

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

DAVID GODIN,
Appellant

v.

BOSTON POLICE DEPARTMENT,
Respondent

Docket Number:

D-24-077

Appearance for Appellant:

Kenneth Anderson, Esq.
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50 Redfield Street, Suite 201
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Appearance for Respondent:

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Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission denied the request of a Boston police officer to have his 5-day suspension (with only 3 days served) reduced to a 1-day suspension based on the undisputed facts related to the officer's failure to activate his body-worn camera during an incident that involved a discharge of his weapon.

DECISION ON CROSS MOTIONS FOR SUMMARY DECISION

Procedural Background

On May 29, 2024, the Appellant, David Godin (Appellant), filed an appeal with the Civil Service Commission (Commission) contesting whether the Boston Police Department (BPD) had just cause to suspend him for five days (with only three days served) as a permanent, tenured, full-time police officer. Specifically, the Appellant sought to have the Commission reduce the discipline to a one-day suspension. On July 2, 2024, I conducted a remote pre-hearing conference. On July 3, 2024, I issued a Procedural Order and the parties subsequently filed cross motions for summary decision.

Undisputed Facts

The parties submitted a lengthy list of undisputed facts, including facts related to the underlying incident. I summarize only those most relevant to ruling on the parties' cross motions.

The Appellant has been a Boston police officer since 2007. On February 7, 2020, while on duty, he and another officer responded to a call that a person (later identified as Juston Root) (Root) had pulled a gun on a security guard at Brigham and Women's Hospital (BWH). After arriving and observing that Root was holding a gun, and after seeing Root start to pull the trigger, the Appellant shot at Root multiple times, as did the other responding officer. Root eventually fled the scene by car, leading to a pursuit by police, which ended with the Appellant and other police officers firing multiple rounds at Root, fatally shooting him. Three separate investigations, one by the Norfolk County District Attorney's Office, one by the Suffolk County District Attorney's Office, and one by the BPD's Firearms Discharge Investigation Team (FDIT), concluded that the Appellant was justified in discharging his firearm that day. A federal

civil action by the victim's estate for use of excessive force was dismissed and affirmed by the First Circuit. Bannon v. Godin, 99 F.4th 63 (2024).

At issue here is the undisputed fact that the Appellant violated BPD rules by failing to activate his body-worn camera (BWC) to record the incidents involving Root and then failed to submit a report documenting his failure to do so. For those offenses, the BPD suspended the Appellant for five days, with only three days to be served and the other two days to be held in abeyance.

Parties' Arguments

The BPD, generally, argues that it is not the Commission's role to fine-tune a short-term suspension—in this case, from three days to be served to one day. More specifically, the BPD argues that the facts of this case distinguish it from others cited by the Appellant in which lesser discipline of a one-day suspension or a reprimand were meted out.

Among the other cases cited to support a modification of the penalty, the Appellant focuses on one in which another Boston police officer received a one-day suspension where, according to the Appellant, the underlying facts were strikingly similar to the incident involving the Appellant.

Relevant Civil Service Law

Section 43 of Chapter 31 vests the Commission with the power to “modify any penalty imposed by the appointing authority.” Such power “is at its core the authority to review and, when appropriate, to temper, balance, and amend. The power to modify penalties permits the furtherance of uniformity and the equitable treatment of similarly situated individuals.” Police Comm'r of Boston v. Civ. Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (1996). 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. Civ. Serv. Comm’n, 447 Mass. 814, 824 (2006).

Motion for Summary Decision Standard

A party before the Commission may file a motion for summary decision pursuant to 801 CMR 1.01(7)(h), which states: “When a [p]arty is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he or she is entitled to prevail as a matter of law, the [p]arty may move, with or without supporting affidavits, for summary decision on the claim or defense.”

These motions are decided under the well-recognized standard for summary disposition as a matter of law, i.e., “viewing the evidence in the light most favorable to the non-moving party,” the substantial and credible evidence established that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case,” and has not rebutted this evidence by “plausibly suggesting” the existence of “specific facts” to raise “above the speculative level” the existence of a material factual dispute requiring an evidentiary hearing. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005); Milliken & Co. v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); see also Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36 (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (denying motion to dismiss due to factual issues bearing on plaintiff’s standing).

