

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
CIVIL ACTION
NO. 23-02641**

BRENDA JAMES

vs.

**CIVIL SERVICE COMMISSION and
THE BOSTON POLICE DEPARTMENT**

**MEMORANDUM OF DECISION AND ORDER ON
CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS**

This is an appeal pursuant to G. L. c. 30A, § 14 and G. L. c. 31, § 44 from an October 19, 2023 Final Decision of the Civil Service Commission (“CSC” or “Commission”) affirming the March 2015 termination of Boston Police Department (“BPD”) patrol officer Brenda James for making false accusations against a superior, failing to take a hair test for the presence of drugs, and failing to update her home address. James has contested the BPD’s actions before two BPD Trial Board proceedings, an arbitration proceeding, a three-day 2015 CSC hearing, an appeal to this Court (which issued a remand), a four-day 2022 hearing before the Chief Magistrate of the Division of Administrative Law Appeals (“DALA”), and a subsequent CSC review of the Chief Magistrate’s decision, which resulted in the Final Decision that is the subject of this appeal. Before the Court are cross motions for judgment on the pleadings filed by plaintiff James and defendants CSC and BPD.

Perhaps most significant to this appeal, the case before the CSC turned at its core on the credibility of three BPD officers – James, Captain Paul Russell, and Lieutenant Steven Sweeney – with regard to what occurred at a June 8, 2012 meeting during which Russell suspended James

for five days. The CSC and the DALA Chief Magistrate did not find James' version of events credible, but found the core of Russell's version, which was supported by Sweeney's testimony, to be credible. James' primary contention on appeal is that these credibility determinations were not adequately supported. However, after careful review of the record and the decisions from the Chief Magistrate and the CSC, the Court concludes that the Final Decision is supported by substantial evidence. Because this and other arguments are unavailing, James' motion for judgment on the pleadings is **DENIED**, and the cross-motions for judgment on the pleadings filed by BPD and the Commission are **ALLOWED**.

BACKGROUND

A. Procedural History

As noted above, this case arises from a meeting held on June 8, 2012 among Russell, James, and Sweeney during which Russell purported to suspend James for five days for failure to report for duty.

On June 15, 2012, after serving her suspension, James filed an incident report in which she complained about Russell's treatment during the meeting. Administrative Record ("A.R.") 1049-52. In this, and in various subsequent interviews and BPD proceedings, she claimed, among other things, that Russell had been unprofessional, unreasonable, impulsive, disrespectful, hostile, extreme and aggressive; that he assaulted her, "lunged" at her, and "brushed up against" her breast; and that he had made her body "jerk back and forth" by "yank[ing]" her firearm, which resulted in a sharp twinge in her lower back as she sought to "twist" out of the way. A.R. 1049-52, 1054, 1105, 1438, 1440, 1445.

On June 20, 2012, after being informed of James' incident report, Russell made his own complaint in which he alleged that James' report was "full of lies and deceit" and that she

“fabricated” her injury to retaliate against him; he claimed that James “had committed libel and attempted to publicly damage [his] reputation;” and he asked for the Internal Affairs Department (“IAD”) to conduct an investigation. A.R. 1055-57.

As a result of James’ complaint and Russell’s counter-complaint, two IAD investigations ensued.

On July 10, 2012, James, acting pro se, sought a complaint of assault and battery in the West Roxbury District Court. A.R. 1171. On July 30, 2012, a hearing was held at which she was now represented by counsel. A.R. 1174. Relying on counsel’s advice, she unsuccessfully sought to add a charge of indecent assault to the requested complaint based upon Russell’s purported contact with her chest. A.R. 1104-05, 1174. This was denied, and the magistrate found no probable cause on the assault charge. A.R. 1174.

On June 7, 2013, the BPD rescinded the five-day suspension imposed by Russell on June 8, 2012, reducing it to an oral reprimand. A.R. 1450. By June 12, 2013, all the allegations James had brought against Russell were deemed to be “unfounded.” A.R. 1175.

