COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

ANGELA HALCOVICH,
Appellant,

Docket No.: D1-17-158

v.

CITY OF REVERE,
Respondent

Appearance for Appellant:

Robert A. Boncore, Esq.
Boncore Law Office
1140 Saratoga Street
East Boston, MA 02128

Appearance for Respondent:

Matthew J. Buckley, Esq.
Law Office of Matthew J. Buckley
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Commissioner:

Cynthia Ittleman

DECISION

Angela Halcovich (Ms. Halcovich or Appellant) filed the instant appeal at the Civil Service Commission (Commission) on August 8, 2017 under G.L. c. 31, s. 43, challenging the decision of the City of Revere (Respondent) to terminate her employment as a police officer. A prehearing conference was held on October 3, 2017 at the offices of the Commission in Boston. A full hearing[1] was held on January 10, 2018 at the same location. The hearing was deemed to be private since I did not receive a request from either party for a public hearing. The witnesses were sequestered. The hearing was digitally recorded and the parties received a CD of the

[1] The Standard Adjudicatory Rules of Practice and Procedure, 810 CMR ss. 1.00, et seq., apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules taking precedence.

recording. [2] The parties submitted post-hearing briefs. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

Thirty (30) exhibits were entered into evidence at the hearing.[3] At the hearing, the parties were ordered to produce court documents concerning a restraining order that the Appellant obtained at or about the time of the incidents that led to the Appellant's termination of employment and the transcript of the State Police interview of the Appellant. The Appellant produced the court record of the restraining order, which was entered into the record and marked as Appellant's Post-Hearing Exhibit (A.PH.Ex.) 1. The Appellant advised that the transcript could not be prepared in a timely manner so the Appellant withdrew the request to include it in the record. Based on all of the exhibits, the testimony of the following witnesses:

Called by the Respondent:

- James Guido, Chief, Revere Police Department (RPD)
- John Goodwin, then-Lieutenant in the RPD, now Deputy Chief of the Winthrop Police Department (WPD)

Called by the Appellant:

- Angela Halcovich, Appellant

[2] If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing 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. If such an appeal is filed, this CD should be used to transcribe the hearing.

[3] The Respondent's exhibits are Exhibits 1, 1A, 1B, 2 through 5, 6A, 6B, 6C, and 7 through 13. The Appellant's exhibits are Exhibits 14, 15A, 15B, 15C, 16, 17, 18A, 18B, 19, 20, 21A, 21B, 21C, 22A, 22B, 22C and 23. As noted above, the Appellant also provided a post-hearing document that was entered into the record. In addition, I take administrative notice of two (2) decisions that the Respondent submitted with its post-hearing brief: Lawrence v Lawrence Firefighters, Local 146 IAFF, Essex Superior Court C.A. No. 2017-0163-B and Clancy v Brockton Public Schools, 18 MCSR 66 (2005).

Given the amount of personal information in many of the admitted Exhibits, at the end of the hearing I returned the parties' Exhibits to them for the purpose of redacting them and they returned them, redacted, to the Commission. Exhibits 6A – 6C, which are photographs of Younger Child depicting his pertinent injuries, are completely redacted. The other evidence in the record suffices to render this decision.

And taking administrative notice of all matters filed in the case and taking administrative notice of pertinent statutes, case law, regulations, rules, policies, and reasonable inferences from the evidence, a preponderance of the credible evidence establishes the following facts:

