COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

TIMOTHY GRIFFIN,
Appellant

v.

TOWN OF EASTON,
Respondent

D1-20-011

Appearance for Appellant:
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Appearance for Respondent:
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Commissioner:
Paul M. Stein

Summary of Decision

In an appeal brought by the Easton Fire Department's former Deputy Chief to overturn the decision to terminate his employment after he was arrested and criminally charged for an alleged incident of domestic violence (for which a jury later acquitted him), the Commission held, consistent with established precedent, that Easton was fully entitled to hold its public safety personnel, especially those holding a senior, command position, to a high standard of professionalism and, in particular, the EFD may exclude from its ranks those who engage in acts of domestic violence. In this appeal, however, upon de novo review of the facts, a majority of the Commission concluded that Easton failed to meet its burden to establish, by a preponderance of the credible evidence, that Dep. Chief Griffin, in fact, had engaged in the acts of domestic violence for which he was terminated and that just cause for his termination on that basis had not been established. The preponderance of the evidence did establish, however, that his off-duty conduct at the home of a female friend rose to the level of conduct unbecoming a public safety official and impaired his fitness to perform the duties of the EFD's Deputy Chief and warranted appropriate discipline. For these reasons, a majority of the Commission modified the penalty imposed from termination to a demotion to the rank of Firefighter.

DECISION

On January 21, 2020, the Appellant, Timothy Griffin, acting pursuant to G.L. c. 31, §§ 42 and 43, appealed to the Civil Service Commission (Commission), challenging the termination of his employment as the Deputy Fire Chief of the Town of Easton (Easton) Fire & Rescue Department

(EFD).[1] The Commission held pre-hearing conferences at the UMass School of Law in Dartmouth on February 28, 2020 and scheduled a full hearing to be held at that location on May 29, 2020.

In March 2020, due to the COVID-19 State of Emergency, by order of the Governor, all but essential businesses in the Commonwealth were closed. The Commission's Boston office and the UMass School of Law were closed to the public. By Order on March 12, 2020 (updated June 9, 2020), the Commission approved emergency procedures to provide services to the public, including, among other things, enabling remote full evidentiary hearings of civil service appeals.

The full hearing scheduled for May 29, 2020 was converted to a remote hearing and, pursuant to a Procedural Order for Remote Hearings dated June 1, 2020, the Commission held a full evidentiary hearing via Webex videoconference over three (3) days on July 27, 29 and 31, 2020.[2] The remote evidentiary hearing was recorded and a link to the recordings was provided to the parties.[3] The full hearing was declared private, with witnesses sequestered. Twelve (12) exhibits were received in evidence at the hearing (*Exhs. 1, 2a through 2e, 3a & 3b, 4a & 4b, 5 through 8, 12 through 14 & 15a through 15d*); three documents were marked for Identification (*Exhs. 9ID & 10ID (later withdrawn) & 11ID*). The Commission received Proposed Decisions from the parties on October 30, 2020.

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

[2] On June 10, 2020, I received the Appellant's "Motion and Memorandum in Opposition to a Full Hearing By Means of Videoconference as Opposed to In-Person Proceedings", which the Respondent opposed. By Interim Order dated July 3, 2020, I denied the motion. The Appellant filed a civil action in the Suffolk Superior Court for preliminary injunctive relief from the Interim Order. The Superior Court (Sullivan, J.) denied that relief. See Griffin v. Massachusetts Civil Service Comm'n, Suffolk Super. Ct., Civil Action No. 2084CV01491 (July 20, 2020), Section 118 petition denied, Mass. App. Ct. No. 2020-J-335 (July 23, 2020). See also, Vasquez Diaz v. Commonwealth, 487 Mass. 336 (2021) (rejecting constitutional challenges to virtual hearing on motion to suppress); Derosiers v. Governor, 486 Mass. 539 (upholding Governor's authority to declare COVID-19 State of Emergency).

[3] If there is a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to use the Webex recordings to provide an accurate transcript, satisfactory to the court, to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

On October 29, 2021, after the conclusion of the full hearing before the Commission, but prior to issuance of this decision, the Appellant filed a "Motion and Memorandum For a Summary Decision Allowing his Appeal and Reinstating His Employment as a Matter of Law", to which was attached an Exhibit A (containing a copy of the Docket in the matter of Commonwealth v. Griffin, Bristol Sup. Ct. No. 1873CR00156 ["the criminal matter"] together with three jury verdict slips in that matter); Exhibits B through D (containing a series of e-mail exchanges among counsel and the Commission regarding the criminal matter); and Exhibit E (containing a letter, dated October 13, 2021, from the Bristol District Attorney's Office regarding the witness [referred to in the letter and in this Decision as Ms. A] who testified in the criminal matter and at the hearing in this appeal). On October 29, 2021, the Appellant also filed a "Motion and Memorandum to Reopen the Record" to receive in evidence the October 13, 2021 letter (Exhibit E to the above-referenced Motion for Summary Decision). Finally, on November 11, 2021, the Appellant filed a "Supplemental Motion to Reopen the Record" to receive in evidence certain testimony from the criminal matter. Easton opposed both motions. I have allowed the Motions to Reopen the record, in part, to take administrative notice of the documents attached as Exhibit A and Exhibit B in the Motion to Reopen the Record (marked respectively as *PHExh.1 & PHExh.2*), the Attleboro Police Department Duty Rosters submitted in support of the Motion to Reopen the Record (*marked as PHExh.3*), and to admit in evidence "Counsel's Affidavit" also submitted in support of the Motion (*marked PHExh.4*), for such purpose and with such weight as I have deemed appropriate, as more fully explained in this Decision. I deny the Motion for Summary Decision. For the reasons stated herein, the Appellant's appeal is allowed, in part, and the termination is modified to a demotion to the position of Firefighter and a disqualification from promotion to a supervisory position for five years.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by Respondent:

- Kevin Partridge, EFD Fire Chief
- Conner Read, Easton Town Administrator
- Timothy Cook, Lieutenant, Attleboro Police Department
- Richard Campion, Sergeant, Attleboro Police Department
- Ms. A[4]

Called by the Appellant:

- Timothy Griffin, Appellant
- Justin Volpe, Commonwealth of Massachusetts Department of Children & Families

and taking administrative notice of all matters filed in the case, pertinent law and inferences from the credible evidence, I find the facts stated below.

