

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

Ronald Hilchey,
Appellant

v.

D-04-507

City of Haverhill,
Respondent

Appellant's Attorney:

William P. Boland, Esq.
Gleason Law Offices, PC
163 Merrimack Street
Haverhill, MA 01830

Respondent's Attorney:

William D. Cox, Jr., Esq.
City Solicitor
145 So. Main Street
Bradford, MA 01835

Commissioner:

Daniel M. Henderson, Esq.

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Ronald Hilchey, (herein after referred to as "Appellant" or "Hilchey") is appealing the decision of the Respondent, the City of Haverhill,(herein after referred to as the "City", "Respondent", or "Appointing

Authority”) to suspend him, for a period of two days without pay, from the position of police officer. The original period of suspension was for a period of four (4) days. However, after the parties encountered difficulty obtaining findings of fact from the hearing officer at the Appointing Authority’s disciplinary hearing, the parties thereafter agreed to a reduced discipline of two (2) days. The specific reasons for the suspension were the Appellant’s violation of Haverhill Police Department Rules and Regulations: Unbecoming Conduct: Rule 102 Section H. While speaking with a citizen (Cheryl Fitzgerald, now deceased), regarding a complaint she had filed with the department on behalf of her son, the Appellant stated in reference to Detective Dekeon (the subject of the complaint) the following: 1.) *“If it were me, I’d be without a job”* 2.) *“I couldn’t believe Detective Dekeon was still working”*. These statements by the Appellant were determined to infer that the department lacked objectivity in investigating the complaint and suggested preferential treatment of Detective Dekeon. It is claimed that these statements caused damage to the department. The appeal was timely filed. A Full Hearing was held on July 17, 2007 at the offices of the Civil Service Commission before Commissioner Daniel M. Henderson. One audiotape was made of the hearing. As no party made a request that the hearing be public, the hearing was determined to be private. No briefs or proposed decisions were filed by either party.

FINDINGS OF FACT

Based upon the documents entered into evidence, by stipulation (Exhibits A-J), the testimony of the Appellant and Donald Thompson (now acting Deputy Chief and then, Detective Commander), I make the following findings of fact:

1. At the time of the alleged incident, the Appellant had been employed as a patrolman by the City of Haverhill Police Department for approximately twelve and one-half years. (Testimony)
2. The Appellant did receive the discipline of a four (4) day suspension, the subject matter of this appeal, from Haverhill Police Chief Alan R. DeNaro, by letter dated July 28, 2004. The four days of the suspension were to occur on July 28, 31, August 1 and August 2, 2004. The reasons for the discipline were a violation of the Rules and Regulations of the City of Haverhill Police Department, Conduct Unbecoming, (Rule 102 sec. H). Specifically, while speaking with a citizen, ([REDACTED]) regarding a complaint she had filed with the department on behalf of her son, the Appellant stated the following: *1. If it were me, I'd be out of a job. 2. I couldn't believe Detective Dekeon was still on the job.* These statements were determined by Chief DeNaro to infer that the department investigation lacked objectivity and suggested that preferential treatment had been given to Detective Dekeon. The Chief further determined that these statements, made to a citizen of the City, was unfair and unfounded under the circumstances and did cause damage to the Police Department.(Exhibits A, H, I and testimony)
3. Hilchey was charged with violation of the Rules and Regulations of the City of Haverhill Police Department, specifically (section H. of) "Rule 102 Unbecoming Conduct: Members of the Police Department shall conduct themselves at all times, both on and off duty, in such a manner to reflect most favorably on the Department. Unbecoming conduct shall include that which brings the Department

into disrepute or reflects discredit upon the individual as a member of the Police Department, or which impairs the operation or efficiency of the Department or the individual. The actions of a police officer that have a reasonable relationship to his/her job performance and/or image and reputation of the police department include, but are not limited to the following” Section H thereof refers specifically to “Any activity that has a tendency to destroy public respect for municipal employees and confidence in the operation of the police department.” (Exhibit H and testimony)