1. The Appellant was raised in Revere. She served in the U.S. Marines from 2003 to 2007 and was honorably discharged as a Staff Sgt. E-6, achieving five (5) promotions. While in the military, she obtained a Bachelor's degree and took courses toward a Master's degree, which she completed after she was hired by the RPD as a Patrol Officer in 2014. The Appellant has earned a number of training certifications as a member of the RPD. Prior to her termination, the Appellant was a tenured police officer. She is a single parent of two small children. (Testimony of Appellant; Respondent's Exhibit (R.Ex.) 1)
2. In the beginning of 2015, the Appellant began a friendship that developed into a romantic relationship with Mr. G, a fellow RPD Patrol Officer. On the evening of January 12, 2017, the Appellant was at her residence with her two children and Mr. G. (Testimony of Appellant; R.Ex. 7*)*
3. One of the children, Younger Child, refused to eat his dinner. Mr. G told the Appellant he was bringing Younger Child upstairs. (Testimony of Appellant)
4. Mr. G then brought Younger Child upstairs to his room where he struck him several times with a belt. (Testimony of Appellant; R.Ex. 7)
5. Mr. G then asked Appellant to come upstairs and she observed that Younger Child had bruises and welts on his back and was or became aware that the injuries were inflicted by a belt. (Testimony of Appellant).
6. Mr. G remained at the residence for approximately twenty (20) minutes then left. (Testimony of Appellant, R.Ex. 8)

7. The following morning, the Appellant put lotion on Younger Child's injury from being stricken with a belt by Mr. G, dressed him in a hoodie and instructed him to wear it all day and told both Younger Child and Older Child to say, if anyone asked them about the hoodie, that Younger Child fell down the stairs. (Testimony of Appellant; R.Ex. 8)
8. The Appellant then brought her children to school, and reported to work at RPD. (Testimony of Appellant)
9. That morning, Younger Child asked the school nurse for a band-aid for his back. The nurse observed extensive bruising on his front and back torso, arms, and neck and took photographs of his injuries.[4] (R.Exs. 6A-6C)
10. Younger Child told the school staff that he fell down the stairs at home and that his mother, the Appellant, had put lotion on his injuries. (R.Exs. 5 and 7)
11. Younger Child's school contacted the Appellant, who arrived at the school shortly thereafter and was shown his injuries. The Appellant said that she was unaware of the bruising but stated that Younger Child must have injured himself when he fell down the stairs a few days ago. The Appellant told the school nurse she would be take him to his pediatrician at Beth Israel Hospital-Revere. (Testimony of Appellant; R.Exs. 5, 7 and 8)
12. The school nurse, as a mandated reporter under G.L. c. 119, s. 51A, contacted the Massachusetts Department of Children and Families ("DCF") to investigate the matter. (R.Exs. 5, 7 and 8)
13. DCF contacted the Suffolk County District Attorney's Office to investigate the physical abuse of Younger Child. Detective Lieutenant John Lannon ("Det. Lannon"), of the

[4] The photographs of Younger Child are not in the record but there appears to be no dispute that he was injured as a result of being struck with a belt on the night of January 12, 2017.

Massachusetts State Police, assigned to the District Attorney's Office, investigated the matter. (R.Exs. 7, 8 and 10)

14. When DCF and Det. Lannon arrived at Beth Israel Revere, the doctor treating Younger Child stated that the injuries were not consistent with falling down the stairs. DCF then took custody of both of the Appellant's children. (R.Ex. 10)
15. On January 14, 2017, Det. Lannon interviewed Mr. G about the events that occurred at the Appellant's residence on January 12, 2017. (R.Ex. 10)
16. Mr. G was subsequently arrested and charged with assault and battery on a child causing serious bodily injury and assault and battery with a dangerous weapon. (R.Exs. 7 and 10)[5]
17. On January 15, 2017, RPD Det. Lannon and Lt. Murphy interviewed the Appellant regarding the events at her home on January 12, 2017. (R.Ex. 8)
18. The Appellant told Det. Lannon and Lt. Murphy that:
    - Mr. G would help discipline her children;
    - on January 12, 2017, she found that Mr. G had taken Younger Child upstairs and struck him with a belt while she was downstairs; and
    - the next morning, the Appellant instructed both her children to say that Younger Child fell down the stairs if anyone asked, and for Younger Child to keep his hoodie on to hide the marks from having been struck by Mr. G. (R.Ex. 8)
19. The Appellant applied for a domestic abuse restraining order against Mr. G on January 18, 2017. The order was set to expire on February 1, 2017. However, on January 31, 2017, apparently at the request of both the Appellant and Mr. G, the court extended the restraining order until May 3, 2017. (A.PH.Ex.1)

[5] News reports shortly thereafter stated that Mr. G resigned from the RPD.