1. The EFD is a municipal fire department of approximately 41 members who provide fire prevention and suppression services, as well as emergency medical services, to the citizens of Easton as well as mutual aid to surrounding communities. (*Testimony of Partridge*)

2. At the time of the hearing of this appeal, Kevin Partridge had served more than eight (8) years as the EFD Fire Chief. He had over thirty-six (36) years of experience in the fire service, including ten (10) years as Fire Chief in Berkley, MA and four (4) years as Fire Chief in Avon, MA. He also served as the Director of Emergency Response for the Massachusetts Department of Fire Services. (*Testimony of Partridge*)

3. The Appellant, Timothy Griffin, is a military veteran who served eight (8) years with the U.S. Marine Corps and six (6) years with the Air National Guard. He is a graduate of Northeastern University. He has held a license as a paramedic for approximately twenty (20) years. (*Testimony of Appellant*)

[4] Consistent with the longstanding practice of the Commission, the Commission does not identify by name alleged victims of domestic violence.

4. After one year of service with the Attleboro Fire Department, the Appellant was appointed to the position of EFD Firefighter in 2001. He rose through the ranks, being appointed under Chief Partridge to the position of Lieutenant, Captain and, finally, in October 2017, he was appointed by Chief Partridge to the position of Deputy Fire Chief, the second-in-command of the department (*Exh.13; Testimony of Appellant & Partridge*)

5. Chief Partridge's letter to the Appellant appointing him as Deputy Fire Chief stated:

> "I have been extremely impressed with your commitment, dedication, and organizational skills as the Fire Prevention Officer, and your understanding and interest in the administration of the department."
>
> "I look forward to working with you as part of the leadership team in particular my second in command. I know your allegiance and loyalty to me and the Easton Fire & Rescue Department will be without question."

(*Exh.13; Testimony of Partridge*)

6. Prior to the events that resulted in Dep. Chief Griffin's termination, he had received a one-day suspension as a Firefighter in 2007 for insubordination, and two (2) written warnings as a Lieutenant: in 2014 for violation of medical control protocol and, in 2015, for verbal abuse of another member of the department. Chief Partridge once bypassed him in 2014 for appointment to Fire Captain. (*Exh.14*)

7. For approximately nine (9) years prior to January 2018, Dep. Chief Griffin was involved in a romantic relationship with Ms. A. (*Testimony of Appellant & Ms. A*)

8. Ms. A worked as a part-time, armed, Deputy Sheriff. She also worked details and as an auxiliary police officer for the Attleboro Police Department. (*Testimony of Ms. A*)

9. On or about January 18, 2018, Dep. Chief Griffin texted Ms. A, informing her that he could not continue the relationship, "wished her well," and blocked her from his personal cell phone. (*Testimony of Appellant*)

10. Ms. A and the Appellant both described their relationship after January 18, 2018 as "friendly." Ms. A continued to reach out to him, calling him at work and leaving messages. At first, he did not response to the messages but, eventually, they did resume texting and speaking by phone. (*Testimony of Appellant & Ms. A*)

11. Prior to January 26, 2018, Dep. Chief Griffin had never physically abused Ms.A. (*Exh.2c*)

The January 26, 2018 Incident

12. According to the available cell phone records, Dep. Chief Griffin made several phone calls to Ms. A beginning about 6:39 pm and, after several attempts around 7:00 pm, they appear to have spoken again at 7:12 pm. (*Exh.5 [pp.198-199]; Exh.6 [p.271-272]*) [5]

13. At 8:02 pm, Dep. Chief Griffin texted Ms. A and attached an angry message he had received from an EFD colleague with whom he had had issues, stating that "He [the colleague] is full of shit. I'm just mad."[6] He then made four attempts to call Ms. A, but she did not answer his calls. (*Exh.5 [pp, 198-.200]; Exh.6 [p.271-273]*)

14. At 8:10 pm, Dep. Chief Griffin texted Ms. A: "Why would you ignore me knowing I'm in pain. . . ." (*Exh.5 [p.200]; Exh.6 [p.273]; Testimony of Appellant*)

15. At 8:15 pm, Deputy Griffin texted Ms. A: "Open the garage", which was a message he had used before to inform her he was on his way to visit her. (*Exh.5 [p.200]; Exh.6 [p.273]; Testimony of Appellant & Ms. A*)

[5] At the time of the Commission hearing, Both Ms. A's and the Appellant's cell phones were in the custody of the Bristol District Attorney handling the related criminal matter. Only a limited number of screen shots from Ms. A's cell phone taken by the Attleboro Police were placed into evidence. The cell phone records show one phone call between Ms. A to Dep. Chief Griffin earlier in the day, but the screen shot is partially cut off, so it is not clear when that initial conversation occurred (*Exh.5 [pp.197-200]; Exh.6 [p.270-273]*)

[6] The colleague, with whom Dep. Chief Griffin had partnered professionally and had considered a good friend was trying to leverage his personal friendship to gain professional favors, and when Dep. Chief Griffin rebuffed him, the colleague wrote a message complaining that his best friend "would take [another person's] bullshit word over me . . .Thanks, Pal, after all the shit we've been through . . .[screenshot cuts off]". (*Exh.5 [p.200; Exh.6 {p.273]; Testimony of Appellant*)

16. At 8:23 pm, Ms. A replied with a text message: “I know you’re upset. Tryy[sic] and calm down and Ill [sic] call you in a little bit. Yoy [sic] cant [sic] talk with me in the statw [sic] youre [sic] in.” (*Exh.5 [p.200], Exh.6 [p.273]; Testimony of Ms. A*)

17. At 8:58 pm, Dep. Chief Griffin sent Ms. A an email message to inform her that “my cell phones are dead. Thought id let you know not that you car[e] [sic]”. Ms. A did not see this email until later. (*Exh.12; Testimony of Appellant & Ms.A*)

18. Between 9:07 pm and 9:25 pm, Ms. A placed three calls to Dep. Chief Griffin (which he did not receive as his cell phone was not working). She also made an outgoing call with an unknown person at 9:08 pm and received an incoming call with an unknown person at 9:15 pm. (*Exh.5 [p.197], Exh.6 [p.270]; Testimony of Ms. A*)

19. At 9:13 pm, Ms. A texted Dep. Chief Griffin: “Are you okay?” At 9:14 pm she texted him: Do you want to talk?” At 9:15 pm she texted him: “Im sorry I ignored you earlier. You need a friend and Im here for you.” He did not see these messages. (*Exh.5 [P. 200], Exh.6 [p.270]; Testimony of Appellant & Ms. A*)

20. Dep. Chief drove to Ms. A’s residence where he arrived sometime shortly before 10:00 pm. He parked his truck in her driveway, saw her looking out the window, and waved to her. (*Testimony of Appellant & Ms. A*)

21. Ms. A lives in a tri-level condominium unit. The ground floor contains a garage with an automated vehicle entry door and a separate exterior passage door for pedestrian access controlled by a keypad security device. The second level contains the living/dining area, kitchen, laundry and bathroom. The third level contains three bedrooms and two bathrooms. (*Testimony of Ms. A*)

22. Dep. Chief Griffin used the keypad code (which he knew) to enter the garage through the passage door and proceeded up the stairs to the second level. Ms. A was sitting on her couch in

the living room. She asked him if he was OK. (*Testimony of Appellant & Ms. A*)

23. Ms. A's 14-year-old son was then upstairs in his bedroom. Ms. A testified her son had texted her at precisely 9:04 pm, she picked him up from school, they returned home approximately a half-hour later and he went upstairs to bed. The son did not appear at any time during the ensuing incident. He had no memory of Dep. Chief Griffin's visit that night. (*Exh.2e; Testimony of Appellant & Ms. A*) [7]

24. After the point of their first encounter, Ms. A and Dep. Chief Griffin provided significantly different, mostly irreconcilable, recollections of events. For the reasons I explain later, I credit most of Dep. Chief Griffin's recollection of the encounter and discredit most of Ms. A's version.