4. On July 28, 2004, the day that the Appellant received the notice of discipline, (the four-day suspension), from Chief DeNaro, the Appellant made a written request for a hearing on the discipline. A disciplinary hearing was subsequently held by the Appointing Authority. (Exhibit B and testimony)
5. The original period of suspension was for a period of four, (4) days. However, after the parties encountered difficulty obtaining findings of fact from the hearing officer who presided at the Appointing Authority’s disciplinary hearing, the parties agreed to a reduced discipline of two (2) days. (Exhibit J, stipulation and testimony)
6. The Appellant, Ronald Hilchey, subsequently filed a timely appeal of this two (2) day suspension, at the Civil Service Commission. (Administrative notice of Docket No. D-04-507)
7. On May 24, 2003, the incident occurred which eventually spawned an investigation, resulting in this disciplinary action. On that day, her son was arrested by Haverhill Police and charged with Assault and Battery with a

- Dangerous Weapon. On May 26, [REDACTED] went to the Police Station and spoke with Captain Alan Ratte. Fitzgerald complained to Captain Ratte that during her son's arrest, her son had been choked by a police officer. Captain Ratte told [REDACTED] that he would look into the allegation. [REDACTED] called Captain Ratte the next day and Captain Ratte informed her that he had reviewed the Booking Room Tape and saw no evidence of an assault. [REDACTED] then became upset, stating that she would call the Mayor. (Exhibit F and testimony)
8. Several days after [REDACTED] spoke with Captain Ratte, [REDACTED] again came to the Police Station and told Captain Ratte that Detective George Dekeon was the Officer who had choked her son. She accused Captain Ratte of lying to her and also stated that she believed that this incident was being covered up. [REDACTED] had received this information about Detective Dekeon being the assailant and Captain Ratte covering it up from Officers Ronald Hilchey and Mark Garrett. (Exhibit F, exhibits and testimony)
9. On June 12th, [REDACTED] filed a citizen's complaint with the Haverhill Police Department. In that complaint, [REDACTED] alleges that Detective George Dekeon choked her son. Also in that citizen's complaint, [REDACTED] writes; "I was informed that Allen Ratty (sic), was covering this up I have proof of this that will come out with my attorney." (Exhibit F and testimony)
10. On June 24, Captain Thompson, of the Haverhill Police Department, contacted [REDACTED] by telephone. Thompson informed [REDACTED] that he would be conducting an investigation of her complaint. [REDACTED] told Thompson that she

had retained an attorney but she would not name him. She told Captain Thompson that her attorney would contact him. (Exhibit F and testimony)

11. On June 25, Attorney Stephen Collela called Captain Thompson advising him that he was representing [REDACTED] in regards to her citizen's complaint. Collela also informed Thompson that [REDACTED] had indicated that she was considering filing a criminal complaint against Detective Dekeon. Attorney Collela stated that he advised [REDACTED] against this. During this conversation Captain Thompson stated to Collela that [REDACTED] was indicating that she had spoken with Police Officers who had stated to her that the assault had happened and that it was being covered up. Collela went on to say that the officers had been in trouble before and believed that George Dekeon was being treated better than they were. (Exhibit F and testimony)

12. Later in the day, on June 25, [REDACTED] made a request at the Haverhill District Court Clerk's Office, for a criminal complaint of Assault and Battery, to issue against Detective George Dekeon. The application for a complaint was scheduled for a probable cause hearing before an Assistant Clerk on August 29, 2003. (Exhibit F and testimony)

13. On August 29th, a probable cause hearing was held before Assistant Clerk-Magistrate Ralph LaBella. At that hearing [REDACTED] testified that *"a couple of guys"* had told her that the case was being covered up. At the end of the hearing Assistant Clerk-Magistrate LaBella ruled that no probable cause existed to issue the complaint of Assault and Battery against Detective George Dekeon. LaBella specifically found, in that hearing, that [REDACTED] was credible as a witness.