20. In the spring of 2017, the Appellant participated in weekly meetings with a domestic violence counselor and obtained psychotherapy at the VA. (A.Exs. 21A – C, 22A-C and 23)

21. On January 27, 2017, the Appellant was charged with two (2) counts of assault and battery with a dangerous weapon on a child under 14 under G.L. c. 265, s. 15A(c)(iv) (assault and battery with a dangerous weapon of a child under age 14) and two (2) counts of permitting another to commit an assault and battery upon a child under G.L. c. 265, s. 13J(b) (wantonly or recklessly permit another to commit an assault and battery which caused "bodily injury"). (R.Exs. 8 and 9)

22. On February 27, 2017, pursuant to G.L. c. 31, s. 41, then-Chief of the Revere Police Department, Joseph Cafarelli, suspended the Appellant for five (5) days without pay beginning February 28, 2017 and ending on March 6, 2017 for violating RPD rules regarding Required Conduct, Truthfulness, Reporting Violations, Situation Involving Off-Duty Officer, Prohibited Conduct, Criminal Conduct and Conduct Unbecoming. This letter informed the Appellant that she may request a hearing within 48 hours. (R.Ex. 2) The March 2017 hearing apparently was not conducted. (Administrative Notice)

23. Also on February 27, 2017, the Appointing Authority, Mayor Brian Arrigo, gave the Appellant a Notice of Hearing to be held on March 6, 2017 indicating that he was contemplating taking further disciplinary action against her, up to and including discharge. (R.Ex. 3)

24. On March 1, 2017, Lt. Goodwin submitted a detailed investigation report of his investigation of Mr. G and the Appellant in connection with the January 12, 2017-related events for which they were criminally charged. (R.Ex. 10)
25. On May 12, 2017, the Appellant pleaded guilty to one (1) count of permitting injury to a child and was sentenced to probation until May 10, 2019. The three (3) other charges against the Appellant, alleging that the Appellant committed an assault and battery on her children, were disposed of by nolle prosequi. (R.Ex. 9)
26. On June 26, 2017, Mayor Arrigo provided the Appellant with a Notice of Hearing that he was contemplating taking disciplinary action against her up to and including discharge for violating cited RPD rules in connection with the January 12, 2017 incident. (R.Ex. 4)
27. On July 18, 2017, Mayor Arrigo designated Assistant City Solicitor Daniel Doherty to conduct the Appellant's disciplinary hearing. (R.Ex. 1B)
28. On July 19, 2017, the hearing officer conducted the disciplinary hearing. (R.Ex. 1A)
29. On July 26, 2017, the hearing officer issued his detailed report and findings and held that the Appellant had violated the cited RPD rules regarding criminal conduct, truthfulness, reporting violations, conduct unbecoming an officer, and situations involving off-duty officers. The Appellant testified at this hearing. She asserted that Mr. G had attempted to control her personal and work life and, on five (5) occasions put his hands around her throat and/or pointed his service weapon at her. The hearing officer explicitly made no finding in that regard. (R.Ex. 1A)
30. Attorney Doherty's report found that,

> As to whether Halcovich was aware of prior incidents where [Mr. G] had struck [redacted] with a belt, the evidence was conflicting, and I make no finding either way on this point. … I do find, however, that Halcovich was aware that [Mr. G] was going to spank [redacted] with a belt on January 12, 2017. …