25. Dep. Chief Griffin said "Yes" to being asked if he was OK and sat down on the couch next to Ms. A. He noticed an open beer container on the end table alongside her law enforcement badge and concealed-carry holster containing her loaded service handgun.[8] He observed that she showed signs of having been drinking alcohol. (*Testimony of Appellant*)

26. Dep. Chief Griffin took Ms. A's handgun from its holster, removed the magazine and "cleared" the weapon.[9] He brought the cleared weapon and ammunition into the kitchen and placed it in the upper cabinet above the refrigerator. He returned to the living room and Ms. A walked into the kitchen, opening drawers and doors. He saw Ms. A reaching for the cabinet above the refrigerator and he told Ms. A to leave the gun alone. At this point, a struggle ensued between them, resulting in her sweater and pants being torn, Ms. A's inner lip being cut open, and her hands

[7] Ms. A's cell phone records entered in evidence do not include that 9:04 pm text message. The son recalled that he got home about 9 pm, had something to eat, took a shower, and then went to bed. (*Exh.2e, Exh.5 [p.200 & Exh.6 [p.270]; Testimony of Ms. A*)

[8] The holster is a "Level 2" security device, with a snap but no other security to prevent removal of the firearm from the holster and no safety mechanism on the weapon itself. (*Testimony of Ms. A & Det. Lt. Cook)*

[9] "Clearing" a firearm is a recognized term of art that means that both the ammunition magazine and the bullet that was pre-loaded into the chamber of the weapon is removed. (*Testimony of Ms. A & Det. Lt. Cook*)

and arms becoming bruised. Ms. A ran out of the condominium. Dep. Chief Griffin returned to the living room, picked up his keys and left. As he departed, he spotted Ms. A along the road outside her condominium. That is the last contact he had with Ms. A. The encounter lasted no more than ten (10) minutes. (*Testimony of Appellant*)[10]

27. About an hour after Dep. Chief Griffin left Ms. A's condominium, the Attleboro Police Department received a call from Ms. A at approximately 11:08 pm.[11] Two officers – Officer Velino and Officer Charette – responded to the scene and were later joined by their patrol supervisor, Sgt. Campion. (*Exhs.2b & 2c; Testimony of Ms. A & Sgt. Campion*)

28. Ms. A gave an oral, unrecorded statement to the police at the scene (reflected in the incident report prepared by Officer Charette, the reporting officer). She later provided a written affidavit that night for the purpose of obtaining an emergency 209A restraining order.[12]

29. Ms. A's affidavit stated that Dep. Chief Griffin had come to her home "unannounced", demanded her cell phone, hit her in the head, grabbed her gun and put it in his pocket, hit her face, and when he went upstairs to search for her phone, she ran outside until he left. She wrote that,

[10] According to Ms. A's testimony, the dispute erupted because Dep. Chief Griffin had demanded to see her "f***ing phone" and, when she refused dragged her into the kitchen to search for the phone and, then, returned to the living room where, he hit her and put her in a headlock, causing the injuries. He then saw the gun, removed it from the holster, removed the magazine (leaving one bullet in the chamber) and put it in his back pocket. As they continued to argue about the phone, she claimed he pulled out the loaded gun, pointed it to the ceiling and started counting down from 10, while demanding to see her phone. She claimed that he then started to go upstairs to her son's bedroom (still in possession of the gun) to retrieve the son's cell phone so he could call her and locate her phone and she tried to run outside, but he came down and dragged her back into the living room, resumed climbing the stairs to the bedrooms, at which point she waited until he go to the top of the stairs and then ran outside and hid in some bushes. (*Testimony of Ms. A*)

[11] Ms. A's cell phone records do not show her call to the Attleboro Police Department. The screenshot shows that the first call she made after Dep. Chief Griffin departed was an 11:01 pm call to an unknown party, not the Attleboro Police Department (the first time she used her cell phone since her attempts to reach Dep. Chief Griffin around 9:15 pm). Ms. A did not recall whether she had called the Attleboro Police on the recorded "911" line or "1212", the unrecorded business line. The Attleboro Police Department incident log that would record the time of a 911 call and when officers reported that they arrived on scene was not offered by either party. (*Exh.5 [p. 197], Exh.6 [p. 270]; Testimony of Ms. A*)

[12] Officer Charette did not testify. Sgt. Campion was the only Attleboro Police Department witness at the scene on January 26, 2018 to testify at the Commission hearing. (*Exhs.2b & 2c; Testimony of Ms. A & Sgt. Campion*)

when she returned, her gun was "nowhere to be found". Neither her affidavit nor the police report mentions that her son was upstairs, that Dep. Chief Griffin allegedly had threatened her with a loaded gun, threatened he would get her fired, or that he had put her in a headlock. (*Exhs.2a through 2c; Testimony of Ms. A*)[13]

30. Sgt. Campion and other officers proceeded (without a warrant) to Dep. Chief Griffin's residence where they surrounded the house and called for him to step outside. As they were unable to determine that he was present, on the order of the Attleboro Police Chief, the police officers departed without making contact and Sgt. Campion then authorized a warrant for Dep. Chief Griffin's arrest. (*Exhs.2b & 2c: Testimony of Sgt. Campion*)

31. Ms. A's torn sweater and ripped pants were taken into evidence and were not produced at the Commission hearing and, thus, I was unable to view them. The Attleboro Police Department reported Ms. A's gun as stolen to the NCIC (national criminal record system). (*Exhs.2b,2c, Testimony of Sgt. Campion*)

32. At 8:15 the following morning, January 27, 2018, Dep. Chief Griffin voluntarily came to the Attleboro Police Station.[14] He was arrested and placed in a cell. Det. Lt. Cook and another officer took him to be interviewed shortly before 10 am. After receiving his "Miranda Rights", Dep. Chief Griffin declined to be interviewed without a lawyer present. When he was escorted