- However, LaBella also found that what she had been told by some other person(s) was untrue. (Exhibit F and testimony)
14. After that hearing, [REDACTED] spoke with Captain Thompson on the Courthouse steps. Thompson there asked who the “**Guys**” were, who told her the case was being covered up. [REDACTED] agreed to talk and she stated that the Officers were **Ron Hilchey and Mark Garrett**. [REDACTED] agreed to meet with Captain Thompson to further discuss the statements made by Officers Hilchey and Garrett. (Exhibit F and testimony)
15. On September 10, 2003, [REDACTED] met with Captain Thompson and Sergeant Dana Burrill. A taped interview was conducted. [REDACTED] stated during the interview that shortly after her son had been arrested, **Officer Mark Garrett** came to her home. Garrett advised her to “**Continue to fight and don’t let go**” and he further stated that if it were him, “**he would be out of a job, that he would be terminated, or put on the desk**”. Garrett also told her, “**Not to give the paperwork to Alan Ratte, he’ll cover it up, he’s covering up for this.**” (Exhibit F and testimony)
16. During that taped interview, [REDACTED] also stated that **Officer Ron Hilchey** approached her, near in time to Officer Garrett’s visit, regarding the allegations against Detective George Dekeon. Hilchey told her that **if it were him accused of assaulting her son, “He would be out of a job.”** Hilchey also told her that “**They were covering up**” the investigation. **When asked during the interview, who Hilchey said was covering up? She answered, “Alan Ratte.”** (Exhibit F and testimony)

17. [REDACTED] also stated during that interview, that after the Probable Cause hearing had been conducted, **Officer Hilchey** approached her again. Hilchey then said to [REDACTED], that *he could not believe that George Dekeon, "Got away with it"* (Exhibit F and testimony)
18. During that taped interview, [REDACTED] emphasized that both Officers Garrett and Hilchey had approached her several times, about the case and told her that Captain Ratte would cover up the case. [REDACTED] further stated that Garrett and Hilchey never visited her at the same time but when they did visit separately, they used the same terms and expressions (e.g. "They are walking on eggshells down at the station" and "cover up".) Because of this [REDACTED] did believe and this Hearing Officer also finds that *Officers Hilchey and Garrett were discussing the case together and also discussing, with each other, their visits to her.* (Exhibit F, exhibits and testimony)
19. On October 16, 2003, Captain Thompson also conducted a taped interview with Officer Ron Hilchey, regarding his statements made to [REDACTED] concerning the arrest of her son Walter. During the interview, Hilchey acknowledged that he knew [REDACTED] and that he had known her for about 7 years. He also acknowledged that he spoke with [REDACTED] about her son's arrest. Hilchey believed that he probably spoke twice with [REDACTED]. Hilchey acknowledged that he told [REDACTED] that *she should go forward with her complaint against Detective Dekeon.* Hilchey also admitted that he told [REDACTED] *that if it were him, he would be without a job* and stating that *he could not believe that Detective Dekeon was still working.* Hilchey however *denied telling* [REDACTED]

that there was an effort to cover up the case and he denied stating that Captain Ratte would cover up this case, (alleged assault by Dekeon). He also denied telling [REDACTED] not to return her citizen's complaint to Captain Ratte. However his denial was indefinite. He answered "I'm sorry. I'm trying to think. I don't believe I told her anything like that." And then he answered a second time, "I don't believe I said that". These indefinite denials by Hilchey are not believed. These are the kind of statements that a person would normally remember under these circumstances. (Exhibit F and testimony)

20. It is noted at this time, that **Officer Mark Garrett**, who is the other Officer who was investigated along with Officer Ronald Hilchey, did also receive discipline for his conduct and statements regarding the alleged assault of [REDACTED]'s son Walter, by Detective Dekeon and the subsequent investigation of the citizen's complaint filed by [REDACTED]. Officer Mark Garrett ***did receive the discipline of termination from employment, by the Appointing Authority for his conduct and statements related to this matter.*** Officer Mark Garrett did subsequently file a timely appeal of that discipline, pursuant to G.L. Chapter 31, § 43, with the Civil Service Commission. A Full Hearing of that appeal was subsequently heard at the Civil Service Commission by this Commissioner on October 14 and December 14, 2004. A decision was voted on and issued by the Commission, on that appeal, on December 8, 2005. ***That decision dismissed the Appellant Mark Garrett's appeal on Docket No. D-04-63.*** See Mark Garrett v. City of Haverhill, 18 MCSR 381, (2005) (Administrative notice)

