practice of counsel reviewing and editing police reports submitted by police officers, counsel for Sgt. Godere provided me with two (2) draft documents (Document 1 and Document 2) that, according to counsel, were drafted without the assistance of counsel. The second document was reviewed by counsel, edited and was then submitted to Captain Dakin (Document 3).

46. Also on March 5, 2015, Officer Kotowski submitted a report in response to Captain Dakin's orders. (Exhibit 5)⁵

47. Document 1, drafted by Sgt. Godere, contained the following statements which are relevant to the *untruthfulness allegation*:

"Officer Kotowski and I arrived within minutes and were met in the front of the house by the reporting party, [private citizen]. [Private citizen] stated that he saw a male in the driveway in the rear of his house and that he had since lost sight of the male and did not know where he had gone Officer Kotowski went toward the rear yard to see if the male was still in the yard while I was still speaking to [private citizen]." (emphasis added) (Appellant Exhibit 7)

48. The dispatch log from February 26, 2015 regarding the incident in question states in relevant part: "SPANISH MALE 20 YOA W BLUE HOODIE IN DRIVEWAY STEALING SNOW BLOWER? STANDING NEXT TO BLK B M W" (City Exhibit 4)

49. Document 2, drafted by Sgt. Godere, without the assistance of his counsel, stated in relevant part:

Officer Kotowski arrived within minutes, I arrived seconds behind him. When I was walking to the front porch where the reporting party, [private citizen] was standing, Officer Kotowski was walking up the driveway toward the backyard. I stopped and spoke with [private citizen] and asked him what had happened. He stated that he saw a Spanish male in a blue hoodie in the driveway in the rear of the house standing by a black car. I asked if he had seen the male do anything. He stated he was just walking around the back driveway and the he lost sight of him and did not know where he went ... I walked up the driveway to assist Officer Kotowski ..." (emphasis added) (Appellant Exhibit 7)

50. Document 3, Sgt. Godere's final report, which was reviewed by counsel, stated in relevant part:

"Officer Kotowski arrived within minutes, and I arrived seconds behind him. While I was walking to the front porch where the reporting party [private citizen] was standing, Officer Kotowski was walking up the driveway toward the backyard. I stopped and spoke with [private citizen] and asked him what had happened. He

⁵ Neither Sgt. Godere nor the City called Officer Kotowski as a witness.

stated that he saw a Spanish male in a blue hoodie in the driveway in the rear of the house standing by a black car. I asked if had seen the male do anything. [Private citizen] stated that the man was just walking around the back driveway and that he had lost sight of him and did not know where he went ... I began to walk up the driveway to assist Officer Kotowski” (City Exhibit 5)

51. Document 1, drafted by Sgt. Godere, also contained the following statements which are relevant to the *incompetence and neglect of duty allegations*:

“Officer Kotowski went to speak with [private citizen] to ask him if anything was missing or out of place. Officer Kotowski and [private citizen] checked the shed and the backyard. [Private citizen] stated that the shed was unlocked and that nothing seems to be touched or out of place. Officer Kotowski told me that [suspect] went into the shed to hide from us because he saw the door closing when entering the rear driveway and because of the deep snow the only other way out of the backyard was down the driveway.

Based on the information that officer Kotowski gave me I told him to enter [suspect] information into the call narrative.” (emphasis added) (Appellant Exhibit 7)

52. Document 2, drafted by Sgt. Godere, contained the following statements:

“Officer Kotowski went to speak with [private citizen] to ask him if anything was missing or out of place. While Officer Kotowski was speaking with [private citizen], I stayed out front to keep an eye on [suspect]. Officer Kotowski told me that he felt [suspect] only went into the shed to hide from us because he saw the door closing when entering the rear driveway and because of the deep snow the only other way out of the backyard was down the driveway.

When Officer Kotowski came back from speaking with [private citizen] he came over to my cruiser and spoke with me. Officer Kotowski stated that the shed was unlocked and there was no damage to the shed. He stated that [private citizen] said that he didn’t see anything out of place, missing or moved. Officer Kotowski also stated again that he thinks [suspect] only entered the unlocked shed to hide from him because he saw the door closing. Officer Kotowski and I agreed that with the information we had at the time he would use his discretion and advise [suspect] and put his information in the call narrative, in case more information became available or another break was reported in the area he could be charged. Officer Kotowski cleared the call and drove [suspect] to St. James Ave.” (emphasis added) (Appellant Exhibit 7)

53. Document 3, Sgt. Godere’s final report, which was reviewed by his counsel prior to being submitted to Captain Dakin contained the following statements:

“Officer Kotowski went to speak with [private citizen] to ask him if anything was missing or out of place. While Office Kotowski was speaking with [private citizen], I stayed out front to keep an eye on [suspect].