[13] The differences in the hearsay account contained in the report prepared by Officer Charette, who did not testify, and Ms. A's written affidavits, raise concern about the weight I am able to give to these documents. Ms. A testified that her omission of these details, as well as omission of any reference to the beer she was drinking, was attributed to the fact that the officers were in a "shift change" and "I was told to hurry up and get something on paper . . . it didn't come to mind. . . ." (*Testimony of Ms. A*). This testimony struck me as self-serving and problematic and, at my request, the Attleboro Police Shift Roster was provided to me which further discredited her explanation, as it established that Officer Charette, the official "Reporting Officer", worked an 11pm to 7am shift on the date in question and Sgt. Goyette, who took over from Sgt. Campion as the patrol supervisor worked a 12 midnight to 8:00 am shift. (Exh.2c; *PHExh.3*)

[14] Dep. Chief Griffin had been served with the emergency 209A restraining order and, pursuant to that order, prior to reporting to the police station, had turned over custody of all of his firearms to a friend who brought them to the Attleboro Police Headquarters later on January 27, 2018. (*Exh.2d*)

back to his cell, however, Dep. Chief Griffin "spontaneously, and without having been asked any question, stated '[t]he gun is in the kitchen above the refrigerator. It's there, and she knows it.'" (*Exh.2c; Testimony of Appellant & Det. Lt. Cook*)

33. Shortly after Dep. Chief Griffin was returned to his cell, the Attleboro Police received a call from Ms. A informing him she had found her gun in the cabinet above the refrigerator behind some liquor bottles (precisely where Dep. Chief Griffin had said it would be found). She told Det. Lt. Cook that she and the police had looked for the gun the night before and may have checked that particular cabinet. (*Exhs.2b & 2c*)

34. Det. Lt. Cook and another officer proceeded to Ms. A's residence, where she showed them the firearm, which rested on her kitchen counter. Det. Lt. Cook took several photographs of the cabinet, her weapon, which had been "cleared", as well as photographs of Ms. A, which showed several areas of minor bruising.[15] He then asked Ms. A to report to the police station for a recorded interview. (*Exhs.2c, 5 [pp. 201-208]; 6 [237-269]; Testimony of Det. Lt. Cook*)

35. Ms. A arrived at the Attleboro Police station about noon on January 27, 2018. During her interview, she again described finding the gun in the cabinet, stating she "assumed that Griffin would hide it there because [her son] wouldn't find it there." She also made several new disclosures about the events of the night before that she had not included in her 209A affidavit and statements to the responding officers. This included statements about how Dep. Chief Griffin had brandished her loaded weapon pointing it to the ceiling while counting down from 10 to 1, had put her in a

[15] Photographs were also taken at the police station the night before, but the photographs taken by Det. Lt. Cook while at Ms. A's home the following afternoon were the only pictures of her offered in evidence. Det. Cook did not see Ms. A until he visited her home and did not know whether the photographs accurately portrayed her appearance immediately after the incident. He agreed that the room lighting detracted from the accuracy of some of the photographs and, in the case of the pictures of Ms. A's chest, he was unable to identify any evidence of bruising in the picture. Ms. A did not seek medical attention and did not elaborate on her injuries during her testimony. ((*Exhs.2c, 5 [pp. 201-208]; 6 [237-269]; Testimony of Appellant, Ms. A & Det. Lt. Cook*)

"headlock", had made numerous threatening, derogatory and intimidating remarks, telling her if she called the police "I'm gonna have both your badges" and "if you tell, you're gonna read about it this in the papers". The subject of drinking the night before did not come up. (*Exh.2c, 5 [pp. 201-208] & 6 [pp.253-269]; Testimony of Det. Lt. Cook*)

The Criminal Matter

36. Based on the disclosures made during Det. Lt. Cook's interview with Ms. A, Officer Charette added those details to his report and enumerated the criminal charges he concluded that Dep. Chief Griffin had committed: assault and battery on a family/household member; assault with a dangerous weapon; reckless endangerment of a child; and witness intimidation. (*Exh.2b*)

37. Dep. Chief Griffin was held in custody at the Bristol County House of Correction until March 12, 2018, when he was released on bail subject to home confinement. (*Exh..5 [pp. 72-73]*)

38. On April 2, 2018, his counsel appeared in court and moved to modify his bail to allow him to return to work, which motion was allowed on April 3, 2018. (*Exh..5 [pp. 72-73]*)

39. On or about April 26, 2018, Dep Chief Griffin was indicted on the above-listed charges (save for child endangerment).[16] He was arraigned in May 2018, at which time he entered pleas of not guilty on all charges. His bail was conditioned on release with a GPS-ankle bracelet to track his location. (*Exhs.2b &,4b; PHExh.2*)[17]

40. After a jury trial in October 2021 in the Bristol Superior Court, at which Ms. A testified under a non-prosecution agreement and the Appellant testified in defense, he was found not guilty on all charges against him. (*PHExhs.1, 2 & 4*)

[16] After an investigation by the Massachusetts Department of Children and Families (DCF), the child abuse allegations were not pursued. (*Exh.8; Testimony of Volpe*)

[17] After hearing on January 29, 2018 on continuation of the emergency 209A restraining order, the order was extended until January 31, 2018. No evidence of what happened thereafter was introduced but it is not disputed that the 209A order expired prior to the commencement of this appeal. (*Exh.3b)*

Employment Termination

41. By letter dated January 29, 2018, Chief Partridge placed Dep. Chief Griffin on paid administrative leave pending an investigation. (*Exh.5 [p.72]; Testimony of Chief Partridge*)

42. On or about March 30, 2018, Chief Partridge received a telephone call from Dep. Chief Griffin's attorney who informed the Chief of the upcoming court hearing (see Finding 38 above) on a motion to allow his client to return to work. (*Exh.5 [pp. 72-73]*)

43. By letter dated April 2, 2018, the day of the court hearing to obtain an order authorizing Dep. Chief Griffin's return to duty, Chief Partridge informed Dep. Chief Griffin that his employment with the EFD had been terminated for job abandonment, pursuant to G.L. c. 31, Sections 37 & 38. (*Exh.5 [pp.71-73]*)

44. Dep. Chief Griffin appealed the April 2, 2018 termination to the Massachusetts Human Resources Division (HRD). After hearing, on September 21, 2018, HRD held that Dep. Chief Griffin's termination for job abandonment was unlawful under civil service law. Easton requested reconsideration and, on January 11, 2019, HRD reconfirmed its decision and Dep. Chief Griffin was reinstated on paid administrative leave. After bringing a civil action against Easton, he obtained a judgment for back pay. (*Exh.5 [pp.71-91]*)

45. By letter dated November 13, 2019, Chief Partridge informed Dep. Chief Griffin that a hearing would be held to consider whether to terminate him from his position with the EFD for "conduct unbecoming" his office arising out of the January 26, 2018 incident. (*Exh.4*)