On June 27, 2013, IAD brought a complaint against James relating to her conduct at the June 8, 2012 meeting, the incident report she filed about Russell’s conduct, and her attempts to obtain a criminal complaint against Russell. A.R. 1166-67. The complaint set forth 11 specifications that detailed the violation of BPD rules concerning Conduct; Respectful Treatment (including insubordination); Truthfulness; Abuse of Process; and Conformance to Laws. A.R. 1166-67.

On September 13, October 4, and October 9, 2013, arbitration hearings were held to determine whether the BPD had violated the Collective Bargaining Agreement (“CBA”) by failing to place James on injury on duty leave following the June 8, 2012 meeting. A.R. 1819-

2330. On February 21, 2014, the arbitrator determined not only that the BPD had not violated the CBA but that James' alleged injury at the meeting did not occur as she had alleged. A.R. 1190-1219.

On June 24, 2014, IAD brought another complaint against James setting forth two specifications. A.R. 1230. It alleged that she had violated the BPD's substance abuse and change of address notification policies by failing to notify the BPD of her change of address and failing to appear for a scheduled hair drug test appointment. A.R. 1230.

On September 5 and 24, 2014, a Trial Board hearing regarding James' alleged violation of the substance abuse and change of address notification policies was held before Deputy Superintendent Lydon. A.R. 2331-2652. Thereafter, on November 18, November 19, December 11, and December 12, 2014, Trial Board hearings were held before Lydon regarding the June 8, 2012 incident and the related action taken by James. A.R. 2653-3232.

On March 10, 2015, Lydon submitted findings to BPD Commissioner Evans on the purported substance abuse and change of address violations, concluding that James had indeed violated BPD rules. A.R. 1768-1780. The next day, Lydon submitted findings to Evans regarding the June 8, 2012 incident and the related action taken by James. A.R. 1781-1818. In part, Lydon concluded that BPD had shown by a preponderance of the evidence that James' statements made to IAD about Russell's conduct during the June 8 meeting were untrue. Notably, a handwritten statement made by James after the incident was introduced into evidence. After it was introduced, James' attorney objected to any interview of James concerning her complaints against Russell. A.R. 1808-1810.

On March 18, 2015, the BPD terminated James based on Lydon's determinations regarding both IAD complaints. A.R. 1161.

Following her termination, James filed a timely appeal to the CSC. Hearings were held before Commissioner Cynthia Ittleman. James was scheduled to testify on the third day but provided advance notice that she would be unable to appear due to a family medical emergency. A.R. 6 n.2, 39. Commissioner Ittleman refused to allow James to testify at a later date. A.R. 6 n.2, 39. In her decision, she drew an adverse inference from James' failure to testify, and the CSC denied her appeal on March 31, 2016. A.R. 39-40, 46.

Commissioner Ittleman rejected James' version of what happened at the June 8, 2012 meeting, and credited the core of the testimony of Russell and Sweeney. In critical part, she credited that while retrieving James' weapon, Russell neither yanked the weapon out of its holster nor assaulted James' person. A.R. 40. Commissioner Ittleman recognized that there were minor discrepancies between Russell's and Sweeney's testimony but found their testimony was consistent on these two points. For instance, she noted that Sweeney testified that although James moved slightly when Russell removed her weapon, he did not yank the weapon out of its holster. A.R. 40-41.

James subsequently appealed to this Court, which held that James "had good cause for her failure to appear to testify; and her absence should not have been held against her." A.R. 49. The case was remanded to the CSC. A.R. 49.

On remand, James moved to recuse the CSC. Commissioner Ittleman did not believe there was any basis for recusal but nonetheless assigned the case to DALA. DALA Chief Magistrate Edward McGrath ("Chief Magistrate") presided over the case on remand. Hearings were held on June 28, June 29, June 30, and July 21, 2022, with James testifying on June 30 and July 21, 2022. A.R. 3233-3938. On December 9, 2022, James and the BPD submitted their

respective post-hearing briefs and proposed decisions. A.R. 382-528. On December 21, 2022, the Chief Magistrate issued a Tentative Decision on Remand. A.R. 529-99.

