COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

RAYMOND D. GOUGEON,
Appellant

v. D-02-852

CITY OF NORTHAMPTON,
Respondent

Appellant's Attorney: Marshall T. Moriarty, Esq.
Moriarty & Connor
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Respondent's Attorney: Elaine M. Reall, Esq.
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Commissioner: John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, Raymond Gougeon (hereafter "Appellant"), is appealing an action taken by the Respondent, City of Northampton ("hereafter "the City") as Appointing Authority, suspending him for 120 days without pay from his employment as a Special Motor Equipment Operator ["SMEO"]. The appeal was timely filed. A Full Hearing was held on November 28,

2005 at the offices of the Civil Service Commission. As no written notice was received from either party, the hearing was declared private. One tape was made of the hearing. Both parties submitted post-hearing briefs as instructed.

FINDINGS OF FACT:

Based upon the documents entered into evidence (Joint Exhibits 1 – 19) and the testimony of the Appellant and George Andrikidis, Director of Department of Public Works, I make the following findings of fact:

1. The Appellant, Raymond D. Gougeon, was a tenured civil service employee for the Department of Public Works ("DPW") in the position of Special Motor Equipment Operator at the time of the alleged incident, June 3, 2002, for which he was disciplined. He had been employed by the Respondent since June 5, 1972. At the end of 2003, the Appellant took advantage of the early retirement option offered by the City to its employees and retired from employment. (Exhibit 13 and testimony of Gougeon)
2. During the Appellant's employment he was subject to several disciplinary actions. These actions included a 1982 suspension for walking off the job without permission during emergency snow conditions and being observed plowing private driveways while allegedly out on sick leave, a 1984 suspension for driving a city vehicle and getting into an accident after having had several drinks, and a 1988 suspension for leaving the job without permission. The Appellant was also issued a July 17, 1991 written warning of possible termination "due to repeated

absences, safety violations, misuse of the communication system" and a March 20, 1996 written warning for willful discriminatory harassment involving the use of racial slurs against an African-American employee. Additionally, the Appellant was involved in three significant accidents involving City vehicles prior to the June 3, 2002 accident. He was not disciplined for these accidents. (Exhibits 1, 15, 16, 17, 18 and 19)

3. On June 3, 2002, the Appellant was performing his duties as a street sweeper. At approximately 3:00 a.m. the Appellant hit a parked Volvo station wagon while he was cleaning the street in front of the courthouse located on Gothic Street in Northampton, Massachusetts. After striking the station wagon, he continued to clean streets, leaving the damaged Volvo halfway in the street and halfway on the sidewalk and pushed up against the fence surrounding the courthouse. (Exhibit 10)

4. A police patrol, finding the damaged vehicle, followed the sweeper's trail of water and located the Appellant sweeping the roadway on Masonic Street. The Appellant was asked to return to the scene of the accident with the street sweeper. Initially, the Appellant denied hitting the vehicle in question; however, when he and his vehicle were returned to the scene of the accident and he was confronted with the perfect match of the damage to the Volvo and to the front of the sweeper, the Appellant admitted to the police that he had hit the vehicle in question. The police report stated that when the Appellant was asked why he did not remain on the scene, he responded that he was going to notify the police. (Exhibits 1 and 10)

5. The Appellant testified that he did not see the Volvo station wagon before hitting it and left the scene because he became scared. He stated that he was not under the influence of alcohol, that he did not fall asleep and that he did not have any medical problem that would explain the accident. (Testimony of Gougeon)
6. The Appellant stated that he requested a DPW accident form to report the accident but was informed no forms were available and one would be provided but he was never given a form. (Testimony of Gougeon)
7. George Andrikidis, the Director of DPW since 2000 and an employee for over 30 years, testified that the Appellant never submitted an accident report with the DPW as is required. (Testimony of Andrikidis)
8. Andrikidis testified that he first learned of the Appellant's June 3, 2002 accident when he received the accident report from the Police Department. He stated that he immediately convened a meeting with the Appellant, a Union representative and other supervisors, to investigate the incident and its aftermath. At the August 6, 2002 meeting, the Appellant offered his description of the accident, stating that after hitting the car he drove around looking for the police, found them and reported the accident. The Appellant also stated that he reported the accident to DPW at the end of his shift but forgot to complete the necessary paperwork. (Exhibit 4 and testimony of Andrikidis)
9. After reviewing the police report that contradicted the Appellant's version, Andrikidis recommended to the Director of the City's Human Resources Department that Appellant's employment with DPW be terminated. (Exhibit 11 and testimony of Andrikidis)

10. By an August 15, 2002 memorandum, Andrikidis informed the Appellant that it was not clear why he had not seen the car on June 3 and in order to eliminate the possibility that a medical reason was the cause of the accident, required him to provide the City with a doctor's note that he was able to perform the duties of his job without restriction. The Appellant submitted a note to this effect. (Exhibits 6 and 13)
11. The Appellant's conduct resulted in serious loss to the property of a city resident. (Exhibit 12)
12. On September 17, 2002, the Appellant was charged by written notice, in accordance with G.L. c. 31, § 41, with the violation of the policy and rules of the Department of Public Works by his behavior and actions. Specifically, he was charged with misconduct and negligent operation of a vehicle resulting from the June 3, 2002 accident and subsequent investigation of such accident. (Exhibit 1)
13. A disciplinary hearing was held on September 26, 2002. The Appellant was represented at this hearing by the same Counsel representing him in the instant matter, Attorney Marshall Moriarty. The October 11, 2002 decision of the City's Human Resources Director, acting as the Hearing Officer and as Appointing Authority for the City, adopted the recommendation of the DPW and imposed a 120-day (four (4) month) suspension without pay. (Exhibit 2)
14. The Appellant received a 120-day suspension without pay from his position as a Special Motor Equipment Operator, commencing October 20, 2002 and ending February 22, 2003. (Exhibits 3 and 8)