46. After a postponement to accommodate Dep. Chief Griffin, on January 8, 2020, a hearing was convened before a Hearing Officer designated by Chief Partridge. Dep. Chief Griffin attended and was represented by counsel. Ms. A was the only witness to testify. Dep. Chief Griffin declined to testify or call witnesses on advice of his counsel. (*Exhs.4 & 5*)

47. By letter dated January 11, 2020, Chief Partridge informed Dep. Chief Griffin that, based on the Hearing Officer's report received on January 8, 2020, he had concluded that "you committed 'several assaults' on [Ms. A], causing her physical injury, and displayed and threatened to discharge [Ms. A's] weapon during the course of your assaults on her" and that this behavior "constituted conduct unbecoming a public employee." Based on the Hearing Officer's findings, Chief Partridge found Dep. Chief Griffin had violated the EFD's Rules and Regulations and Easton's Employee Professional Conduct Policy" and, therefore, Chief Partridge terminated Dep. Chief Griffin's employment, effective as of the date of the letter. (*Exhs.5 [pp. 53, 147-194]*)

48. The Appellant's timely appeal to the Commission duly ensued. (*Claim of Appeal*)

EFD Rules and Regulations and Discipline of Other Employees for Off-Duty Misconduct

49. The EFD's Rules and Regulations contain no explicit reference to the standards expected of EFD personnel when off-duty. The regulation upon which Easton rests the termination of Dep. Chief Griffin is contained in Chapter 20 of the Rules and Regulations which states, in relevant part: "An employee may be disciplined for offenses which may include but are not limited to . . .", followed by nineteen (19) specific acts of misconduct, all of which arise in the "on-duty" context, and a final clause [Section 20(t)] prohibiting "conduct unbecoming of a public employee." (*Exh.5 [pp.175-176]*)

50. Easton's Employee Professional Conduct Policy provides, in relevant part:

> "While it is impossible to list every example of professional misconduct expected by its employees, the Town provides the following examples of standards of conduct to be observed by its employees . . . .
>
> "To project a positive and professional image of the Town"
>
> . . .
>
> "To comply with separate policies and procedures also maintained by the Town on subjects such as discrimination, harassment, electronic communications and domestic violence."[18]

(*Exh.5 [pp. 195-197]*)

[18] No written policies on the subjects described were proffered by the Town.

51. Dep. Chief Griffin is the only EFD firefighter known to have been terminated for off-duty misconduct. (*Testimony of Appellant*)

52. At my request for examples of discipline imposed for off-duty misconduct, Easton presented three examples:

A. An EFD Firefighter received a 45-day suspension under a Last Chance Agreement for off-duty misconduct involving a loss of his driver's license for operating under the influence of alcohol and carrying a firearm while intoxicated. (*Exh.15A*)

B. An Easton Police Sergeant received a 30-day suspension for engaging in unwanted physical contact of a subordinate female (touching her buttocks) while off-duty, with a final warning that repeated similar misconduct will result in termination. (*Exh.15B; Testimony of Town Manager Reed*)

C. An Easton Police Officer was terminated for misconduct consisting of attempting to use his official position for personal advantage during an off-duty encounter with the Boston Police, during which the officer had verbally abused a private citizen and also failed to make a complete and truthful report of the incident to his superior. (*Exh.15C*)

APPLICABLE LEGAL STANDARD

Sections 41 to 45 of G.L. c. 31 allow discipline of a tenured civil servant for "just cause" after due notice, a hearing (which must occur prior to discipline other than a suspension from the payroll for five days or less), and a written notice of the decision that states "fully and specifically the reasons therefor." G.L. c. 31, § 41. An employee aggrieved by such disciplinary action may appeal to the Commission, pursuant to G.L. c. 31, § 42 and/or § 43, for de novo review by the Commission "for the purpose of finding the facts anew." Town of Falmouth v. Civil Service Comm'n, 447

Mass. 814, 823 (2006). As prescribed by G.L. c. 31, § 43, ¶ 2, the Appointing Authority bears the burden of proving "just cause" for the discipline imposed by a preponderance of the evidence:

> "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."

As a general rule, the Commission determines just cause for discipline by inquiring "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 488, rev. den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983). The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.'" Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of Commission's jurisdiction to enforce basic merit principles under civil service law); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) (appointing authority must provide "adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law" for discharge of public employee), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) (justification for discharge of public employee requires

proof by a preponderance of evidence of "proper cause" for removal made in good faith). It is also a basic tenet of merit principles, which govern civil service law, that discipline must be remedial, not punitive, designed to "correct inadequate performance" and "[only] separating employees whose inadequate performance cannot be corrected." G.L. c. 31, § 1.

Off-duty behavior by a public employee must bear a direct and significant nexus to his or her ability to perform the official duties of the position in order for it to be subject to discipline. See, e.g., Baldassaro v. City of Cambridge, 50 Mass. App. Ct. 1, 4, rev. den., 432 Mass. 1110 (2002) (reinstating heavy motor equipment operator terminated for "reprehensible" verbal abuse of meter maid who issued him a parking ticket); School Committee of Brockton v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 491-92, rev. den., 426 Mass. 1104 (1997) (reinstating custodian who committed sexual act in a public park). See also Fuertes v. City of New Bedford, 25 MCSR 485 (2012) (reinstated paramedic terminated after charged with motor vehicle homicide later for lack of probable cause); Burke v. Lynn School Committee, 10 MCSR (1997) (reinstated school custodian guilty of involuntary manslaughter (negligent discharge of firearm); O'Donnell v. Newton Police Dep't, 11 MCSR 227 (1998) (reinstated police captain terminated for "conduct unbecoming" arising out of an off-duty drinking incident); Furtado v. Plymouth Police Dep't, 8 MCSR 209 (1995) (police officer acquitted of charge of vehicular homicide).

The public policy underlying the "nexus" requirement is firmly embedded in the civil service statute. As explained by the Appeals Court:

> *Pivotal to the commission's decision* [to reinstate the employee] *was its adopted conclusion that no "significant correlation" or "nexus" existed between Wise's conduct in D.W. Field Park and his employment*. The judge rejected this nexus analysis and relied entirely upon the test . . . of whether the employee misconduct "adversely affects the public interest by impairing the efficiency of the public service." That . . . *did not take into account the proviso* in G.L. c. 31, § **43**, as amended by St.1981, c. 767, § 20, which states that *if an employee establishes that the appointing authority's action was based "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...."* Not only is it reasonable to interpret this amendment to the statute as inserting a nexus test but it is also arguable that *without such a test the natural tension between municipal managerial discretion and commission's statutory oversight too frequently might be resolved by giving undue judicial deference to local political or nonemployment considerations in the name of protecting the "efficiency of the public service."* . . . [N]o evidence was presented of Wise being a threat to school children[.] [A]n absence of significant correlation between Wise's conduct and his employment indicates that the commission was satisfied that Wise had established that his discharge was based on factors unrelated to his fitness to perform his custodial duties.