On February 6, 2023, James filed objections and on February 24, 2023, the BPD responded. A.R. 616-770.

On October 19, 2023, the CSC issued a Summary of Final Decision, which affirmed the Tentative Decision on Remand. A.R. 945-951. In the decision, it acknowledged that Capt. Russell “used poor judgment in how he relieved [James] of duty” and “may not have followed all Department protocols” on June 8, 2012, but found that the Chief Magistrate’s conclusions, including his determination that James’ shifting version of events could only be attributed to James’ untruthfulness, was “amply supported and well-reasoned.” A.R. 945-946, 950. The CSC explained that “[t]he Chief Magistrate conducted a fair, impartial review, and made well-supported credibility assessments that the Commission is bound to accept” and that “[h]is thorough, well-reasoned findings are supported by the voluminous record.” A.R. 946.

B. Commission’s Findings in the False Statement Case

The record reflects that leading up to the June 8, 2012 meeting, there was a dispute between Capt. Russell and James over a decision he made the previous winter to list James as AWOL. A.R. 1220, 3296-97, 3330, 3686-87. On June 7, 2012, Russell decided to issue a five-day suspension for the contested AWOL. A.R. 3307, 3311, 3314. At around 11:50 p.m., he appeared at the District E-13 station to issue the suspension, and he asked Lt. Sweeney to be present as a witness. A.R. 3311, 3315. As no union representative was at the station, Russell agreed to have a “one-way” conversation whereby James would not be questioned or obliged to engage in any discussion. A.R. 3323-24, 3700-01. The parties disputed what occurred during June 8, 2012 meeting.

In determining what happened at the meeting, the Chief Magistrate heard from the three officers and resolved the credibility issue against James. A.R. 955, 1008. The Commission accepted this conclusion, adopting the Chief Magistrate's decision and overruling objections filed by James, many of which are now repeated here. A.R. 945-946. Thus, the Commission in the Final Decision adopted the following findings made by the Chief Magistrate as to what occurred at the meeting:

81. Capt. Russell began explaining to Ms. James the reasons for the suspension. (Testimony of Capt. Russell, DALA Transcript, Volume 1, page 41)

82. Capt. Russell believed that Ms. James was angry, because he found her nonresponsive and her tone disrespectful. (Id.)

83. While in Capt. Russell's office, Ms. James' cell phone rang and she answered it. (Testimony of Lt. Sweeney, CSC Transcript, Volume 1, page 130)

84. Ms. James ... walked out of Capt. Russell's office and took [a] call. (Id.)

85. Lt. Sweeney stayed in the Captain's office for a few minutes and then went to look for Ms. James. He found her ... still on the phone (Id.)

86. Lt. Sweeney waited a few more minutes for Ms. James to finish her phone call and told her that they needed to go back into Capt. Russell's office because Capt. Russell had some paperwork to give her and that the conversation could be a one-way conversation. (Testimony of Lt. Sweeney, Id. at 131)

87. Capt. Russell went out into the hall and ordered Ms. James back into his office. (Testimony of Capt. Russell, CSC Transcript, Volume 1, page 48)

88. Ms. James and Lt. Sweeney returned to the Captain's office. (Testimony of Lt. Sweeney, CSC Transcript, Volume 1, page 131)

89. Capt. Russell began explaining the details of the suspension to Ms. James and her rights to an appeal hearing and that he did not like issuing the suspension. Ms. James replied if it bothered him so much that Capt. Russell should pay her bills. (Testimony of Capt. Russell, DALA Transcript, Volume 1, page 41)

90. Capt. Russell intended to work with Ms. James to impose the suspension in a manner that would lessen the financial burden on her. He had hoped to issue the

suspension in increments of one day. He also intended to have Ms. James finish her shift that night. (Testimony of Capt. Russell, CSC Transcript, Volume 1, pages 47-48)

91. Capt. Russell believed that Ms. James was angry. (Testimony of Capt. Russell, DALA Transcript, Volume 1, page 41)

92. Capt. Russell asked Ms. James if she was okay to go back out on the street after the meeting that night. (Testimony of Lt. Sweeney, CSC Transcript. Volume 1, pages 132-133)

