

ROBERT GRIFFIN,
Appellant

v.

CITY OF CHELSEA,
Respondent

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

Case No.: D-05-344

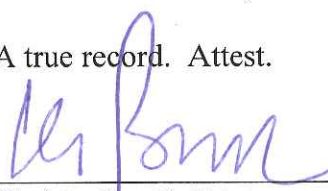
DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on January 28, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated November 13, 2009. The Commission received the Appellant's comments on December 14, 2009. By a 3-2 vote, the Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman - Yes; Henderson, Commissioner - No; Marquis, Commissioner - Yes; Stein, Commissioner - Yes; and Taylor, Commissioner - No) on January 28, 2010.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice to:
Regina M. Ryan, Esq. (for Appellant)
Mary Maslowski, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
ACTING CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
FAX: 617-727-7248

November 13, 2009

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: *Robert Griffin v. City of Chelsea*
DALA Docket No. CS-07-1122, D-05-344

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

Judithann Burke
Administrative Magistrate

Enclosure

cc: Regina M. Ryan, Esq.
Mary Maslowski, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law
Appeals

Robert Griffin
Appellant,

v.

DALA Docket No. CS-07-1122¹
Civil Service Comm'n. Docket No. D-05-344

City of Chelsea,
Appointing Authority.

Appearance for Appellant:

Regina M. Ryan
Louison, Costello, Condoon & Pffaff. LLP
67 Batterymarch Street
Boston, MA 02110

Appearance for Appointing Authority:

Mary Maslowski, Esq.
City of Chelsea Law Dept.
Chelsea City Hall
500 Broadway
Chelsea, MA 02150

Administrative Magistrate:

Shelly Taylor, Esq.

RECOMMENDED DECISION

¹ There are two separate Civil Service Appeals brought by Robert Griffin, docketed under a single number, DALA Docket No. CS—07-1122. The Civil Service Commission Docket numbers are D-05-391 and D-05-344. These matters were not consolidated. This decision pertains to Civil Service Docket No. D-05-344. Civil Service Docket No. D-05-391 is addressed in a separate opinion.

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

After proceedings before the Civil Service Commission in 2005 and 2006, on August 1, 2007, the Commission scheduled this matter and another for hearing on December 5, 2007 before the Division of Administrative Law Appeals. By agreement of the parties at a conference on that date, the parties agreed to present this case on written submissions without a hearing.

A. FINDINGS OF FACT

1. Lt. Edward Noseworthy sent an email to all officers on Friday, August 12, 2005. In the email, the lieutenant reported that a woman had called to report that a woman living at a Chelsea address listed in the email was being threatened by her husband "because he is trying to stop her from going to probate Court on Monday." The email stated that the caller "is asking for stepped up patrols in the area and rapid response to any calls for assistance," and gave the name and address of the husband. Ex. 1

2. According to the Hearing Officers report, after reading a print-out of the email, Griffin searched the computer system and found no report of the incident in the system.

3. Sgt. Griffin took a printed copy of the email and wrote on it "Good info. A report was written, right?"

4. Lt. Noseworthy found the note in his mail slot the following Monday. Ex. 7.

5. Sgt. Griffin did not address the issue of the failure to write a report with Lt. Noseworthy or anyone else, until he was asked about it in the internal affairs investigation of his conduct in the incident. Ex. 7.

6. When asked about the matter, Griffin admitted leaving the note. Ex. 7.

7. When asked why he would do such a thing, he stated that when he read the email he felt that the information should have been entered into an incident report and it was not. Sgt.

Griffin also stated that he checked the computer and no one had been dispatched to the location which was more reason to do a report. Ex. 7.

8. Griffin did not address why he did not sign the note, did not call Lt. Noseworthy about the matter, did not respond himself to the address and write a report, and did not assign an officer to respond to the address and write a report. Ex. 7

9. Griffin acknowledged that he should have handled this differently and apologized to Lt. Noseworthy. Ex. 7.

10. The job of a sergeant, Griffin's rank, is to maintain order and support the organization, to ensure the orders of the lieutenant and organization are carried out and support and assist the lieutenant with daily supervisory duties. Ex. 7; Affidavit of Lt. Thomas Dunn.

11. Rule 7.01 of the Chelsea Police Department Rules and Regulations Manual provides:

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

Ex. 4.