When Officer Kotowski came back from speaking with [private citizen], he came over to my cruiser and spoke with me. Officer Kotowski stated that the shed was unlocked and that there was no damage to the shed. He also stated that [private citizen] said that he didn’t see anything out of place, missing or moved. Officer Kotowski again indicated that he thought [suspect] only entered the unlocked shed to hide from him. Officer Kotowski and I agreed that based upon the information that was available to us at the time, Officer Kotowski would use his discretion to advise [suspect] that if more information became available or a break was reported in the area, he could be a suspect and charged. Officer Kotowski also was to enter the information for [suspect] into the call narrative, in the event that more information became available or a break was reported in the area. Officer Kotowski cleared the call and drove [suspect] to St. James Avenue.” (City Exhibit 5)

54. Officer Kotowski’s report, submitted the same day as Sgt. Godere⁶, stated in relevant part:

“Upon my arrival, I spoke briefly to the homeowner, who stated that he was not sure what the party was doing or where the party had gone. I advised the homeowner that I was going to check the backyard. I began heading to the backyard and Sgt. Godere began speaking with the homeowner. As I walked into the backyard from the driveway, I observed a door to a shed in the far right corner of the backyard closing. At that time, not knowing who was in the shed or what was going on in the shed, I reasonably feared for my personal safety. As a result, I drew my service weapon out of my holster and maintained it in the low ready position, and, after I took a good angled position to the door, I identified myself verbally as the police and began issuing verbal commands for the person to come out of the shed with hands raised. I repeated the instruction that I wanted to see the person’s hands.

At my instruction, a young male party in a blue hoodie exited the shed. By that time, Sgt. Godere had arrived in the area and was with me. I holstered my weapon and performed a pat frisk of this person for weapons. I found no weapons on his person and I began to speak with the individual. This person identified himself to me as [suspect’s name, date of birth and address]. In speaking with [suspect], I asked him what he was doing there and [suspect], during that conversation, stated that he was looking for some gas. I told [suspect] that he was not going to find gas there and the he should not be in anyone’s backyard. [Suspect] had no ID or license on him.” (emphasis added) (City Exhibit 6)

⁶ As Officer Kotowski was not a witness, I was unable to inquire with him as to whether any prior drafts of his report existed and/or whether he had any of them reviewed by counsel before submitting it to Captain Dakin.

55. Officer Kotowski's report then goes on to recount placing the suspect in the back of his cruiser and his subsequent interaction with the homeowner when he and the homeowner inspected the shed and it was confirmed that nothing was missing from the shed. Officer Kotowski's report then states in relevant part:

"The Records Bureau returned with no warrants for [suspect] and showed only an ID for him. I asked Records to provide with the S number, and then asked Sgt. Godere to run the S number so that he could bring up a photo and the information that had been given to me by [suspect] could be verified. The photo did come back as a match to [suspect].

I spoke with Sgt. Godere about the situation, indicating that [suspect] had not been observed in the shed prior to my arrival in the backyard and it was my belief, seeing the door close as I was coming into the backyard, that [suspect], who I understood to be approximately eighteen years old, went into the shed simply to hide from me. Both marked cruisers were parked in front of the house in a way that they were visible from the backyard and I had been walking up the driveway, which was the primary path in and out of the backyard. In speaking with Sgt. Godere, I indicated that, with the information that I had at the time, I did not feel that there was sufficient probable cause for a charge of breaking and entering. Sgt. Godere agreed.

[Suspect], who had been in the back of my cruiser, then was transported to the corner of Broadway and St. James. I advised [suspect] that he should not be going into anyone's backyard looking for anything. I then sent him on his way. I entered the information from [suspect] into my call screen narrative and advised dispatch that I was clear from the call." (emphasis added) (City Exhibit 6)

56. On March 11, 2015, Captain Dakin interviewed the suspect and then prepared a written statement for the suspect to read and sign, acknowledging that it was accurate. The suspect read and signed the statement that reflected that on February 26, 2015, he walked up the driveway at 451 Broadway Street looking for gas for his son's dirt bike. The suspect further acknowledged that he went to a shed, opened the door and noticed a snow blower, dirt bike and two cans of gasoline. The first gasoline can was empty and before he could check the second gasoline can, he heard a police officer shouting from outside the shed to come out with his hands up and when he did exit the shed, the police officer had his gun drawn. The suspect noticed the second police

officer sometime after and the suspect was not sure if the other officer (Godere) was present the entire time or came up to the shed afterward. The suspect told the officer he was looking for gasoline and that officer (Kotowski) told the suspect he could lock him up for trespassing before walking him down the driveway and placing him in the back of the police cruiser. Kotowski then went to talk to someone for eight to ten minutes and when he returned, he drove the suspect down the street (before letting him go) and stated that he didn't want to see the suspect around here anymore and if anyone reports a breaking and entering, he (Kotowski) would be knocking on the suspect's door. The suspect concluded his statement by stating that he did try to open the back door, thinking it would lead to the basement where he would find tools.

(City Exhibit 8 and Testimony of Captain Dakin)

57. On March 17, 2015, the private citizen met with Chief Jebb and Captain Dakin in Chief Jebb's office. The private citizen provided them with an updated statement dated March 16, 2015. (Testimony of Private Citizen and City Exhibit 3B)

58. The private citizen's updated statement states in relevant part:

"He [suspect] approached the door and tried to enter the house but it was locked. I dialed 911 and spoke with a dispatcher who after a few minutes notified me that officers had arrived at my house. I went to the front porch and saw two officers walking up the driveway and then I went to the other side of the porch in case he ran down that side of the yard. I observed an officer with a gun drawn and pointed at the shed yelling 'get out of the shed'." (City Exhibit 3B)

59. On April 16, 2015, Captain Dakin penned a six (6) page "violation notice" charging Sgt. Godere with the following violations: Untruthfulness; Incompetence; and Neglect of Duty. In the same notice, Officer Kotowski was charged with: Failing to Submit Reports; Incompetence; and Neglect of Duty. (Exhibit 4)