93. Ms. James replied, "you know, it is a stressful situation. How would you feel?" (Id. at 133)

94. Capt. Russell had considered assigning Ms. James to the station's front desk for the remainder of her shift that night but decided against it when he saw that "she was angry, she was non-responsive. I was afraid of her behavior carrying over dealing with the public at the front desk, and I was also concerned that she probably would have got (sic) hurt at the front desk. She probably would have tripped or fallen off the chair or something and gone back out injured." (Testimony of Capt. Russell, DALA Transcript, Volume 1, page 47-48)

95. Instead, Capt. Russell decided to impose the suspension immediately and ordered Ms. James to take off her badge and give it to Lt. Sweeney, and to give Lt. Sweeney her radio and ID. (Id. at 49)

96. Ms. James told Capt. Russell that her ID was outside in her car. (Arbitration Testimony of Ms. James. Transcript, Volume 1, Page 73)

97. Capt. Russell also wanted Ms. James to turn over her firearm so he ordered her to take the magazine out of her firearm and to turn it over to Lt. Sweeney. (Testimony of Capt. Russell, DALA Transcript, Volume 1, page 44)

98. Ms. James removed the magazine clip from her weapon. (Testimony of Lt. Sweeney, CSC Transcript, Volume 1, page 116)

99. There was one bullet left in the barrel of the weapon and Capt. Russell was concerned for his safety. (Testimony of Capt. Russell, DALA Transcript, Volume 1, page 44)

100. Capt. Russell, who was seated at the time, told Ms. James to stop what she was doing and that he would remove her firearm. He did this because he was concerned about a firearm discharge. (Testimony of Capt. Russell, CSC Transcript, Volume 1, page 51)

101. Capt. Russell stood up from his seat, walked somewhat quickly around his desk towards Ms. James and attempted to pull the firearm from Ms. James' gun holster. The gun got stuck in the holster briefly and Capt. Russell had to push down on the holster and pull the gun forward in order to remove it. (Id. at 52)

102. Capt. Russell remained calm and did not yell while issuing the five-day suspension. (Testimony of Lt. Sweeney, DALA Transcript, Volume 2, page 16)

103. Ms. James was calm. (Id.)

104. When Capt. Russell was removing Ms. James' weapon it got stuck in her holster briefly. While Ms. James did move when the weapon was removed from the holster, there was no violent movement of Officer James' body, and her body did not twist. (Id. at 20-21)

105. Capt. Russell did not lunge at Ms. James. He did not contact Ms. James's body. (Id. at 19 and 21)

106. Ms. James was taken aback. (Id. at 21)

107. Capt. Russell did not touch any part of Ms. James' body, including her breasts. (Testimony of Lt. Sweeney, DALA Transcript, Volume 2, page 21)

108. Ms. James did not make any noises during this interaction, as if she was hurt; nor did she request medical attention while her weapon was being removed or immediately after it was removed by Capt. Russell. (Testimony of Capt. Russell, CSC Transcript, Volume 1, pages 55-56; Testimony of Lt. Sweeney, CSC Transcript, Volume 1, page 141)

109. Ms. James then left Capt. Russell's office and returned with her ID badge, which she turned over to Capt. Russell. (Testimony of Capt. Russell, CSC Transcript, Volume 1, page 57; Arbitration Testimony of Ms. James, Transcript. Volume 1, page 81)

110. Capt. Russell handed Ms. James paperwork regarding her suspension and copies of applicable Massachusetts General Laws. (Arbitration Testimony of Ms. James, Transcript, Volume 1. pages 82-83)

111. Ms. James, Capt. Russell and Lt. Sweeney moved out into the hallway and Capt. Russell informed Ms. James that she needed to contact the District-13 station clerks to find out how her attendance would be marked for the suspension. (Testimony of Lt. Sweeney, CSC Transcript, Volume 1, page 142)

The record also shows that the seizure of the firearm took seconds, A.R. 3278, 3459, and that several hours after the seizure, at approximately 3:00 PM, James went to Beth Israel Deaconess Medical Center, where she was treated for back pain and a migraine. A.R. 1437-42, 3731-32.