12. Griffin was suspended for five days for insubordination. Ex. 6.

13. Griffin was previously suspended for one day for insubordination. Civil Service Docket No. D-05-391.

14. Notice of a five-day suspension was given by Memorandum dated September 6, 2005. A handwritten notation on the notice indicates that the notice was given to Sgt. Griffin in hand at 7:35 AM on Wednesday, September 7, 2005. Ex. 5.

15. Griffin appealed the suspension on November 8, 2005. Ex. 8.

16. The Appointing Authority held a hearing on September 12, 2005. According to the Hearing Officer's report, "a hearing was begun but continued to September 16, 2005." Ex. 7.

17. Griffin's representative, Sgt. Atkins, President of the Police Superiors Association, requested that the hearing be continued due to the absence of Sgt. Griffin. Ex. 7.

18. The City Manager affirmed the recommended disciplinary action for insubordination and accepted the recommendation of a five-day suspension. Notice of this decision was given by mail and delivery to the police station on September 27, 2005.

19. The Supervisor's Guide to Progressive discipline states that it is a guide to be used when taking disciplinary action. As such, the department is not mandated to follow it, and has discretion to determine what is appropriate under the circumstances. Insubordination is not among the examples of conduct warranting suspension, although it is clear in the policy that offenses other than those listed in the policy may warrant suspension and/or more severe discipline. Ex. 9.

B. CONCLUSIONS OF LAW

1. The hearing was timely held and notice of the decision was timely given.

Griffin contends that the Appointing Authority failed to timely provide written notice of his suspension. The notice was timely. Four days after the date of the notice, and five days after the notice was given in hand to Officer Griffin, exclusive of Saturday and Sunday,² the Appointing Authority convened a hearing on September 12, 2005. The hearing was continued to September 16, at the request of Griffin's representative. The Appointing Authority therefore

²" Saturdays, Sundays and legal holidays shall not be counted in the computation of any period of time specified in this section." G.L. c. 31, § 41 .

complied with the requirement in G.L. c. 31, § 41 to convene a hearing within five days. The notice of decision was also timely. It was sent seven days after the close of the hearing on September 16, 2005, excluding intervening Saturdays and Sundays.

2. The Appointing Authority has met its burden to show that there was just cause for the disciplinary action taken.

It is well established that a tenured employee may not be suspended or lowered in rank by an appointing authority except for just cause. G.L. c. 31, § 41. “Just cause” under § 41 requires a determination whether the employee's misconduct “adversely affects the public interest by impairing the efficiency of the public service.” *City of Cambridge v. Baldasaro*, 50 Mass.App.Ct. 1, 3, (2000). It is evident from the circumstances of Griffin’s conduct that he did not intend his action as a constructive act in pursuit of his duty to support a superior officer because, when he wrote the note, he already knew no report had been written. In this posture, the only word I can find to describe the note is sarcastic. That alone qualifies as disrespectful to superiors. The fact that Griffin made no effort to bring what he considered a serious lapse directly to his superior earlier is all the more disrespectful. This more than meets the applicable standard for imposing a suspension, *i.e.* misconduct which adversely affects the public interest by impairing the efficiency of the public service. *Baldasaro, supra.*

With respect to the five-day suspension, The Supervisor’s Guide to Progressive discipline states that it is a guide to be used when taking disciplinary action. As such, the department is not mandated to follow it, and has discretion to determine what is appropriate under the circumstances. Insubordination is not among the examples of conduct warranting suspension, although it is clear in the policy that offenses other than those listed in the policy may warrant suspension and/or more severe discipline. Based on the prior, 1-day suspension for

insubordination, it is fair to characterize the subsequent five-day suspension as progressive, and I find that the Appointing Authority's decision to impose a five day suspension, on the record before me, was not inconsistent with the progressive discipline policy, and "based on adequate reasons supported by credible evidence." *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 482 (1928). To the extent the circumstances of the prior suspension differ from the situation here, the Commission may review the sanction under 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.'" *Town of Falmouth v. Civil Service Comm'n*, 447 Mass. 814, 823 (2006) and cases cited.

For the foregoing reasons, I recommend that the decision of the Appointing Authority, the City of Chelsea, be affirmed.

SO ORDERED.


Shelly Taylor
Administrative Magistrate

DATED: 11-13-2009