60. Relevant excerpts from Captain Dakin's report include the following:

“ ... on 3/06/2015 I contacted [private citizen] by phone. I again asked [private citizen] to explain to me what happen (sic). I asked him to start at the point the officers arrived. He stated that he had gone to the front of the house and both responding officers acknowledged him by nodding but did not speak with him.” (Page 3)

“ ... He [private citizen] stated that no one spoke to him except for Off. Kotowski at the end. Kotowski did not ask him any questions about the incident.” (Page 3)

“This information is in direct conflict with Sgt. Godere’s report. In paragraph two of Sgt. Godere’s report he states, ‘Office Kotowski arrived within minutes, and I arrived seconds behind. While I was walking to the front porch where the reporting party [private citizen], was standing, Officer Kotowski was walking up the driveway towards the backyard. I stopped and spoke with [private citizen] and asked him what had happened. He stated that he saw a Spanish male in a blue hoodie in the driveway in the rear of the house standing by a black car. I asked if he had seen the male do anything. [Private citizen] stated that the man was just walking around the back driveway and that he had lost sight of him and did not know where he went.

I read paragraph two of Sgt. Godere’s report to [private citizen] who said it is a lie.

All the information in paragraph two of Sgt. Godere’s report, was given out by the dispatcher. If Sgt. Godere would have spoken to [private citizen] he would have known that the suspect tried his locked house door prior to entering the shed.” (Page 4)

“Policy and Procedure NO. 1.05 are the guidelines for Preliminary Investigations

These guidelines were not followed by Off. Kotowski and Sgt. Godere. Pertinent quotes from 1.05 are listed below-

I ... *‘the preliminary investigation should never be handled routinely. ...
...It is the duty of the patrol officer initially to discover facts, to locate and identify witnesses...
...A written report of the incident should be as complete, accurate and concise as possible.*

III. A.1. *‘Preliminary investigation shall be conducted on all incidents which violate the criminal code of the Commonwealth, town bylaws or have the potential to result in a criminal or civil action ...’*

B.1. *‘Responsibility*

a. *the first officer arriving at the scene shall be responsible for initiating and conducting the preliminary investigation and shall yield his/her responsibility only when so directed by a superior officer ...’*

4. *‘Arresting the Perpetrator*

b. *if the perpetrator as (sic) at the scene, the crime is an arrestable offense, and probable cause to arrest exists, the officer shall make the arrest ...’*

6. *‘Interview Witnesses*

a. *The purpose of the preliminary interview is to obtain as much basic information as quickly as possible in order to identify and, if possible, apprehend the perpetrator and Every effort should be made to locate, identify and interview reliable witnesses.*” (Page 5)

“Conclusion:

Sgt. Godere

Sgt. Godere arrived on scene seconds after Off. Kotowski. He was aware of all the facts of the incident but allowed an Officer under his direct supervision ignore (sic) the Department Policies and Procedures. Sgt. Godere allowed Off. Kotowski to catch and release a felon in the act of B&E. He allowed Off. Kotowski to end the incident by driving the suspect down the street and release him. Off. Kotowski was allowed to clear the call with no incident report.

In his report to me he states that he and Off. Kotowski believed there was no probable cause which is far from the truth even with the limited information they allowed themselves to learn. Sgt. Godere states that he spoke with the victim but the victim states he never spoke with Sgt. Godere. If Sgt. Godere had spoken with the victim, he would have had more specific information about the suspect and the suspect’s actions.

I find that Sgt. Godere violated department rules and regulations– 200:67 Truthfulness
--300:19 Incompetence
-300:31 Neglect of Duty

I recommend that Sgt. Godere receiving the maximum suspension of five days. My recommendation is based on the fact that Sgt. Godere is a Supervisor who should lead by example and who should be held to a high standard of professionalism and leadership. Most importantly my recommendation is based on the serious violation of truthfulness.”
(Pages 5 & 6)

(City Exhibit 4)

61. In his report, Captain Dakin recommended a two (2)-day suspension for Officer

Kotowski for failing to submit reports, incompetence and neglect of duty. He was not charged with untruthfulness. (City Exhibit 4)

62. In a letter from Chief Jebb dated April 27, 2015, Sgt. Godere was notified that he was being suspended for five (5) days for untruthfulness, incompetence and neglect of duty. (City Exhibit 2)
63. Chief Jebb's April 27th letter stated in part: "You may file a counter statement and you have the right, within forty-eight (48) hours of receipt of this notice to request in writing, a hearing by the appointing authority, Mayor Richard J. Kos. That hearing will be on the question of whether there was just cause for the suspension. If you request such a hearing, it will be held within (5) days of the receipt of such request by the appointing authority." (City Exhibit 2)
64. On May 11, 2015, a hearing was held before Mayor Kos. (City Exhibit 1)⁷
65. After the appeal hearing before Mayor Kos, Chief Jebb spoke to Mayor Kos and Mayor Kos talked about terminating Sgt. Godere, but then Mayor Kos decided upon the demotion in rank, which Chief Jebb supported. Chief Jebb had no issue with Sgt. Godere continuing to work as a patrolman, because Chief Jebb believed Sgt. Godere was promoted to a position that was over his level/ability. (Testimony of Chief Jebb)
66. In a letter dated May 18, 2015, Mayor Kos notified Sgt. Godere of his determination that there was just cause for the five (5)-day suspension and "pursuant to M.G.L. ch. 31, Sec. 41, I am hereby ordering your police rank of Sgt. to be reduced to Patrolman." (City Exhibit 1)
67. The May 18, 2015 letter from Mayor Kos stated in part:

⁷ Upon drafting this decision, I reviewed the record and could not locate any written notice from the Appointing Authority to Sgt. Godere stating that any action beyond the 5-day suspension was being contemplated. After emailing both counsel, I learned that no such written notice was sent to Sgt. Godere prior to the hearing. I was informed by counsel for Sgt. Godere that Sgt. Godere filed a written notice with the Mayor to conduct a hearing in order to contest the 5-day suspension. Counsel for Sgt. Godere did not have a copy of that actual written request.

“ ... I found your testimony, when read in conjunction with Officer Kotowski’s and your report to Captain Dakin, not credible or truthful, but to be self-serving, with respect to your assertion you spoke to [private citizen] [Private citizen]’s testimony is that no such conversation ever occurred between the two of you.”

“Specifically, the dispatch record of Call 15-6412 verifies you arrived on scene twenty-three seconds after Officer Kotowski.

[Private citizen] testified, and I found his testimony credible, that upon Officer Kotowski’s arrival, he did not speak with Officer Kotowski out of concern of notifying the suspect in the back yard of the police officer’s presence. He further testified that he motioned to the police officer (Kotowski) that the suspect was in the backyard and immediately went into his house and observed from his back window Officer Kotowski drawing his gun as he ([private citizen]) walked out the back door and hear Officer Kotowski say, ‘Come out with your hands up’ (or words to that effect.

Your testimony reflects that you arrived at the [private citizen] residence and immediately, upon your arrival spoke to [private citizen] on the front porch of his home, in direct conflict with the timetable established by the dispatch record, Call 15-6412. Your testimony is in direct conflict with [private citizen]’s testimony that he immediately went into his home when Officer Kotowski began walking down the driveway into the backyard.

I find it indisputable that [private citizen] could have motioned to Officer Kotowski that the suspect was in the backyard while on his front porch, and then walked through his home and onto the back porch and heard and observed Officer Kotowski’s commands to the suspect and still had time to speak to you.

In your testimony, it seems not believable that you could have arrived on scene, exited your police vehicle, walked to the area by the front porch, had a conversation with [private citizen] and then walk to the back yard, heard Office Kotowski’s commands and saw the suspect exit the shed and still had a conversation with [private citizen] on his front porch prior to walking into the backyard. The facts do not support your testimony.” (City Exhibit 1)

68. On May 22, 2015, Sgt. Godere filed an appeal with the Commission. (Stipulated Fact)

The appeal contests the City’s decision to demote him to patrol officer and the 5-day

suspension. A question on the appeal form asks: “Are you alleging that the

Respondent failed to follow any procedural requirements?” Mr. Godere answered:

“No”. (Administrative Record: Appeal Form)

69. Sgt. Godere's prior discipline includes then-Chief Ferraro on August 2, 2011, imposing five extra tours of duty upon Godere for violation of Chicopee Police Department Rules and Regulations alleging neglect of duty concerning his involvement in witnessing a patrolman under his supervision strike a handcuffed prisoner and failing to take appropriate action against the patrolman. (City Exhibit 11A)
70. Sgt. Godere's prior discipline also includes a Letter of Reprimand from then-Chief Ferraro, dated April 12, 2012, concerning his involvement in receiving and then disseminating a photograph of a murder victim at a crime scene that he was in charge of securing and his reluctance to identify the source of the photograph. (City Exhibit 11B, Page 7, Paragraph 1)
71. During his tenure, Sgt. Godere has received accolades for his work performance. In September 2002, Godere was commended by then Chief John Ferraro for his "alertness and attention to duty and detail" in recognizing a situation that appeared curious, investigating the situation and turning over information to the detective bureau that resulted in "arrests . . . in an incident that could have easily gone unsolved." (Appellant Exhibit 8)
72. In August, 2004, Sgt. Godere received a letter of commendation for his role in the police response to a call of shots fired, and subsequently in the pursuit, establishment of a perimeter and identification or capture of several individuals. (Appellant Exhibit 9)

Legal Standard

G.L. c. 31, § 41 provides:

“Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished. Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the holding thereof, except that if the action contemplated is the separation of such employee from employment because of lack of work, lack of money, or abolition of position the appointing authority shall provide such employee with such notice at least seven days prior to the holding of the hearing and shall also include with such notice a copy of sections thirty-nine and forty. If such hearing is conducted by a hearing officer, his findings shall be reported forthwith to the appointing authority for action. Within seven days after the filing of the report of the hearing officer, or within two days after the completion of the hearing if the appointing authority presided, the appointing authority shall give to such employee a written notice of his decision, which shall state fully and specifically the reasons therefor. Any employee suspended pursuant to this paragraph shall automatically be reinstated at the end of the first period for which he was suspended. In the case of a second or subsequent suspension of such employee for a period of more than five days, reinstatement shall be subject to the approval of the administrator, and the notice of contemplated action given to such employee shall so state. If such approval is withheld or denied, such employee may appeal to the commission as provided in paragraph (b) of section two.