C. Commission's Findings in the Hair Test and Address Update Case

The record reflects the following.

After serving her suspension, BPD placed James on a “no-pay” status for approximately two years until she was placed on administrative leave in October 2014. A.R. 1018, 1460, 3741, 3848. During the “no pay” period, James lost her apartment and had no permanent address. A.R. 3823, 3918.

James was required to submit to a yearly drug test (known as a “hair test”) through BPD Occupational Health Services Unit (“OHSU”) and had a 60-day window to complete it. A.R. 993, 3422. The record reflects that for the 2013 test, James missed the first appointment. A.R. 995. James also failed to attend a rescheduled appointment. A.R. 997.

Before the window of time expired, BPD initiated another IAD investigation into her for failure to submit to a drug test. A.R. 999, 1267, 1341. During this investigation, the IAD investigator learned that James was homeless, and that James had not updated her address. A.R. 1000, 3412-14.

At the outset of his analysis, the Chief Magistrate appeared to conclude that the BPD had just cause to terminate James for her failure to submit to a drug test and her failure to notify BPD of her change of address in violation of BPD rules. A.R. 1014, 1016. However, at the end of his decision, the Chief Magistrate expressed that “it is unclear that Ms. James’ violation of the BPD substance abuse rule, or especially, of the change of address rule, individually, would provide

just cause for termination,” and ultimately determined that: (1) James’ false reports were sufficient cause to terminate her; and (2) the hair test and change of address rule violations merely had a “cumulative effect” in that they further supported the termination decision. A.R. 1020.

As noted above, the Commission accepted the Chief Magistrate’s findings. It also rejected James’ contention that the failure to update her address was not a terminable offense, noting that the Tentative Decision After Remand did not hold otherwise and that “the Chief Magistrate clearly signaled that it was the whole constellation of misconduct on [James’] part, and not just proof of the charges relating to the hair drug test or failure to advise management of her whereabouts, that warranted [her] termination.” A.R. 950.

DISCUSSION

A. Standard of Review

The applicable legal standards of review were aptly summarized in a decision by the SJC, Brackett v. Civil Serv. Comm’n:

General Laws c. 31, § 2(b), requires the commission to determine, on the basis of the evidence before it, whether the appointing authority sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification for the action taken by the appointing authority. Reasonable justification in this context means 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. In reviewing the commission’s action under G. L. c. 30A, § 14(7), it [is] not open to the Superior Court judge to substitute her judgment for that of the commission. The judge’s task [is] limited to determining whether the commission’s decision was supported by substantial evidence. Further, a judge is required to give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it. This standard of review is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom.

Pursuant to G. L. c. 31, § 44, [the Court] review[s] the commission’s decision to determine if it violates any of the standards set forth in G. L. c. 30A, § 14(7), and cases construing those standards. [The Court is] required to overturn commission decisions that

are inconsistent with governing law. The party appealing from an administrative decision has the burden of proving its invalidity.

447 Mass. 233, 241–242 (2006) (internal citations, quotations, and alterations omitted).

B. The False Statements Case

1. Denial of a De Novo Hearing

Relying on Town of Falmouth v. Civil Serv. Comm'n, 447 Mass. 814 (2006), James contends, as she did before the CSC, that she failed to receive the de novo hearing required by G. L. c. 31, § 43 because the Chief Magistrate relied extensively on prior credibility assessments of James and other witnesses. See id. at 823 (“under G. L. c. 41, § 43, the commission was required to conduct a de novo hearing for the purpose of finding facts anew”). She notes that the Chief Magistrate adopted many of Commissioner Ittleman’s findings verbatim. James’ argument is unavailing.