> … under G.L. c. 31, s. 50 … a person shall not be employed or retained in any civil service position within one year after his conviction of any crime, [the Appellant], by virtue of her sentence of two years (sic) probation, qualifies for the exemption under the statute to be employed within such one-year period in the discretion of the appointing authority. (R.Ex. 1A)
>
> … by virtue of [the Appellant's] convictions of a misdemeanor punishable by imprisonment for more than two years she is a prohibited person to be issued a license to carry firearms pursuant to G.L. c. 140, s. 131(d)(i). … I find, based on the testimony of former Revere Lieutenant John Goodwin, that it is discretionary with the Chief of Police whether to retain an officer who has been so disqualified from being issued a license to carry firearms, and that the Revere Police Department currently employs two officers who are so disqualified due to convictions for operating under the influence of alcohol. (R.Ex. 1A)

31. By letter dated August 1, 2017, Mayor Arrigo notified the Appellant that her employment at the RPD was terminated for violating cited RPD rules pertaining to truthfulness, failing to report violations, criminal conduct, and conduct unbecoming a police officer in connection with the January 12, 2017-related events. (R.Ex. 1)
32. Rule 301(c)(7), regarding truthfulness, mandates that "[a]n officer shall truthfully state the facts in all oral and written reports, including all log and record books, and in any judicial, departmental or other official investigation, hearing, trial or proceeding. He/she shall cooperate fully in all phases of such investigations, hearing, trials and proceedings except as the officer may elect not to testify or make statements otherwise pursuant to his/her constitutional or statutory rights, unless granted transactional immunity. No employee shall knowingly enter, or cause to be entered, any inaccurate, false or improper information." (R.Ex. 11)
33. The Appellant violated Rule 301(c)(7) on January 13, 2017, when she "falsely informed a mandated reporter…that [she was] not aware that [her] son was injured and that [she] did not see his injuries and that his injuries must have occurred when he fell down the stairs.

[She] later reported similar false information to investigators from the Massachusetts State Police inquiring into the crime." (R.Ex. 1)

34. Rule 301(c)(19), regarding situations involving off duty officers, mandates that officers "confronted with a situation in which the conduct of an off duty police officer is in question shall take the proper police action and request a superior officer respond to the scene." (R.Ex. 11)
35. The Appellant violated Rule 301(c)(19) in that she was "aware that a crime had been committed, i.e., assault and battery by means of a dangerous weapon on a child under 14 and did not report that crime to the Chief of Police as required." (R.Ex. 1)
36. Rule 301(D)(1), regarding criminal conduct, mandates that "[e]mployees shall obey all laws of the United States, of the Commonwealth of Massachusetts, all City of Revere ordinances and by-laws and all ordinances and by-laws of other cities and towns. An employee of the Department who commits any criminal act shall be subjected to disciplinary action up to and including discharge from the Department. Each case shall be considered on its own merits, and the circumstances of each shall be fully reviewed before the final action is taken." (R.Ex. 11)
37. Appellant violated Rule 301(D)(1) in having "prior knowledge that a fellow officer, Mr. G, was going to spank [her] young child with a belt on the evening of January 12, 2017. Further, [she] pled guilty on May 12, 2017 to the charge of permitting injury to a child under 14." (R.Exs. 1 and 9)
38. Rule 301(D)(4), regarding conduct unbecoming an officer, states that "[a]ny specific type of conduct, which reflects discredit upon the member as a police officer, or upon his fellow officers, or upon the police department he serves. Employees shall conduct

themselves at all times, whether on or off duty, in such a manner as to reflect most honorably on the Department. Conduct unbecoming an officer shall include conduct which tends to indicate that the employee is unable or unfit to continue as a member of the Department, or conduct which impairs the operation of the Department or its employees." (R.Ex. 11)

39. The Appellant violated Rule 301(D)(4) in that "all of the conduct noted…in the suspension letter and Hearing Officer's Report and Findings is conduct which reflects discredit upon [her] as a police officer as well as to the entire Revere Police Department." (R.Ex. 11)

40. The Appellant filed the instant appeal with the Commission on August 9, 2017. (Administrative Notice)

Applicable Civil Service Law

G.L. c. 31, s. 43 provides:

> "If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority."