15. The Appellant is unable to read or write but for his signature. (Testimony of Gougeon)

16. The Appellant's testimony was hesitant and devoid of any significant detail of the events in question. I found him to be a person trying, unsuccessfully, to portray a difficult situation in the best light. His recall of the accident and his responsibility in reporting it was inconsistent from the time of the incident through the Appointing Authority's hearing and, now, here at the Commission's hearing. For reasons not articulated by the Appellant, I find it was highly likely that the Appellant sought to circumvent reporting the accident to Andrikidis, as was his duty. I find no evidence that Andrikidis had a strained working relationship with the Appellant or that there existed a hostile workplace atmosphere that might have caused the Appellant any concern in fulfilling his obligation to report the accident according to departmental procedure. His varying accounts of the circumstances surrounding the accident served to undermine his credibility in the matter and lent credence to the Appointing Authority's charge that his "refusal to admit and accept responsibility for [his] misconduct has made a difficult situation worse." (Exhibit 1)

17. Andrikidis' testimony was credible regarding the investigation of the June 3, 2002 accident and its aftermath, as were his assertions concerning the Appellant's failure to take responsibility for his actions surrounding the accident.

18. No other employee has had a similar accident or similar driving record as Appellant. (Exhibit 14 and testimony of Andrikidis)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge *v.* Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). See Town of Watertown *v.* Arria, 16 Mass. App. Ct. 331 (1983); McIsaac *v.* Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston *v.* Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster *v.* Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when 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." Id. at 304, quoting Selectmen of Wakefield *v.* Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service *v.* Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). 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." Murray *v.* Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton *v.* Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority's burden of proof is one of a preponderance of the evidence which is established "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). In reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just

cause for an action taken against an appellant, the Commission shall affirm the action of the appointing authority. Town of Falmouth *v.* Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

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 commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown *v.* Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. *v.* Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster *v.* Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

There is no dispute that the June 3, 2002 accident occurred and was due to the Appellant's negligence. The question at issue in this case centers on the degree of discipline imposed: whether or not the four month suspension without pay received by the Appellant is justified.

A review of the record reveals that reasonable justification exists for the actions taken by the Appointing Authority. See, generally, Police Commissioner of Boston v. Civil Service Commission, 39 Mass. App. Ct. 594, 600, 659 N.E. 2d 1190 (1996). The discipline imposed by the Appointing Authority was a result of the Appellant's actions in hitting a parked Volvo station wagon with a street sweeper, leaving the scene of the accident and refusing to initially admit to the police that his vehicle had hit the Volvo, failing to notify the DPW - either at the time of the incident or later - via the mandatory accident reporting procedure, untruthfulness during the accident investigation and

negligent operation of a piece of heavy equipment. Based on his prior accidents, the Appellant should have known of the DPW reporting procedure following an accident but never filed an accident report with Andrikidis. Despite the impediment to the Appellant's ability to fill out the accident report that could understandably be attributed to his illiteracy, it was clearly his responsibility to insure that a report was filed. Instead, he claimed that there were no forms available on which to file a report and did not pursue his duty any further. The Appellant's actions added up to a serious situation that the City determined needed to be addressed in the strongest possible terms. The City's policy of taking all responsible actions necessary to protect property and persons from such possible harm represented "a valid exercise of discretion based on merit or policy consideration". Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304, 682 N.E.2d 923 (1997). The discipline under review was implemented in an attempt to prevent a reoccurrence of the type of dangerous conduct engaged in by the Appellant as negligent operation of such equipment poses a risk of serious harm to members of the community and their property.

Moreover, the Appellant had been involved in three significant accidents involving City vehicles during the four year period leading up to his most recent suspension. He had also been suspended from duty on three occasions. Additionally, the record fails to reveal any inequity in the discipline issued in this case. No other DPW employee has ever amassed such a checkered combination of disciplinary infractions and dangerous driving patterns.

In sum, documentary evidence and Andrikidis' credible testimony demonstrate that the City's decision to retain the Appellant as an employee but suspend him for 120 days without pay was based on the careful balancing of the Appellant's checkered disciplinary history and a history of accidents with City vehicles against his thirty year tenure as a City employee.

Based on the above, the City of Northampton has shown, by a preponderance of the evidence, that it was justified in imposing the stated discipline upon Appellant and that there was just cause for his 120-day suspension from employment without pay. Further, there is no evidence of inappropriate motivations or objectives on the part of the Appointing Authority that would warrant the Commission reducing the suspension imposed upon Mr. Gougeon. For all of the above reasons, the appeal on Docket D-02-852 is hereby ***dismissed***.

Civil Service Commission

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John J. Guerin, Jr.,
Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairman; Taylor, Guerin and Marquis, Commissioners) [Bowman, Commissioner absent] on February 1, 2007.

A true copy. Attest:

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Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice to:
Marshall T. Moriarty, Esq.
Elaine M. Reall, Esq.