While the SJC indeed stated that the CSC is required to conduct de novo hearings, it also remarked that “[t]he commission’s task … is not to be accomplished on a wholly blank slate,” id. at 823, and further noted:

While it is true that the commission performs a de novo fact-finding function, there is little reason for the commission to exclude … [underlying] findings While the commission must develop its own view of the facts, a review of [such] findings no doubt would assist the commission in determining 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.

Id. at 825, n. 12 (internal quotations omitted). The Chief Magistrate was thus free to examine the entire record, including previous findings, and accept them and reject them based on his own view of the evidence, and the fact that the Chief Magistrate adopted findings made by Commissioner Ittleman does not necessarily mean that the Chief Magistrate failed to conduct an independent review.

Most of the evidence heard by the Chief Magistrate had already been presented previously, including the testimony, in one form or another, of the three participants in the June 8, 2012 meeting. To the extent the Chief Magistrate agreed with Commissioner Ittleman's earlier, extensive findings, little would have been gained by simply rewriting them. Further, the Chief Magistrate made several new findings, reflecting an independent review. These included findings with respect to the critical June 8, 2012 meeting, and as discussed below, findings regarding James' testimony. See A.R. 964-970 (paragraphs 66, 67, 68, 82 (Russell believed James was angry), 89 (James' comment that Russell should pay her bills if he felt badly about suspending her), 91 (Russell believed James was angry), 99 (Russell was concerned for his safety), 102 (Russell remained calm and did not yell while issuing the suspension), 103 (James was calm), 104 (while James did move when her weapon was being removed from her holster, there was no violent movement of James' body and her body did not twist), 105 (Russell did not lunge at James and did not contact her body), 106 (James was taken aback)); A.R. 1009-1010. As the CSC found, the Chief Magistrate explained the basis for his credibility findings, identifying the specific false statements made by James. A.R. 947

Under these facts, and in light of the Commission's own thorough and searching review of the record, James received the de novo review to which she was entitled.

2. Lack of Evidence that James Made Deliberate False Statements

James contends that the conclusion made by the Chief Magistrate and the CSC that James was untruthful was not adequately supported by the evidence. The Court disagrees.

In support of this argument, James first asserts that the Chief Magistrate's conclusions regarding her credibility on critical points had no evidentiary basis. However, in making this assertion James essentially asks the Court to substitute its judgment on the credibility of James,

Russell, and Sweeney for that of the Chief Magistrate and the CSC. See Plaintiff's Memorandum, at 15-17. This the Court cannot do. "The commission, and not the court, is the sole judge of the credibility and weight of the evidence before it." Police Dep't of Bos. v. Kavaleski, 463 Mass. 680, 694 (2012), quoting School Comm. of Brockton v. Massachusetts Comm'n Against Discrimination, 423 Mass. 7, 15 (1996).

Second, and relatedly, James claims that the Chief Magistrate ignored or minimized evidence that contradicted Russell. This is not the case.

James points out that the Chief Magistrate found that Sweeney supported James' version of some of the events on June 8th, rather than Russell's. This, however, is not evidence that the Chief Magistrate somehow erred by crediting Russell over James on the critical points regarding that meeting.¹ Significantly, Sweeney's testimony, credited by the Chief Magistrate, was consistent with Russell's on key points. For example, he testified that James' firearm was only momentarily stuck when Russell tried to remove it from its holster; that Russell did not "yank" the firearm or jerk James; and that Russell did not touch or make contact with James' breasts or her person. Compare A.R. 3277, 3278, 3283 (Russell's testimony) with A.R. 3459-3461, 3496-3498 (Sweeney's testimony).

James also complains that there were other facts that should have swayed the Chief Magistrate, such as Russell's concession to a BPD investigator that he may have touched James' shoulder when removing her weapon as well as certain medical records James submitted to the Chief Magistrate.² But the record shows the Chief Magistrate considered these facts. As to Russell's concession, the Commissioner considered the question of whether Russell brushed

¹ Indeed, as to James' first argument regarding the absence of a de novo hearing, that the Chief Magistrate credited some of James' version of events supports the conclusion that he conducted his own analysis before making his credibility determinations.