21. In that prior decision, D-04-63, Mark Garrett v. City of Haverhill, 18 MCSR 381, (2005), there were numerous Findings of Fact made regarding the demeanor, testimonial capacity and credibility of the witness, [REDACTED], who testified at that hearing. Those Findings of Fact: Nos. 15, 16, 17, 20, 23, 29 and 34 did support that part of the Conclusion contained in that decision, at page 15 which stated "... [REDACTED] answered in a straightforward, unhesitating and convincing manner. I could not detect any inconsistency or exaggeration in her testimony about her conversations and encounters with the Appellant, (Garrett)". Those Findings of Fact and the related Conclusion do support and refresh my present memory of her testimony at the Mark Garrett Full Hearing. I found her to be a credible witness, having given reliable and consistent testimony. [REDACTED]'s prior testimony and interviews in the Garrett case dealt with the same subject matter as this present case. [REDACTED] was unable to testify in this present appeal of the Appellant, Ronald Hilchey, since she is now deceased, having died in the Fall of 2006. (Administrative notice, stipulation and testimony)
22. Ronald Hilchey was charged with behavior determined to be Unbecoming Conduct in violation of the Rules and Regulations of the City of Haverhill Police Department, (Rule 102 Sec. H). He did say to a citizen [REDACTED] regarding a complaint she had filed with the Department on behalf of her son, the following statements: 1.) *"If it were me, I'd be without a job"* and 2.) *"I couldn't believe Detective Dekeon was still working"*. These statements by the Appellant were determined, when uttered, to infer that the department lacked objectivity in investigating the complaint and suggested preferential treatment of Detective

Dekeon. These statements also infer that Dekeon did commit the alleged assault. It is claimed and I also find that these statements caused damage to the department. I find that Hilchey did make those two statements to Citizen [REDACTED]. He made those statements while considering only his own self interest. He made those statements without fully considering the consequences for Detective Dekeon, other officers and the Haverhill Police Department. He made these statements while in police uniform and on duty. These statements caused [REDACTED] to believe that her son had been assaulted and that some officers in the Police Department were covering it up. This spurred her on and motivated her to file a citizen's complaint and an application for a criminal complaint in the Haverhill District Court against Detective Dekeon. The statements of Hilchey, the citizen's complaint and criminal application filed by [REDACTED] did damage the respect and the confidence that the public held for the Police Department and some of its officers. (Exhibit A, H, exhibits and testimony)

23. Ronald Hilchey was interviewed on December 17, 2003, during this investigation and the interview notes were transcribed. Some of the questions and answers of that interview, as transcribed, are as follows: TRANSCRIPT OF INTERVIEW

“Q. Did you advise [REDACTED] that Captain Ratte would cover up this investigation involving her son?

A. No.

Q. Did you approach [REDACTED] after the P.C. hearing and state “I can’t believe (Dekeon) got away with it?

A. No.

Q. How many times did you see [REDACTED] regarding Dekeon/Walter invest?

A. 2 x’s

Q. On my time or yours?

A. On duty early nights & late nights 8:00 AM.

Q. Were you at her home on police business?

A. 1 time for about 20 minutes (and once spoke on phone)

Q. Who did you discuss Walter case with?
A. Garrett & J. Spero
Q. Were you surprised he was still working?
A. No.
Q. Did you discuss this case with Ofc. Garrett? When?
A. After first time I spoke with [REDACTED].
Q. What did you discuss with Mark (Garrett)?
A. Told Mark she hired an attorney./ Mark advised she received a call from an unnamed officer with info about the case.
Q. Was there a problem with this investigation that you are aware of?
A. No.
Q. What did you discuss with her ([REDACTED])?
A. Served her juv. Summons ref. her other son for vandalism. She initiated conversation about investigation. Stated she has info from a cop that her son was assaulted.
Q. Did you ask who the cop was?
A. Yes she wouldn't say.
Q. What did you discuss with Ofc. Joe Spero?
A. Was surprised he not placed on admin leave.
Q. Did you discuss case specifics with Joe Spero?
A. Only discussed that I was surprised hearing for Dekeon held in Haverhill Dist. Court."