A civil service employee may be suspended for just cause for a period of five days or less without a hearing prior to such suspension. Such suspension may be imposed only by the appointing authority or by a subordinate to whom the appointing authority has delegated authority to impose such suspensions, or by a chief of police or officer performing similar duties regardless of title, or by a subordinate to whom such chief or officer has delegated such authority. Within twenty-four hours after imposing a suspension under this paragraph, the person authorized to impose the suspension shall provide the person suspended with a copy of sections forty-one through forty-five and with a written notice stating the specific reason or reasons for the suspension and informing him that he may, within forty-eight hours after the receipt of such notice, file a written request for a hearing before the appointing authority on the question of whether there was just cause for the suspension. If such request is filed, he shall be given a hearing before the appointing authority or a hearing officer designated by the appointing authority within five days after receipt by the appointing authority of such request. Whenever such

hearing is given, the appointing authority shall give the person suspended a written notice of his decision within seven days after the hearing. A person whose suspension under this paragraph is decided, after hearing, to have been without just cause shall be deemed not to have been suspended, and he shall be entitled to compensation for the period for which he was suspended. A person suspended under this paragraph shall automatically be reinstated at the end of such suspension. An appointing authority shall not be barred from taking action pursuant to the first paragraph of this section for the same specific reason or reasons for which a suspension was made under this paragraph.”

G.L. c. 31, § 42 provides:

“Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow such requirements. If the commission finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.

A person who files a complaint under this section may at the same time request a hearing as to whether there was just cause for the action of the appointing authority in the same manner as if he were a person aggrieved by a decision of an appointing authority made pursuant to all the requirements of section forty-one. In the event the commission determines that the subject matter of such complaint has been previously resolved or litigated with respect to such employee, in accordance with the provisions of section eight of chapter one hundred and fifty E, or is presently being resolved in accordance with said section eight, the commission shall forthwith dismiss such complaint. If said complaint is denied, such hearing shall be conducted and a decision rendered as provided by section forty-three.”

G.L. c. 31, § 43 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.”

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,” Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service,” School Comm. v. Civil Service Comm’n, 43 Mass.App.Ct. 486, 488 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof by a preponderance of the evidence is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there,” Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956).

Under section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew ...” Falmouth v. Civil Service Comm’n, *op.cit.* and cases cited. However, “[t]he commission’s task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision’,” which may include an adverse inference against

a complainant who fails to testify at the hearing before the appointing authority, Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006), quoting internally from Watertown v. Arria, 16 Mass App.Ct. 331, 334 (1983) and cases cited.

Analysis

As a preliminary matter, the City failed to comply with the requirements of the first paragraph of Section 41. Chief Jebb was permitted to suspend Sgt. Godere for up to five (5) days without prior notice or a hearing. Sgt. Godere, after receiving notice of the five (5)-day suspension, filed a timely appeal of that five (5)-day suspension and requested a hearing before the Mayor. At no point prior to the hearing before the Mayor did Sgt. Godere receive a written notice that the City was contemplating disciplinary action beyond the five (5)-day suspension, including a potential demotion. Had that issue been before me, I likely would have vacated the demotion based solely on the City's procedural violation here. However, Sgt. Godere did not contest this issue and specifically stated in his appeal to the Commission that he was not alleging any procedural violations on behalf of the City.⁸

In regard to whether there was just cause to discipline Sgt. Godere, the City relies heavily on a charge of untruthfulness along with the intertwined charges of incompetence and neglect of duty. I address the charge of untruthfulness first.

The need for police officers to be truthful is entrenched in years of Commission decisions and precedent-setting judicial decisions. An Appointing Authority is well within its rights to take disciplinary action when a police officer has "a demonstrated willingness to fudge the truth in exigent circumstances" because "[p]olice work

frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” See Town of Falmouth v. Civil Service Commission, 61 Mass.App.Ct. 796, 801 (2004); citing City of Cambridge, *supra* at 303.

Dozens of Commission decisions have held that untruthfulness by a police officer warrants discipline, up to and including termination.

In Ryan v. Needham Police Department, 20 MCSR 133 (2007), the Commission upheld the termination of a police officer for failing to speak the truth in Court and perjuring himself.

In Layne v. Town of Tewksbury, 20 MCSR 372 (2007), the Commission upheld the discharge of a police officer for rudeness and profanity in his dealing with the public and his subsequent lying and filing false reports to avoid the consequences of his conduct.

In Grinham v. Town of Easton, 20 MCSR 534 (2007), the Commission upheld the discharge of a police Sgt. who beat up a prisoner in custody, suborned his fellow officers to testify on his behalf, filed false reports and lied about his conduct.

In Rizzo v. Town of Lexington, 21 MCSR 634 (2008), the Commission upheld the discharge of a police officer for excessive force, lying, conduct unbecoming and failure to follow procedures.

In Mozeleski v. City of Chicopee, 21 MCSR 676 (2008), the Commission upheld the discharge of a police officer who conducted a late-night traffic stop involving a sole female and his subsequent conduct in falsifying a report in an attempt to cover up his interaction.

⁸ Prevailing under Section 42 based on a procedural violation may have only been a temporary victory for Sgt. Godere as nothing would have prevented the City from curing this error, subsequently providing proper notice and proceeding with a new hearing.

In Desharnias v. City of Westfield, 23 MCSR 418 (2010), the Commission upheld the discharge of a police officer who damaged his cruiser and then untruthfully denied that he had damaged the cruiser.