² James also claims that the Chief Magistrate did not address Russell's inconsistent statements.

against her breast or her person. He supportably found that Russell did not. As to the medical records, the Chief Magistrate was entitled to conclude, as he did, that those records did not provide persuasive *causative* evidence that James' interaction with Russell on June 8th was the reason for James' claimed injury. See A.R. 948.³ That there are some facts that might detract from the Chief Magistrate's conclusions does not undermine his credibility finding, nor indicate there's a lack of substantial evidence to support it, his ultimate determination, or that of the CSC.

Lastly, James asserts that the Chief Magistrate failed to explain why he rejected her testimony. However, his decision reflects that he did. See A.R. 948-949. The Chief Magistrate wrote extensively, in his own words, as to why he did not find James' testimony regarding the events of June 8, 2012 to be credible. A.R. 1009-1010. The CSC, for their part, did the same. A.R. 947 ("Appellants testimony ... contradicted not only other witnesses' sworn statements but her own prior statements; it is unnecessary to further tie each falsehood to specific lines in the disciplinary charging document.").

Fundamentally, this is a case that turns largely on the credibility of James, Russell and Sweeney. James has failed to show that those credibility determinations may be questioned by this Court.⁴

3. Disregard of James' Constitutional Right to Petition

James claims she was terminated in retaliation for the incident report and her criminal complaint against Russell and that the CSC failed to properly assess whether such termination

³ Tellingly, perhaps, James provided no expert testimony to support this causative connection.

⁴ James repeatedly argues that the Chief Magistrate and other fact finders failed to address which person was responsible for "causing the physical confrontation," which she describes as a "pivotal question." The Court disagrees that this was critical to the resolution of this case. The primary issue was who was telling the truth as to how James was relieved of her weapon. As the CSC noted, Russell may not have acted in an ideal manner in connection with the suspension's issuance, but the evidence supported that James was not credible as to what occurred, which warranted her termination.

violated her constitutional right to petition. See Plaintiff's Memorandum, at 22-25. The Court disagrees. The CSC correctly concluded that in light of the Chief Magistrate's factual findings, James did not engage in constitutionally protected petitioning. See A.R. 949.

The first step in determining whether a constitutional violation occurred is to assess whether James was speaking as a police officer during the course of her official duties or a private citizen. As explained by the First Circuit, “[t]he First Amendment does not prohibit managerial discipline based on an employee's expressions made pursuant to official responsibilities. The relevant inquiry … thus has two basic components—(1) what are the employee's official responsibilities? and (2) was the speech at issue made pursuant to those responsibilities?—both of which are highly context-sensitive.” Mercado-Berrios v. Cancel-Alegria, 611 F.3d 18, 26 (1st Cir. 2010) (internal quotations and citations omitted). See Lane v. Franks, 573 U.S. 228, 240 (2014) (“The critical question … is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties.”). Drawing the distinction between employee and citizen speech when the two are muddled, as they are here, is no easy task. See Mercado-Berrios, 611 F.3d at 27 (where court struggled with the distinction).

If James was not acting in her capacity as an officer but as a citizen, the next step in the analysis is to determine whether James was speaking “upon matters of public concern.” Antonellis v. Department of Elder Affs., 98 Mass. App. Ct. 251, 259 (2020), quoting Connick v. Myers, 461 U.S. 138, 147 (1983). If that is the case, “the court next balances the interest of the employee speaking out as a citizen on matters of public concern and ‘the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.’” Id., quoting Pickering v. Board of Educ., 391 U.S. 563, 568 (1968). See Lane, 573

U.S. at 242, quoting Connick, 461 U.S. at 150–151 (“government employers often have legitimate ‘interest[s] in the effective and efficient fulfillment of [their] responsibilities to the public,’ including ‘promot[ing] efficiency and integrity in the discharge of official duties,’ and ‘maintain[ing] proper discipline in public service’”).

Here, James’ filing an incident report regarding the June 8, 2012 meeting was within the scope of James’ duties. Indeed, James conceded that filing an incident report after an injury was required. A.R. 3154-3155.