Analysis

More than four years has passed since the Appellant responded to a life-and-death call at Brigham and Women's Hospital in which he was ultimately called upon to discharge his firearm multiple times. The dangerousness of the incidents that transpired cannot be overstated and serves as a stark reminder of the harm's way that police officers such as the Appellant voluntarily put themselves into every day. As referenced above, three separate investigations have concluded that the Appellant was justified in discharging his firearm on that harrowing morning. That is not the issue before the Commission. Rather, the issue is whether the BPD was justified in imposing a five-day suspension, with only three days served, for the Appellant's admitted violation of the BPD's body-worn camera policy. The Appellant admits that he violated that policy by not activating his body-worn camera and by failing to submit a report documenting the failure to do so.

I have carefully reviewed and considered the arguments of both parties. Even when viewing the facts in a light most favorable to the Appellant, intervention by the Commission in the form of a modified penalty is not warranted here. First, there are no allegations here of political considerations, favoritism, or bias. Second, the underlying material facts found by the BPD are not in question. Third, even if a fine-tuning of the penalty would be warranted if other officers faced slightly less discipline for a similar offense, which I do not believe is a correct reading of the relevant caselaw¹, the facts related to the one-day suspension of the other officers are materially distinguishable from the incident involving the Appellant, including the

¹ See City of Boston v. Boston Police Patrolmen's Ass'n, 443 Mass. 813, 822 n.9 (2005) ("That other police officers may have received lesser sanctions for their serious misconduct avails nothing here. Each case must be judged on its own facts ...".)

disciplinary matter cited by the Appellant as being most similar. In that case, there is no evidence that the officer provided conflicting information to investigators regarding the body-worn camera nor did the encounter involve the fatal shooting of a civilian that subsequently received scrutiny from multiple outside entities and the public. Here, the known life-threatening nature of the call involving a suspect wielding a gun, the Appellant's discharge of his gun in confrontation with a suspect who was mortally wounded, and alleged inconsistencies related to whether the Appellant's body-worn camera was in his cruiser during the incident, as he has reported, or whether it was actually on his uniform, but not activated, clearly added considerable weight to the negative consequences of violating the BPD's body-worn camera policy.² An officer-involved fatal shooting of a civilian is a paradigmatic scenario in which compliance with a department mandate to utilize the issued body-worn camera (BWC) is imperative. I perceive no reason—and nor has the Appellant supplied a sufficient one—to disturb Deputy Superintendent Dahill's finding that “Officer Godin willfully disregarded the BWC Rule resulting in the loss of critical evidence, compromised transparency and accountability, and eroded . . . public[] trust.” (*Resp. Ex. 1*) As this Commission observed only a few months ago: “[T]here are compelling reasons for firm enforcement of the body-worn camera policy and this case is one illustration of

² In Bannon v. Godin, *supra*, a partially dissenting judge wrote: “Aside from the inconsistencies regarding Root's movements, the officers provided other testimony that was controverted by other pieces of evidence. For example, Godin repeatedly stated that he was not wearing his body-worn camera on the day Root was killed; however, this was later disproved by video evidence from another officer's body-worn camera.” 99 F.4th at 99 (1st Cir. 2024). At a minimum, Godin's failure to activate his body-worn camera has called into question his “ability to observe, perceive, and recall the shooting” of Root accurately. *Id.* at 100 (citing Flythe v. District of Columbia, 791 F.3d 13, 21 (D.C. Cir. 2015)).

why there ought to be consequences for any violation." Rodriguez v. Dep't of State Police, D1-22-166 (June 27, 2024). Here the BPD was warranted in imposing significant discipline for the Appellant's policy violation. In short, the undisputed facts here do not warrant the type of modification that the Appellant is seeking.

Conclusion

For all of the above reasons, the BPD's Motion for Summary Decision is allowed; the Appellant's cross motion is denied; and the Appellant's appeal under Docket No. D-24-077 is **denied**.

CIVIL SERVICE COMMISSION

/s/ Christoher C. Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, and Stein, Commissioners) on September 5, 2024.

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:
Kenneth Anderson, Esq. (for Appellant)
Omar Bennani, Esq. (for Respondent)