In Kinnas v. Town of Shrewsbury, 24 MCSR 67 (2011), the Commission upheld the discharge of a police officer who accessed the Facebook account of a colleague's wife and subsequently being untruthful by denying it.

In Ung v. Lowell Police Department, 24 MCSR 567 (2011), the Commission upheld the discharge of a police officer who filed false stolen motor vehicle reports on the automobile of a woman he was apparently trying to seduce.

In Gonsalves v. Town of Falmouth, 25 MCSR 231 (2012), the Commission upheld the discharge of a police officer for negligent handling of evidence and repeated untruthfulness.

In Freitas v. City of Somerville, 25 MCSR 259 (2012), the Commission upheld the discharge of a police officer for giving confiscated marijuana to a friend and then lying about the incident in a deposition while under oath.

In Hadis v. Town of Oxford, 27 MCSR 200 (2014), the Commission upheld the discharge of a police officer for seeking to conceal from his superiors his involvement in a traffic stop that had resulted in vehicle damage.

In Pierce v. City of Attleboro, 27 MCSR 329 (2014), the Commission upheld the discharge of a police officer who failed to file the required reports governing the use of his Taser and subsequently failed to be truthful during the investigation.

In Desmond v. Town of West Bridgewater, 27 MCSR 645 (2014), the Commission upheld the discharge of a police officer who lied at a hearing to determine whether a

temporary restraining order sought by his girlfriend against her husband should be extended.

Consistent with the above-referenced judicial and Commission decisions, I take the charge of untruthfulness against a police officer seriously and, if proven, concur that it warrants the most severe discipline possible, up to and including termination. Given the serious and potentially career-ending nature of the charge, however, a careful and thoughtful review is warranted to determine if the police officer was indeed untruthful. For the reasons explained in detail below, I do not believe that the City has shown that Sgt. Godere was untruthful.

The charge of untruthfulness here is two-fold. As stated in Captain Dakin's report to Chief Jebb:

"In his report to me he states that he [Sgt. Godere] and Off. Kotowski believed there was no probable cause which is far from the truth even with the limited information they allowed themselves to learn. Sgt. Godere states that he spoke with the victim but the victim states he never spoke with Sgt. Godere."

Sgt. Godere's report, however, does *not* state that he believed there was no probable cause to arrest the suspect. Rather, he wrote: "Officer Kotowski and I agreed that based upon the information that was available to us at the time, Officer Kotowski would use his discretion to advise [suspect] that if more information became available or a break was reported in the area, he could be a suspect and charged."

In his testimony before the Commission, Sgt. Godere stated that he believed there *was* probable cause to arrest the suspect, but that he deferred to the discretion of Officer Kotowski, who was first to arrive on the scene.

That leads to the other prong of the untruthfulness charge: that portion of Sgt. Godere's report which states that, upon arriving at the private citizen's house, he "stopped and spoke with [private citizen] and asked him what had happened. He stated that he saw a Spanish male in a blue hoodie in the driveway in the rear of the housing standing by a black car. I asked if he had seen the male do anything. [Private citizen] stated that the man was just walking around the back driveway and that he had lost sight of him and did not know where he went."

According to the City, Sgt. Godere's statement contradicts repeated written and verbal statements by the private citizen. In his report to Chief Jebb, Captain Dakin wrote: "Sgt. Godere spoke with the victim but the victim states he never spoke with Sgt. Godere." In his discipline letter to Sgt. Godere, Mayor Kos states: "Your testimony reflects that you arrived at the [private citizen] residence and immediately, upon your arrival, spoke to [private citizen] on the front porch of his home, is in direct conflict with the timetable established by the dispatch record, Call 15-6412. Your testimony is in direct conflict with [private citizen]'s testimony that he immediately went into his home when Officer Kotowski began walking down the driveway into the backyard."

At the de novo hearing before me, however, the private citizen testified that he saw both Sgt. Godere and Officer Kotowski walking up his driveway. According to the private citizen, when one (1) of the police officers asked the private citizen, "where is he now?", the private citizen responded in a low voice by saying "he's around the back."

Sgt. Godere, in his post-hearing brief, points to this and other alleged inconsistencies in the private citizen's statement to paint him as an unreliable witness. I did consider some of the private citizen's testimony before the Commission that was not consistent

with his written and verbal statements to the City. Rather than painting the picture of someone who is untruthful, his testimony reinforced to me that the City, for somewhat inexplicable reasons, chose to focus on the existence of a brief conversation between Sgt. Godere and the private citizen that offered little or no value. As argued by Sgt. Godere, it would be as if an officer were asked about the nature of his interaction with a citizen who was alleging harassment and the officer then was accused of lying about the weather conditions at the time or whether the citizen had blue or brown eyes.

The private citizen's recollection of events understandably focused on: a) the fact that he spotted a stranger walking on his property in the early morning; b) the local police arrived and removed the suspicious person from his shed at gunpoint; and c) seeing the suspect driven away from his property by police and assuming that the suspect had been arrested and charged with a crime. Whether or not the private citizen spoke with Sgt. Godere upon his arrival, and what words were actually spoken, does not appear to have been at the forefront of the private citizen's memory. For that reason, it is understandable that, upon recounting his recollection of events, he may remember that brief encounter differently.