It is noted that Hilchey contradicted himself during this short interview. He initially stated that he was not surprised that Detective Dekeon was still working during the investigation. Then he later stated that when he spoke with Officer Joe Spero he told Spero that he was surprised that Dekeon was still working.
(Exhibits A, D and testimony)

24. [REDACTED] was interviewed by Captain Thompson on September 10, 2003 and that interview was transcribed and reduced to a transcript. On page 6 of that transcript [REDACTED] indicates that Hilchey had only been to her door on one occasion about the incident with her son. Later on page 16 of the transcript, she was asked: "Q. We were talking about Officer Hilchey and that he came over here. How many times do you think he came over here while this process was going on? A. Ron Hilchey, I think it was three--four times --three or four times I

- talked to him.” I do not attribute this apparent inconsistency to [REDACTED] [REDACTED]’s lack of veracity but to the phrasing of the question and her misunderstanding of the question. She answered with the total number of times she had spoken with Hilchey about the incident involving her son and not the number of times Hilchey had been to her home about it.(Exhibit C and testimony)
25. However, the transcript of the September 10, 2003 [REDACTED] interview did reveal several more statements made by Hilchey that could have been used as the basis of discipline by the City. Regardless, the City chose to use only two statements made by Hilchey to [REDACTED], as the basis of discipline. In the July 28, 2004 disciplinary letter from Police Chief DeNaro the statements used were the following: 1. If it were me, I’d be out of a job. 2. I couldn’t believe Detective Dekeon was still on the job. (Exhibits A and C)
26. In that transcript of the [REDACTED] interview at page 6 [REDACTED] states (after speaking about Mark Garrett) “...The same thing with Ron Hilchey. It was mostly – it was at night. I had spoken to him about [her son], as well. He had only came by to my door on one occasion about the incident with [her son]. We had spoken, as well, about what happened with [her son] and do—that the Haverhill Police were walking on eggshells down there. They both said it to me at different times. But, they had both used the same, exact words. And not to give the paperwork to Alan Ratte, because Alan Ratte was covering up for the Haverhill Police Department.” These two statement made by Hilchey, about Alan Ratte covering up for the Haverhill Police Department and to not give the paperwork to Alan Ratte, even though Captain Ratte had given her the complaint forms and had

instructed her to return the completed forms back directly to him, are more serious violations of the Rules and Regulations of the Department than the ones charged here. (Exhibits A,C, H and testimony)

27. I find the testimony of Deputy Chief Donald Thompson to be credible and reliable. He is professional and straightforward in his response to questions. He did not embellish or give a definite answer unless he was sure of its accuracy. He would take the time to review his report or other documents to locate the correct information in the event of doubt. His demeanor was appropriate and that of a seasoned veteran. (Exhibits, testimony and demeanor)
28. In his testimony at the Commission in this hearing, Hilchey did admit making the two statements to the citizen [REDACTED], for which he was charged and disciplined here. He was hesitant in his testimonial admission and stated that he was not talking about Detective Dekeon or the Haverhill Police Department in those statements, but that he was talking about himself. He felt that he would have been treated differently than Dekeon under the same circumstances. He attributed this belief to the fact that he had previous problems with the Haverhill Police Department which were well publicized in the local newspapers. These problems arose out of an allegation of inappropriate touching of a woman. Hilchey was asked on direct examination by his own attorney why he was fighting this two (2) day suspension. He answered in a hesitant manner that he wanted to "... try and maintain a good record with the Police Department on his personal file." Hilchey volunteered several times during his testimony the fact of his previous (2001) well-publicized problems with the Haverhill Police Department regarding the

allegation of inappropriate touching. He made reference to it several times during his testimony, when this answer was unresponsive to the question asked. Negating or minimizing the negative effects of that prior charge, with success or vindication in this matter, seems to be his driving motivation here. (Exhibits and testimony)