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304 (1997);

Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass.App.Ct. 486, 488 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

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

Under section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. However, "[t]he commission's task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision'," which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Id., quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

Also under section 43, the Commission has "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).

It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. "[T]he assessing of the credibility of witnesses is a preserve of the [Commission] upon which a court conducting judicial review treads with great reluctance." Leominster v Stratton, 58 Mass.App.Ct. 726, 729 (2003); *see* Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997). *See also* Covell v. Dep't. of Social Services, 439 Mass. 766, 787 (2003).

Truthfulness is essential for a police officer. To this end, the Commission has noted, for example, that,

> … [t]he criminal justice system relies on police officers to be truthful at all times and an appointing authority is justified in bypassing a candidate who does not meet this standard. *See, e.g.*, LaChance v. Erickson, 522 U.S. 262 (1998) (lying in a disciplinary investigation alone is grounds for termination); Meaney v. Woburn, 18 MCSR 129, 133-35 (discharge upheld for police officer based, in part, on officer's consistent dishonesty and "selective memory" during departmental investigation of officer's misconduct); Pearson v. Whitman, 16 MCSR 46 (appointing authority's discharge of police officer who had a problem telling the truth upheld); Rizzo v. Town of Lexington, 21 MCSR 634 (2008) (discharge upheld based partially on officer's dishonesty regarding a use of force incident); and Desharnias v. City of Westfield, 23 MCSR 418 (2009) (discharge upheld based primarily on officer's dishonesty about a relatively minor infraction that occurred on his shift).
> Wine v. City of Holyoke, 31 MCSR 19 (2018).

Analysis

The Respondent has established by a preponderance of the evidence that it had just cause to discipline the Appellant. In the spring of 2017, the Appellant pleaded guilty to permitting injury to one of her minor children by Mr. G in violation of G.L. c. 265, s. 13J(b)(third

paragraph) on January 12, 2017, for which she was sentenced to two (2) years of probation. After investigations (first by the State Police regarding the criminal charges and the second by the RPD to determine if the Appellant violated RPD rules), the Respondent conducted a disciplinary hearing under G.L. c. 31, s. 41. The hearing officer issued a detailed report finding that the Appellant was untruthful when she falsely informed a mandated reporter at school that she was not aware that her son was injured and that his injuries occurred when he fell down the stairs and later made similar false statements to State Police investigators in violation of the RPD rule concerning truthfulness. The hearing officer's report also found that she was aware that Mr. G, a fellow RPD officer, committed a crime against one of her children and failed to report the crime to the Chief of Police in violation of the RPD rule requiring officers to report such matters. The report found also found that on May 12, 2017, the Appellant pleaded guilty to permitting injury of a child under age 14 in violation of the RPD rule concerning criminal conduct by officers. Further, the report found that the Appellant's actions in these regards constitute conduct unbecoming a police officer that discredits her and the Department in violation of the pertinent RPD rule. This Appellant's actions and/or inactions constitute substantial misconduct which adversely affect the public interest by impairing the efficiency of public service.

The question that follows is whether the Respondent had just cause to discipline the Appellant by terminating her employment. G.L. c. 31, s. 50 provides, in part,

> No person habitually using intoxicating liquors to excess shall be appointed to or employed or retained in any civil service position, nor shall any person be appointed to or employed in any such position within one year after his conviction of any crime except that the appointing authority may, in its discretion, appoint or employ within such one-year period a person convicted of any of the following offenses: a violation of any provision of chapter ninety relating to motor vehicles which constitutes a misdemeanor or, any other offense for which the sole punishment imposed was (a) a fine of not more than one hundred dollars, (b) a sentence of imprisonment in a jail or house of correction for less than six months, with or without such fine, or (c) a sentence to any other penal

> institution under which the actual time served was less than six months, with or without such fine…. (Id.)(emphasis added)