School Committee of Brockton v. Civil Service Comm'n, supra at 491 (**emphasis in original**; *emphasis added*).

Section 43 of G.L. c. 31 also vests the Commission with "considerable discretion" to affirm, vacate or modify discipline but that discretion is "not without bounds" and requires sound explanation for doing so. See, e.g., Police Comm'r v. Civil Service Comm'n, 39 Mass. App. Ct. 594, 600 (1996) ("The power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio . . . accorded the appointing authority"). See also Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006), quoting Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983).

ANALYSIS OF THE PRESIDING COMMISSIONER ADOPTED BY THE MAJORITY

Easton is fully entitled to hold its public safety personnel, especially those holding a senior, command position, to a high standard of professionalism and, in particular, the EFD is entitled to exclude from such employment those who engage in acts of domestic violence. In this appeal, however, upon de novo review of the facts, I conclude that the preponderance of the evidence does not support that, during Dep. Chief Griffin's encounter at the home of Ms. A, he assaulted her or threatened her with a firearm as the termination letter issued by Easton concluded. EFD did establish, however, that Dept. Chief Griffin's behavior concerning his encounter with Ms. A rose to the level of conduct unbecoming of him and his misconduct was both reasonably related to his

fitness to perform the duties of EFD Deputy Chief and provided just cause for modified discipline and warrants a demotion to the rank of Firefighter and a five-year disqualification from promotion.

First, as a matter of law, I reject the Appellant's contention that the EFD's Rules and Regulations and Easton's Employee Professional Conduct Policy are unacceptably vague and, since they do not expressly prohibit off-duty misconduct, they do not encompass the misconduct alleged here. Public employees, especially those in senior, command positions, do not require "training" to understand that engaging in acts of violence are utterly intolerable in this Commonwealth. The Commission consistently sustains discipline imposed upon a public safety officer who engages in off-duty violent behavior, especially when it involves domestic abuse, even when the conduct did not result in criminal or civil penalties. See, e.g., D'Andrea v. City of Everett, 34 MCSR 369 (2021) (domestic abuse); Luis v Town of Dartmouth, 34 MCSR 335 (2021) (domestic abuse); Adams v. Department of Correction, 32 MCSR 1 (2019) (domestic abuse); Gould v. Town of North Attleborough, 31 MCSR 186 (2018) (domestic abuse); Torres v. City of Chicopee, 30 MCSR 467 (2017) (domestic abuse); Lavery v. Town of North Attleborough, 30 MCSR 373 (2017) (domestic abuse); Robichau v. Town of Middleboro, 24 MCSR 352 (2011) (domestic abuse); Haynes v. City of Somerville, 29 MCSR 525 (2010) (citizen harassment); Andrade v. Town of Hudson, 21 MCSR 73 (2008) (bar fight); Rivers v. Town of Wilmington, 19 MCSR 425 (2000) (bar fight).

Second, the Appellant's contention that he is entitled to a Summary Decision in his favor now that he has been acquitted of all criminal charges similarly misses the mark. As Easton correctly asserts, his acquittal (in which the Commonwealth's standard of proof is "beyond a reasonable doubt"), does not necessarily mean that Easton cannot prove, as a matter of law, that the Appellant

did actually engage in assaultive behavior that justified his termination, under the "preponderance of the evidence" standard applied to de novo review by the Commission under civil service law.

Third, after giving a careful de novo review of the exhibits, the testimony of the witnesses, and guided by common sense and the correct rules of law, I conclude that Easton has not met its burden to establish by a preponderance of the credible evidence that it had just cause to terminate Dep. Chief Griffin for the off-duty conduct it labeled assaultive domestic violence and that formed the sole basis for his termination. In reaching this conclusion, I have noted his acquittal of all criminal charges, but rely solely on my own assessment of the credibility of the witnesses and the weight to be given to the evidence presented to the Commission in preparing my findings of fact set forth above and determining whether those facts, as found by the Commission (without regard to criminal culpability), justified the decision to terminate the Appellant. For the reasons set forth below, I conclude that they do not.

I conclude that the Appellant's account of the events of January 26, 2018 makes more sense and it is consistent with other evidence in the record. The testimony from the Appellant and Ms. A. was consistent that both agreed that their romantic relationship had ended in a friendly manner and that there had never been any prior history of domestic violence. Dep. Chief Griffin reached out to her around 6:30 pm, sending her a copy of a message from his colleague. When she did not return his subsequent phone calls, at 8:15 pm, he left her a message: "Open the garage", which had been his way of letting her know he was coming over to see her. She texted back that "I know you're upset . . . Try to calm down . . . I'll call you in a little bit." Between 9:07 pm and 9:25 pm, she made several phone calls to him, and texted him at 9:13 pm, apologizing for ignoring him earlier and writing: "I'm here for you." The Appellant did not receive those messages as his cell phone went dead about 8:58 pm (when he sent Ms. A an email to that effect).

Ms. A went out to pick up her son at school and I place their arrival home at about 9:00 pm. Prior to Dept. Chief Griffin's arrival, the son had something to eat, went upstairs, took a shower and went to bed (per the son's statement to the Attleboro Police).[19] He was asleep when Dep. Chief Griffin arrived and knows nothing of the encounter or the police responding to the scene. Ms. A got a beer, went into the living room, took off the concealed carry holster containing her loaded duty weapon and placed it on a table, and sat down on the sofa where she spotted the Appellant as he arrived and parked in her driveway about an hour later (shortly before 10 pm). They waved to each other, and the Appellant came upstairs to meet her.

The Appellant went into the living room and found Ms. A seated on the sofa with an open beer and her unsecured firearm nearby. He took the gun out of the holster, cleared it, brought it to the kitchen and placed it inside a cabinet over the refrigerator. Ms. A followed him and tried to recover her gun. When she reached for the cabinet above the refrigerator, the two engaged in a physical altercation in which Ms. A's clothing was torn, she cut her inner lip and suffered other bruises. I conclude that Ms. A was the initial aggressor in this brief altercation. Ms. A ran outside and the Appellant followed her out, seeing her on the street as he drove away. He had been with Ms. A less than 10 minutes, making the time of his departure somewhere around 10:00 pm to 10:10 pm.

It is not known when Ms. A returned to her condominium, but the first call she placed after the Appellant left was a phone call at 11:01 pm to an unknown person. She did not contact the Attleboro Police until about 11:08 pm, which would be about an hour after the Appellant departed,

[19] I find this timeline consistent with the fact that Ms. A engaged in numerous texts and phone calls from 9:07 pm until 9:40 pm, when she claimed to be on the road retrieving her son from school. It is also consistent with the son's account that he spent some time after getting home before he went to bed, which would not jibe with Ms. A's account that they had been home only 15 minutes or so before the Appellant arrived and the son fell asleep for the night.

most likely by calling the unrecorded business line.[20] Her initial affidavit made no mention of the most serious allegations that later surfaced about the Appellant allegedly putting her in a headlock, threatening her with a loaded gun, and intimidating her not to go to the police.