29. Hilchey testified here under direct examination about his prior discipline for the inappropriate touching incident of 2001. He stated emphatically that the discipline he received for that incident was appealed by him to the Civil Service Commission. He further testified that the Commission “found that I was not responsible for that.” Yet on cross-examination he was forced to admit that the Civil Service Commission never made a decision on the merits of that appeal but dismissed the appeal on procedural grounds and the matter was referred back to the Respondent for a hearing. He should have known that the disposition of that prior appeal to the Civil Service Commission could be easily verified. (Exhibit A, Exhibits and testimony)

30. Hilchey has been inconsistent regarding his admission or denial for having made those two statements, for which he was charged and disciplined in the present case. In his transcribed interview on December 7, 2003, he denied having made statement 2 but he was not asked about statement 1. In his transcribed interview on March 5, 2004, he admitted having made statement 1 and denied having made statement 2. In his transcribed interview on October 16, 2003, he admitted having made statement 1 and he also admitted to having made statement 2. During his sworn testimony as a witness at this Civil Service Commission hearing on July

17, 2007, he admitted to having made statement 1 and he admitted to having made statement 2. (Exhibits D, E, G and testimony)

31. Hilchey admitted discussing the Dekeon assault allegation, the [REDACTED] citizen complaint and the subsequent police investigation of it, with Officer Mark Garrett. Shortly after the alleged assault occurred, Garrett and Hilchey showed up separately at [REDACTED]'s home and discussed the matter with her. Both Hilchey and Garrett spoke separately with [REDACTED] on at least several other occasions. Both officers urged her not to drop her complaint and urged her not to turn in the paper work on the alleged assault to Captain Alan Ratte, despite Ratte's instructions to her. Both Hilchey and Garrett informed [REDACTED] that Ratte would cover- up the alleged assault. Hilchey and Garrett used the same terms and expressions and gave the same advice when conversing with [REDACTED] about this matter. Hilchey and Garrett did discuss and coordinated to some degree, their approach to [REDACTED] with the obvious purpose of supporting and propelling the complaint against Dekeon. It was their hope that their efforts would result in some form of discipline against Dekeon. However this does not infer that either Hilchey or Garrett was fully conscious of this motivation for their coordinated effort. They may not even have clearly articulated their goal or a clear plan of action. They discussed it generally, between them, approached [REDACTED] to boost her up, to keep the complaint process moving and then they reacted to the developments as they occurred by coordinating conversations with [REDACTED] to keep her motivated to continue the complaint process. I believe that Hilchey and Garrett had the common goal of propelling the complaint against Dekeon, so that Dekeon

would join them in that select group of disciplined officers. (Exhibits, testimony and demeanor)

32. Hilchey is of average height, slim build, shaved head and a mini goatee under is lower lip. He has been a patrolman on the Haverhill Police Department for twelve and one-half years. As a witness, his dominant testimonial trait seems to be inconsistency shaded with speculation, indefiniteness and inconclusiveness. He knows that he has been questioned on this subject matter many times before so that his answers are hesitant and trepidatious, as he tries to recall his many previous answers. Unresponsive, indefinite or qualified answers are sometimes his refuge when testifying on previously covered matters. Many of his other answers were qualified with expressions such as: "I may have", "it's hard to say", "it could be", "maybe not exactly those words", "I don't recall", "I don't really recall", "I don't remember", "it's not clear", "I believe so", "from my understanding", "I didn't know the circumstances", etc. Although Hilchey is not a credible witness, I do not believe that he is malicious. He simply has very poor judgment. His testimony is entirely unreliable.(Exhibits, testimony and demeanor)

33. Hilchey's admission of having made those two statements, for which he has been charged and disciplined, is believed. However his claim that he was not referring to Detective Dekeon, other officers or the Haverhill Police Department when he made those statements to the citizen [REDACTED] is not believed. He testified, *"I made those comments to myself, I stated an opinion to myself, about me."* Hilchey was focused on his own self interest when he made those statements, without full cognizance of the effects that the statements might have

on himself, Detective Dekeon, other officers or the Department generally. I find that Hilchey made those statements with the specific intent of furthering or propelling [REDACTED]'s citizen complaint against Dekeon, with the hope that some discipline against Dekeon would result. Hilchey did not have any animosity toward Dekeon, he just believed that he and Officer Mark Garrett were unfairly viewed as the disciplinary problem officers in the Department and he hoped (probably without any clear articulation) to expand that group by adding Dekeon. (Exhibits, demeanor and testimony)