When pressed on this matter during the City's investigation, the private citizen stated that he did not exchange any words with Sgt. Godere that morning, something heavily relied upon by the City in determining that Sgt. Godere was untruthful. At the de novo hearing before the Commission, however, the private citizen testified that one (1) of the police officers (while walking up the driveway together) asked the private citizen, "where is he now?" and the private citizen responded in a low voice by saying "he's around the back." Further, asked about whether he had a conversation with Sgt. Godere in which the

private citizen described the suspect and where he was, the private citizen equivocated somewhat and stated, "not that I recall." When asked effectively the same question again later, the private citizen responded "[n]ot specifically that I recall." As referenced above, I do not equate the private citizen's inconsistency or equivocation with untruthfulness. Rather, I chalk it up to a person being asked to remember an event that was not particularly memorable to him. Thus, standing alone, the private citizen's testimony has not sufficiently persuaded me that Sgt. Godere's written statement regarding his interaction with the private citizen was untruthful.

The City's charge of untruthfulness against Sgt. Godere is also undermined by another important factor. Officer Kotowski, in his written report to Captain Dakin, *confirmed* Sgt. Godere's account, writing that he (Kotowski) advised the homeowner that he was going to check the backyard and began heading to the backyard while Sgt. Godere "*began speaking with the homeowner.*" Yet, Officer Kotowski was never charged with untruthfulness. Asked about this contradiction at the hearing, both Chief Jebb and Captain Dakin suggested that Sgt. Godere asked Officer Kotowski to include this untruthful statement in his report. No matter the circumstances, filing a false police report constitutes untruthfulness. The City's failure to charge both officers with untruthfulness for the same alleged offense is, to me, unexplainable.

On a similar note, it was noteworthy to me that the City, who bears the burden of proof here, failed to call Officer Kotowski as a witness. The City was aware that two (2) percipient witnesses would likely provide divergent accounts regarding what occurred. Yet, they failed to call Officer Kotowski, the only other possible percipient witness in

regard to what occurred in the front of the private citizen's house upon the officers' arrival.

I also carefully listened to Sgt. Godere's testimony, reviewed the written transcript of his testimony and carefully reviewed three (3) documents he prepared in response to Captain Dakin's orders regarding this matter. Document #1, dated March 4, 2015, appears to be the initial response that Sgt. Godere prepared in response to Captain Dakin's Order. Document #2, also dated March 4, 2015, appears to be an updated response by Sgt. Godere after receiving a follow-up email from Captain Dakin asking for more specific information. Document #3, dated March 5, 2015, appears to be the final response submitted to Captain Dakin after Document #2 was reviewed and edited by his (Sgt. Godere's) counsel. (Documents 1 & 2 were only submitted after the hearing at which time I inquired about the practice of counsel reviewing police reports before they are submitted by police officers.)

Document 2 does indeed add information regarding Sgt. Godere's interaction with the private citizen. While Document 1 only references a brief encounter in which the private citizen told Sgt. Godere the location of the suspect, Document 2 adds additional information and states that the private citizen provided Sgt. Godere with a description of the suspect, what he was wearing and his movements prior to the officers arriving on the scene. The City argues that this conversation never took place and that Sgt. Godere, when preparing Document 2, likely went back and reviewed the dispatch log in order to add this information. Sgt. Godere argues that he simply added the additional information based on the follow-up memo from Captain Dakin to provide more detailed information

about his interaction with the private citizen. Both assertions are, to me, equally plausible.

I also considered two (2) other factors when assessing whether Sgt. Godere was untruthful: Sgt. Godere's demeanor at the hearing before the Commission; and the fact that he had counsel review his report before it was submitted to Captain Dakin. Sgt. Godere was not the best witness. At times, he was noticeably sweating during his testimony; he equivocated when asked questions regarding whether he and Officer Kotowski shared their reports with each other before submitting them; and he added information during his testimony that was not contained in any of his reports (i.e. – a conversation he had with Officer Kotowski telling him (Kotowski) that there was sufficient grounds to issue a summons against the suspect.) Although all of this detracted from his testimony, it did not cause me to disbelieve him regarding whether, and to what extent, he had a conversation with the private citizen. The sequence of events, as described by Sgt. Godere, was plausible and generally rang true to me.

In regard to having counsel review his report before submitting it to Captain Dakin, I found that troubling. Notwithstanding the assertion that this is a “common practice” among police officers, it is appropriate to consider whether any substantive changes were made or recommended by any individual that was not a percipient witness to the events described in the report. According to counsel for the Appellant, he (counsel) only reviewed and made suggested edits to “Document 2” which were incorporated into “Document 3”. I reviewed both documents and found no substantive changes in those two (2) documents. The edits appear to be limited to grammatical and stylistic changes.

For this reason, notwithstanding my concern regarding this practice, it did not adversely impact my assessment of Sgt. Godere's credibility.

As stated above, the City has the burden here of showing, *by a preponderance of the evidence*, that the written report submitted by Sgt. Godere was untruthful. The 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 at 35-36. In summary, based on my careful review of all the evidence presented at the de novo hearing and for all of the reasons stated above, the City has not met that burden in regard to the charge of untruthfulness against Sgt. Godere.

That turns to the remaining intertwined charges of incompetence and neglect of duty. Here, the City has shown, by a preponderance of the evidence, that Sgt. Godere failed to carry out the duties and responsibilities expected of a superior officer.