The Appellant voluntarily reported to the Attleboro Police Department early the next morning. He was promptly arrested and held in a cell, at which point he chose not to be interviewed by the police. He did let them know, however, that he did not steal Ms. A's gun and that she knew exactly where he had put it, which is precisely where she soon reported that she "found" it.[21]

In contrast, I conclude much of Ms. A's account of the January 26, 2018 incident is not credible and is inconsistent with other evidence that I do find credible. As noted above, her timeline does not make sense but it is necessary to match her version of events from 9 pm to 11pm, in which she home only long enough to take a sip or two sips of beer, left her unsecured gun out a few minutes (not an hour), after her son came home, and went immediately to the police as soon as Appellant departed (when the incident actually lasted less than 15 minutes)..[22] She knew that her gun (with its ammunition) was in the cabinet above the refrigerator, and told Det. Lt. Cook that is where she "assumed" the Appellant would put it to keep it away from her son, yet she swore in her affidavits

[20] No evidence of a 911 call was produced which would have documented and recorded the time and message. Ms. A said she did not recall if she called 911 or the business line. Given her position as a police officer, and the gravity of her complaint (stolen gun and domestic violence), her equivocation on this point leads me to infer that, more likely than not, she did NOT call 911.

[21] Easton contended that the Appellant's failure to surrender to police when they surrounded his home and called for him to step outside the night before was evidence of his "consciousness of guilt". There was no confirmation that he was present at the time and, even if his presence were established, whatever slight inference, if any, of "consciousness of guilt" that might be drawn from a failure to voluntarily present oneself to a group of armed officers (professional colleagues of Ms. A) in the "heat of the night", is outweighed by his subsequent voluntary appearance at the police station, his sworn testimony before the Commission, his choice to testify in defense at his criminal trial, and the other exculpatory evidence presented to me.

[22] I note that Sgt. Campion, the last to arrive on scene, did not find Ms. A to be "intoxicated", presumably referring to having a blood-alcohol content above the legal limit. Although his observations do not rule out that Ms. A had drunk more than "one or two" sips of beer in the hour she had been home, it does lead me to infer that Dep. Chief Griffin's characterization of her as being under the influence (slurring her speech, unsteady, and glassy eye), was an exaggeration or misperception.

filed in court that the gun was "nowhere to be found" that night, that she forgot to check the very cabinet she later said she "assumed" was where Dep. Chief Griffin would have put it. Her excuse for signing an affidavit that inferred her gun was stolen, while omitting any reference to the Appellant's alleged use of the gun to threaten her, was that the police were in a shift change and they "told me to hurry up and get something on paper." I do not find that explanation at all credible.

Similarly, I do not credit Ms. A's central thread that the Appellant came to see her without her assent because he was being "possessive and obsessive" and wanted her "f***ing phone". They both acknowledged that that they each had moved on from their romantic relationship. His testimony, which is corroborated by the text messages and her own testimony, shows that the Appellant was not focused on their relationship, but rather went to seek succor from her after being insulted by one of his best friends and EFD colleague, and that Ms. A greeted him when he arrived.

Even by Ms. A's own telling, her accounting for how the Appellant handled her gun strains credulity. She would have them in an hour-long physical altercation and quarrel while he had a loaded gun, with no safety mechanism engaged, in his pocket most of the time. She would also have me believe that she watched him walk up the stairs to the bedroom level, toward her sleeping son, with the gun in his pocket and then fled the condominium. I do not believe any of that is true.

However, the encounter 2018 did not occur precisely as either Ms. A or the Appellant recalled and his behavior is not entirely beyond reproach. In fact, he demonstrated a disappointing lapse of judgment and leadership skills in a number of respects. His appearance at Ms. A's home for the first time since they their consensual romantic relationship ended without having her unequivocal permission, notwithstanding the apparent disconnect between them which prevented each from receiving messages from the other. He went to see her in an agitated state over a work-related problem about which he had (inappropriately) shared details with her. After his arrival, he

continued to exercise poor judgment by unilaterally seizing her firearm and attempting to hide it without any prior effort to seek her compliance to secure it herself or call the authorities to ensure safety. It is not disputed that Ms. A had an open beer bottle next to the gun, but I do not find that the preponderance of the credible evidence established she was so impaired as to be unable to control the weapon safely. The Appellant was the only witness to claim that to be true. Indeed, if she had been that significantly impaired, his behavior in placing the gun where she "knew" he had put it, and then leaving her home alone, is equally as problematic. I conclude that he wholly misperceived the situation, resulting in a physical altercation that got out of control, rather than calling the authorities to assess and handle the situation safely. Rather than exercise the leadership skills expected of a senior public safety officer to take steps to de-escalate a conflict, he escalated it, which was another major mistake of judgement. I take notice that I received no clear explanation from either the Appellant or Ms. A why she fled after he told her he was about to leave himself. Although I have taken account of that gap in their testimony, and it does not change my conclusion that Ms. A, not the Appellant, was the aggressor and initiated the physical confrontation, it does further support the inference that the Appellant misperceived how tumultuous and out-of-control the situation had become and his failure to accept any responsibility whatsoever for his own poor judgment that contributed to the escalation, rather than the de-escalation of the conflict demonstrates that he does not fully appreciate his serious lapse in judgment.[23]

[23] I have considered the views expressed in the dissent that would place more weight on this unexplained gap in the evidence, along with other facts, and correspondingly would conclude that the Respondent met its burden to prove by a preponderance of evidence that the Appellant engaged in domestic abuse. I stand by the analysis I have set forth above. In particular, I do not find the hearsay and uncorroborated statements in the report of Officer Charette, who was not called to testify; an isolated 2015 verbal reprimand; photographs taken the following day (which appear to show a minor cut to the interior of Ms. A's lip, but are inconclusive evidence that the Appellant struck a blow to her mouth or otherwise assaulted her); or the damage to Ms. A's clothes absent physical or photographic evidence, sufficiently probative to outweigh the weight of the other credible testimony and documentary evidence that, as a whole, discredits Ms. A's version of the incident and her claim to being the victim of a domestic assault.

Modification of the Discipline

Having concluded that the facts, as found by the majority of the Commission after a de novo hearing, differ materially from those upon which the EFD relied to justify the decision to terminate the Appellant, I must consider whether the circumstances, as found by the Commission, warrant allowing the appeal or, alternatively, a modification of the penalty. As explained above, the preponderance of the credible evidence does not establish that the Appellant's misconduct rose to the level of domestic assaults as charged but I am persuaded that it shows a sufficient level of poor judgment and lack of candor that cannot be tolerated in the second-in-command of a municipal fire department and that it warrants a demotion from his position as a senior-level commander.