34. Hilchey had ample prior opportunity to clearly state that he was referring only to himself in those two statements for which he was charged. He waited until this Commission hearing to express it for the first time. Hilchey admitted making the first statement, "I'd be out of a job if it were me" to Police Chief DeNaro during his interview of March 5, 2004. Chief DeNaro had difficulty understanding why Hilchey would make such a statement to a citizen. Hilchey answered by bringing up his prior discipline of a three-day suspension for the inappropriate touching incident in 2001. Hilchey assumed that [REDACTED] would have known about the incident since it had been in the newspapers. Chief DeNaro, seeking further explanation at the March 5, 2004 interview, asked the Appellant, "Q. Okay. You can –So, she knows that maybe you were suspended once for three days and based upon that you felt it necessary to tell her that if it was you, you'd be without a job?" Hilchey answered, "A. Yes." Chief DeNaro then stated, "Q. Okay, I don't have any further questions. Anything you feel you'd like to add?" Hilchey answered, "A. Do you feel that you're going to do any other interviews or

anything?” This was one of the numerous opportunities presented to Hilchey to clearly state his self-reflection defense (that he was only talking about himself). However, he took that opportunity instead to inquire about future interviews. (Exhibit E, exhibits and testimony)

CONCLUSION

The two statements made by the Appellant to the citizen [REDACTED] for which he is charged here: 1.) *“If it were me, I’d be without a job”* and 2.) *“I couldn’t believe Detective Dekeon was still working”*, did bring disrepute or disrespect upon the Police Department and some individual Officers. These statements did have the tendency to cause the public to lose confidence in the employees of or the operation of the Police Department. This is a clear violation of the Rules and Regulations of the City of Haverhill Police Department: Unbecoming Conduct, (Rule 102 Sec. H)

The Appellant admitted in his testimony to making these two statements, among others, to [REDACTED]. These two statements were not gratuitous or frivolous under the circumstances in which they were made. Hilchey’s admission of those two statements, for which he has been charged and disciplined, is believed. However his claim that he was not referring to Detective Dekeon, other officers or the Haverhill Police Department when he made those statements to the citizen [REDACTED] is not believed.

[REDACTED] believed these two statements as they had been made by the Appellant and another Haverhill Police Officer, Mark Garrett. The two statements clearly infer that Detective Dekeon had committed the assault and that the Department thereafter, was giving Dekeon preferential treatment as compared to how the Department

would have treated the Appellant. The result was That [REDACTED] did believe that Detective Dekeon had committed an assault against her son and that some Officers in the Department were covering it up.

[REDACTED] thereafter did pursue her citizen's complaint more diligently and because she believed that Captain Ratte had lied to her, she pursued a criminal complaint against Detective Dekeon. The Appellant had spoken with [REDACTED] and identified Detective Dekeon as the Officer who had assaulted her son. The Appellant also told her not to return her completed citizen's complaint to Captain Ratte as Ratte had instructed her to do because Ratte would cover it up.

In a free society the public must have confidence in their police officers because of the vast power they can dispatch. "Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities." Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986). "Police officers must comport themselves in accordance with the laws that they are sworn to enforce *and* behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel." Id. Because of the nature of a police officer's position and the risk of abuse of power, police officers are held to a high standard of conduct. The public misdeeds of even one police officer casts wide aspersions on all the other professional and responsible police officers, undermining their effectiveness by affecting public confidence and good will.

“Police rules of conduct and their enforcement are policy matters that, absent ‘overtones of political control or objectives unrelated to merit standards or neutrally applied public policy,’ are beyond the commission's reach.” Boston Police Department v. Collins, 48 Mass .App. Ct. 408, 413 (2000) (quoting Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997)). “It is not within the authority of the commission . . . to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. at 304 (1997).