The sequence of events that morning, even as recounted by Sgt. Godere, make it clear that he witnessed and/or was aware that Officer Kotowski removed his firearm from his holster, pointed it toward a shed in the private citizen's backyard and ordered the suspect to exit the shed with his hands up. Further, Sgt. Godere either heard and/or was aware that, upon exiting the shed, the suspect admitted that he was looking for gas in the shed of the private citizen's property. Thus, when Officer Kotowski purportedly told Sgt. Godere that an arrest was not appropriate because the suspect was just "hiding" in the shed to get away from him, Sgt. Godere knew, or should have known, that this conclusion was preposterous given that the suspect had *admitted* his true purpose of being in the shed.

Sgt. Godere now tries to cloak his failure to perform his duties and responsibilities that day under the guise of deferring to an officer's discretion. No definition of this concept requires a superior officer to accept a police officer's account of events which the superior officer knows, through his own observations, is not true. Even if Sgt. Godere felt compelled to defer to Officer Kotowski's discretion, he could have – and should have – required Officer Kotowski to submit a written report regarding the events that unfolded that day and to cover all the points outlined in the Department's Policies and Procedures regarding written reports. Sgt. Godere argues that he instructed Officer Kotowski to complete a "call narrative". First, there is no evidence that such a call narrative was completed. Second, the record here, including the credible testimony of Captain Dakin, establishes that: 1) a call narrative is distinguishable from a written report; and 2) based on the events that occurred at the private citizen's residence, submission of the more formal and detailed written report was warranted here.

I also accept the credible testimony of Captain Dakin that Sgt. Godere should have known to query the criminal history of the suspect before allowing Officer Kotowski to drive the suspect down the street and let him go. Even Sgt. Godere acknowledges that having that information would have influenced his decision-making regarding whether the suspect should have been charged and/or arrested.

By failing to ensure that the decision on whether to arrest the suspect was based on the events as they actually occurred; by failing to query the suspect's criminal history; and by failing to ensure that a written report was filed regarding these events, Sgt. Godere failed to meet his responsibilities of a superior officer and engaged in incompetence and neglect of duty, which warrants disciplinary action.

Having determined that it was appropriate to discipline Sgt. Godere for his misconduct, I must determine if the City was justified in the level of discipline imposed here – a demotion from sergeant to police officer; and a five (5)-day suspension.

“The ... power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.” Falmouth v. Civ. Serv. Comm’n, 61 Mass.App.Ct. 796, 800 (2004) quoting Police Comm’r v. Civ. Serv. Comm’n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission’s findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to “substitute its judgment” for that of the appointing authority, and “cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation.” E.g., Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006).

The Commission is also 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 Commission, 447 Mass. 814, 823 (2006) and cases cited.

Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune an employee’s discipline to ensure perfect uniformity. See Boston Police Dep’t v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

My findings do differ significantly from those of the City, as, after a de novo hearing, I did not find that Sgt. Godere was untruthful, as charged by the City. The City's finding of untruthfulness clearly played a large role in determining whether, and to what extent, discipline was warranted here. Captain Dakin's investigative report states, in relevant part that: "I recommend that Sgt. Godere receive the maximum suspension of five days. My recommendation is based on the fact that Sgt. Godere is a Supervisor who should lead by example and who should be held to a high standard of professionalism and leadership. *Most importantly my recommendation is based on serious violation of truthfulness.*" (*emphasis added*) The Mayor's final letter also emphasizes the seriousness of the alleged untruthfulness.

Further, although Officer Kotowski was not a superior officer, the City alleges that he too penned a report that was not accurate. Yet, he was not charged with untruthfulness and received only a two (2)-day suspension, which he was able to satisfy through punishment duty, meaning no actual loss of pay or benefits.

Also, although the civil service law does not explicitly require that an Appointing Authority's actions be consistent with the principles of progressive discipline, the Commission often looks to an Appellant's prior discipline as one factor in determining whether a modification of the penalty is warranted. Here, Sgt. Godere's prior discipline includes five extra tours of duty in 2011 for his involvement in witnessing a patrolman under his supervision strike a handcuffed prisoner and failing to take appropriate action against the patrolman; and a letter of reprimand in 2012 concerning his involvement in receiving and then disseminating a photograph of a murder victim at a crime scene that he was in charge of securing and his reluctance to identify the source of the photograph.

Finally, I also considered Sgt. Godere's allegation that the outcome here was influenced by an alleged animus that Chief Jebb has toward him, purportedly because Sgt. Godere didn't support Chief Jebb in: a) a union election years ago; and/or b) Chief Jebb's recent bypass appeal that ultimately resulted in Chief Jebb's appointment as Chief of Police. I don't believe the record sufficiently supports this allegation and I accepted the Police Chief's credible testimony that the discipline he recommended here was based solely on the facts as he found them and, and based on those facts as he found them, what he believed was an appropriate discipline.

Primarily because the serious charge of untruthfulness was not proven here, a modification of the penalty is warranted.

For this reason, Sgt. Godere's appeal under Docket No. D-15-99 is hereby ***allowed in part***. The demotion from sergeant to police officer is rescinded; and he shall be returned to his position without loss of compensation or other rights.. The five (5)-day suspension stands.

Civil Service Commission

Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 4, 2016.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. 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:

Andrew J. Gambaccini, Esq. (for Appellant)

Thomas J. Rooke, Esq. (for Respondent)