Finally, I have taken account of the Appellant's failure to testify at the appointing authority hearing. Ordinarily, the Commission exhorts an appellant to present a defense at the appointing authority level and failure to do so may result in taking an adverse inference against the appellant. Here, however, I find that failure to testify deserves diminished weight when considered together with the facts that the Appellant did testify under oath before the Commission (while his criminal case was still pending) and put himself in jeopardy by testifying on his own behalf at the criminal trial, resulting in his acquittal.[24] Under these circumstances, I do not find that the failure to testify at the appointing authority hearing sufficiently probative to change the result that I conclude must be reached after my de novo review of all of the credible evidence presented to the Commission; namely, that the basis for his termination based on alleged assaultive behavior has not been proved by a preponderance of the evidence. I have, however, considered the Appellant's failure to testify

[24] I note that, the date for the evidentiary hearing in this appeal was initially set so that it occurred after the scheduled date for the Appellant's criminal trial. Although, as it turned out, as a result of the COVID emergency the Commission was able to resume evidentiary remote hearings sooner than the judiciary was able to resume jury trials. I do not discount the Appellant's decision not to testify at the appointing authority hearing as a tactical decision by counsel which, while it does not vitiate the ability of a fact-finder to draw an adverse inference from that decision, it does bear on what weight, if any, to give to such an inference, after taking it into account, along with all the other relevant evidence I received during the de novo hearing before this Commission.

at the appointing authority hearing in deciding what modification of the level of discipline, short of termination, is appropriate under the facts found by the Commission. The Appellant's failure to cooperate in an official investigation, coupled with his poor judgment described above, warrants not only his removal from any leadership position within the EFD but a temporary five-year disqualification from seeking promotion within the EFD.

In sum, I conclude that the preponderance of the evidence fails to establish that the Appellant initiated an assault against Ms. A or threatened her with a loaded weapon, which the termination letter asserted were the reasons for discharging him from the EFD. His poor judgment in going to Ms. A's home at 10 pm for the first time eight days after ended their romantic relationship to discuss a work-related issue and then taking dangerous and problematic steps to separate her from her firearm and fending off her aggressive behavior, for which he does not acknowledge appropriate responsibility, does rise to the level of misconduct reasonably related to his fitness to perform the leadership duties of his position as the EFD's Deputy Fire Chief and does warrant the Commission exercising its discretion to modify the discipline from a termination to a demotion, plus a temporary disqualification from promotional opportunities.

CONCLUSION

For the reasons stated, the Appellant's appeal, Case No. D1-20-011 is hereby ***allowed, in part.*** The discipline of the Appellant, Timothy Griffin is modified from termination to a demotion.. to the position of Firefighter. He shall be reinstated to the EFD in that position of Firefighter, effective January 11, 2020, without loss of other compensation or benefits available to him in the position of an EFD firefighter. He shall be eligible for promotion no earlier than February 1, 2027.

Civil Service Commission

/s/ Paul M. Stein
Paul M. Stein, Commissioner

By a 3 to 2 vote of the Civil Service Commission (Chair Bowman – No; Commissioner Camuso – Yes; Commissioner Ittleman – No; Commissioner Stein – Yes; and Commissioner Tivnan – Yes) on January 27, 2022.

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:
Joseph F. Krowski, Sr., Esq. (for Appellant)
Marc L. Terry, Esq. (for Respondent)

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
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(617) 979-1900

TIMOTHY GRIFFIN,
Appellant

D1-20-011

v.

TOWN OF EASTON,
Respondent

OPINION OF COMMISSIONERS BOWMAN AND ITTLEMAN

We agree with the majority's conclusion that, when a public employee engages in domestic abuse, particularly a public safety employee in a command position, his/her employer is justified in imposing discipline, up to and including termination. We see nothing in the majority's decision that wavers from the Commission's long held position on this point.

Here, in this admittedly difficult case, we respectfully reach a different conclusion regarding the question of whether the preponderance of evidence shows that the Appellant engaged in domestic abuse. While we defer to the thoughtful credibility assessments of the Commissioner who heard this appeal, we believe that the record, when viewed in its entirety, supports a conclusion by a preponderance of the evidence that the Appellant did indeed engage in domestic abuse warranting his termination from the Easton Fire Department.

Importantly, the Town made its decision to terminate the Appellant after conducting a local hearing in which both the Appellant and the alleged victim were given the opportunity to testify before a hearing officer. Ms. A testified at that local hearing and the Appellant did not. The Town's hearing officer heard unrefuted testimony from Ms. A that the Appellant, upon entering Ms. A's home around 10:00 P.M., demanded to see Ms. A's cell phone. When she refused, the Appellant, while searching for the phone, struck Ms. A and ripped her clothes. The

local hearing officer also reviewed documentary evidence, including police reports and photographs, verifying that Ms. A's clothes were torn, she had a cut lip and there were red marks on her arms, wrist, hands, chest and neck. Again, the Appellant chose not to testify at the local hearing to refute Ms. A's testimony, the police reports or photographs. The Appellant also refused to participate in the internal investigation that preceded the local hearing that was conducted by an independent firm contracted by the Town, even after the investigator agreed to provide the Appellant, through counsel, with a list of questions in writing beforehand. The Town accepted the hearing officer's recommendation to terminate the Appellant.

At the hearing before the Commission, the Appellant, for the first time, offered a wildly divergent version of events, effectively arguing that Ms. A was the physical aggressor, he was engaging in self-defense and that Ms. A self-inflicted the injury to her lip. Even if the Appellant's testimony in this regard, which was never provided to the independent investigator or the local hearing officer, is accepted, there is no plausible explanation given regarding how Ms. A sustained marks on other parts of her body, how her clothes were ripped or why she fled her own home and called police that night.

Beyond the testimony of Ms. A, offered consistently at both the Town's hearing and the Commission hearing, other parts of the record paint a picture of what, more likely than not, occurred that night including, but not limited to:

- The Appellant has been disciplined in the past for a verbal outburst at work;
- The tone and tenor of the texts sent by the Appellant prior to his arrival at Ms. A's home that night and his failure to abide by her initial request not to visit her home.
- The above-referenced police reports and photographs.

Based on a review of the entire record, and when accounting for the adverse inference that the Town was entitled to make based on the Appellant's failure to give statements to the investigator or testify before the local hearing officer, we believe that the preponderance of the evidence supports the Town's findings that the Appellant engaged in domestic abuse warranting his termination from employment from the Town of Easton's Fire Department.

Civil Service Commission

/s/ Christopher C. Bowman
/s/ Cynthia A. Ittleman

January 27, 2022