This statute bars certain people from civil service employment within a year after they have been convicted of certain crimes. However, the statute further provides civil service employers the discretion to hire or retain such persons within the year of their conviction if their conviction was for certain misdemeanors. Since the Appellant pleaded guilty to a misdemeanor and was sentenced only to probation and one $50 fine, the Respondent could continue the Appellant's employment if it so chose. Here, the Respondent declined to exercise its discretion to retain the Appellant within the year following her conviction based on its findings the led to its termination of her employment or thereafter. However, the Respondent also declined to continue her employment as a police officer because she is not authorized to have a license to carry a gun. To that end, the Respondent cites G.L. c. 140, s. 131(d)(i). Subsection (d) states that certain people may apply for a license to carry firearms as long as they are not "prohibited persons". Subsection (d)(i) defines a "prohibited person" as someone who,

> has, in a court of the commonwealth, been convicted … for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; … (Id.)(emphasis added).

Although the Appellant was sentenced to two (2) years of probation for a misdemeanor, a conviction of the crime of permitting the injury of a child is punishable for up to two and one-half years imprisonment.[6] As a result, the Appellant is a prohibited person under the statute and she is unable to possess a license to carry a firearm. The Respondent's hearing officer's report indicates that, at the time, the Respondent employed two (2) officers "who are so disqualified

[6] I take administrative notice that the Felony and Misdemeanor Master Crime List by M.G.L. Reference, June 2018, issued by the Massachusetts Sentencing Commission, indicates that permitting injury to a child under age 14, pursuant to G.L. c. 265, s. 13J(b)(paragraph 3), with which the Respondent hearing officer indicated that the Appellant was charged, pertaining to "injury" to a child, constitutes a misdemeanor but that permitting "substantial injury"(paragraph 4) to a child under 14 constitutes a felony. https://www.mass.gov/doc/master-crime-list/download (February 6, 2020). There is no indication in the record that the Appellant was charged with permitting "substantial injury" to a child pursuant to paragraph 4 of the statute, which the Master Crime List states is a felony.

due to convictions for operating under the influence of alcohol." (R.Ex. 1A) A first or second offense OUI (G.L. c. 90, s. 24(1)(a)(1)) sentencing ceiling is two and a half years, like the Appellant's conviction.[7] However, the record here does not include sufficient information to determine whether the two (2) officers were so convicted, charged with untruthfulness, and are prohibited persons, like the Appellant, barred from possessing a license to carry a firearm under G.L. c. 140, s. 131(d)(i). While a police department may have the discretion to retain employment of officers who have been convicted of crimes and can no longer have a license to carry a firearm to perform the functions of an officer, they should have objective reasons for such decisions and equitably apply them, assuming that the officers are fit for duty. This is not a case in which a police department has suspended an officer's license to carry a firearm to discipline an officer and bias or other improper motive may be of concern. The Appellant's conviction, under G.L. c. 31, s. 50, and her status as a "prohibited person" under G.L. c. 140, s. 131(d)(i), determine her fate. The Respondent is not obliged to exercise its discretion to restore her to her position as police officer, without a firearms license, and a modification is not warranted. I find no evidence of bad faith on the part of the Respondent in refusing to exercise its statutory discretion to retain the Appellant's employment. *See* Kraft v Police Commissioner of Boston, 417 Mass. 235 (1994)(In deciding whether a Police Commissioner violated a court order returning a police officer to duty, the standard was whether the Police Commissioner's decision was made in a "good faith effort to fulfil his statutory managerial function.").

Conclusion

Accordingly, for the above stated reasons, the discipline appeal of Ms. Halcovich, Docket No. D1-17-158, is hereby ***denied***.

[7] *See* Felony and Misdemeanor Master Crime List by M.G.L. Reference, June 2018, issued by the Mass. Sentencing Commission (*supra*).

Civil Service Commission

/s/Cynthia A. Ittleman

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Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 27, 2020.

Either party may file a motion for reconsideration within ten days of the receipt of the Commission's 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 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:
Robert A. Boncore, Esq. (for Appellant)
Matthew J. Buckley, Esq. (for Respondent)