The facts as found here overwhelmingly support the Appointing Authority’s decision to discipline the Appellant. The Appointing Authority would have been justified in imposing a more serious discipline. The Appointing Authority’s discipline of a two-day suspension was based on violations of police department rules and regulations essential to the appropriate mode of conduct for relations with the public. The rules and regulations were properly and fairly applied to the conduct as found. The Appointing Authority provided more than sufficient evidence to support the sustaining of the violations of the Haverhill Police Department’s Rules and Regulations and the Appellant must be held accountable for these violations.

The Respondent did prove by a preponderance of the credible evidence in the record that there was just cause to impose the discipline here, of a two (2) day suspension. Just cause is defined as “substantial misconduct, which adversely affects the public interest by impairing the efficiency of the public service”. Boston Police Department v. John Collins, 48 Mass. App. Ct. 408 (2000), citing, Police Com’r of Boston v. Civil Serv. Comm., 39 Mass. App. Ct. 594, 599 (1996). The role of the Civil

Service Commission is to determine whether the Town had substantial and very practical reasons for imposing the discipline. Watertown v. Aria, 16 Mass. App. Ct. 331, 334 (1983). The question is whether there was reasonable justification for the action taken by the Appointing Authority in the circumstances that existed when the Appointing Authority made its decision. Town of Dedham v. Civil Service Commission, 21 Mass. App. Ct. 904 (1985). It is well settled that police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens. The Supreme Judicial Court, citing the Court of Appeals, has held that even off-duty behavior can be the basis for finding just cause to impose discipline on police officers. The Courts stated:

“These cases teach a simple lesson. Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.”

Attorney General v. Leo A. McHatton, Jr., 428 Mass. 790 (1999); citing, Police Comm’r of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986).

In the McHatton decision, the SJC affirmed the history of Appeals Court cases upholding the discharge of police officers who behaved inappropriately while off duty. In finding that McHatton’s off-duty behavior precluded him from public office, the SJC made reference to the oath McHatton took, quoted from the “Law Enforcement Code of Ethics” and discussed the heightened obligations of senior officers.

The Appointing Authority acted properly under the circumstances of this case in its discipline of the Appellant. There was reasonable justification for the action taken by the Appointing Authority in the circumstances and facts found here. *See also* Town of Dedham v. Civil Service Commission, 21 Mass. App. Ct. 904 (1985), in which the Commission findings of circumstances and facts determined that the Appointing Authority's actions were justified.

The role of the Civil Service Commission is to determine “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). The Commission cannot substitute its judgment for that of the appointing authority in exercising its discretion concerning “a valid exercise of discretion based on merit or policy considerations.” *Id.* The Commission is given the duty of review in the hope that it might “protect efficient public employees from partisan political control.” Debnam v. Town of Belmont, 388 Mass. 632, 635 (1983). Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983). Where such overtones of political control exist, the Commission may then intercede with its own judgment. City of Cambridge at 304. Boston Police Department v. Collins, 48 Mass. App. Ct. 408, 412 (2000). The issue is to determine whether the Respondent, at the time of the hearing, had reasonable justification to suspend the appellant, taking into consideration the totality of the circumstances. *See* Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v.

Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003).

The Commission determines that the City has acted properly and within its discretion based upon the policy considerations embodied in its rules of conduct when it determined that the Appellant's comments to a citizen in this case constitute unbecoming conduct and did bring disrepute or disrespect upon an individual officer or the Police Department.

For all of the above stated reasons, it is found by a preponderance of the credible evidence in the record that the Appointing Authority had just cause for the disciplinary action taken in this case. ***Therefore this appeal is dismissed.***

Civil Service Commission

Daniel M. Henderson, Esq.
Commissioner

By vote of the Civil Service Commission (Bowman; Chairman, Henderson, Guerin, Taylor and Marquis; Commissioners) on August 9, 2007.

A True Record. Attest:

Commissioner

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

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

Notice To:

William D. Cox, Jr., Esq.

William Boland, Esq., Gleason Law Offices P.C.