As for the criminal complaint, that presents a more difficult question. Seeking a criminal complaint was ordinarily within James’ normal duties in cases to which she was assigned, but James was not assigned to any case involving her and Russell that would permit her to seek a criminal complaint in court. This strongly suggests that she acted in her personal capacity, not her professional capacity. Further, her claim was one of official misconduct, which concerned a matter of public concern. Lane, 573 U.S. at 241; see also Garcetti v. Ceballos, 547 U.S. 410, 425 (2006) (“Exposing governmental inefficiency and misconduct is a matter of considerable significance.”).

However, regardless of whether James acted as an officer or a citizen in connection with the incident report and criminal complaint, making a false statement is not expressive conduct protected by the First Amendment when it comes to government employees. See Lane, 573 U.S. at 242 (noting that employee speech that is “false or erroneous or … unnecessarily disclosed … sensitive, confidential or privileged information” weighs against according it First Amendment protection). And here, James’ expressive conduct suffered from this failing. She has not shown that her termination was attributable to her *exercise* of First Amendment rights, but rather her making false statements in doing so. A.R. 949, 945-946, 1021-1022. In other words, the record

shows that James was terminated not for filing an incident report or going to court but speaking falsely when she did. See Mihos v. Swift, 358 F.3d 91, 108 (1st Cir. 2004) (“In short, the issue is the causal link between the protected conduct and the adverse employment action.”); Wagner v. City of Holyoke, Massachusetts, 404 F.3d 504, 508 (1st Cir. 2005) (“While individuals are entitled to speak on matters of public concern free from the threat of retaliation … this does not entitle those same individuals to use whatever methods or instrumentalities they see fit to convey their message. If the use of such inappropriate means of expression—rather than the speech itself—prompts discipline, there is no first amendment violation.”).

Under the facts here, James has not shown that her termination violated her First Amendment rights.⁵

4. Lack of Notice by BPD

James alleges she was not provided adequate notice of the charges against her under G. L. c. 31, § 41. This argument fails for two reasons highlighted in the Commission’s decision. A.R. 947. First, James did not previously file a claim with the Commission regarding this issue pursuant to G. L. c. 31, § 42, and thus waived it. Second, even if this were not the case, it is clear that James had adequate notice. The record shows that she received 11 written specifications identifying the conduct for which she was being disciplined. Given the course of events that preceded the charges, the falsehoods at issue were sufficiently evident. Moreover, because James had undergone hearings before the Trial Board and Commissioner Ittleman, she was already aware of the key evidence the BPD planned on presenting against her by the time she was afforded a second de novo evidentiary hearing before the Chief Magistrate.

⁵ James also argues that the retaliation protections under Chapter 151B are broader than the First Amendment protections. Even if that is the case, on this record, James has still failed to demonstrate that her termination was the result of retaliation for protected conduct, as opposed to a response to an officer providing false statements.

C. The Hair Test and Address Case

James argues that the decision to terminate her for failure to submit to the hair test was not supported by substantial evidence or by subsidiary findings, and that her failure to update her address was not a terminable offense. These arguments are unavailing. The record shows the Chief Magistrate considered the hair test issue in detail, and concluded James failed to submit to the test. A.R. 1016-1019. Moreover, in his decision, the Chief Magistrate expressed skepticism that both the hair test and address violations alone were sufficient to terminate James. A.R. 1020. He ultimately concluded that James' false reports and testimony alone were sufficient to justify her termination and that the hair test and address violations merely added to the just cause to terminate James. A.R. 1020. James thus has failed to demonstrate prejudice arising from consideration or determination on these points, as the result here would have been the same.

ORDER

For the foregoing reasons, Plaintiff's motion for judgment on the pleadings (Docket No. 26) is **DENIED** and the Defendants' cross-motions for summary judgment (Docket Nos. 28, 30) are **ALLOWED**. The Civil Service Commission decision is **AFFIRMED**.

SO ORDERED.

M. D. Ricciuti
MICHAEL D. RICCIUTI
Chief Justice of the Superior Court

Dated: January 27, 2026