

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503
Boston, MA 02108
(617) 979-1900

JOHN KEELEY,
Appellant

v.

D-21-132

BOSTON FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

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Appearance for Boston Fire Department:

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Commissioner:

Christopher C. Bowman^{1,2}
Cynthia A. Ittleman

SUMMARY OF DECISION

The Commission reduced the Appellant's four-tour suspension to an official reprimand, as many of the charges against the Appellant were either unsupported by a preponderance of the evidence or overblown. The four-tour suspension against a 31-year employee with an unblemished record, based on the particular facts of this case, was also not consistent with the BFD's own policy regarding progressive discipline.

¹ Commissioner Ittleman conducted the full hearing regarding this appeal, but she retired from the Commission prior to drafting a decision. For that reason, the appeal was assigned to me. I have reviewed the entire record in this matter, including the audio / video recording of the full hearing and all exhibits.

² The Commission acknowledges the assistance of Law Clerk Sara Kniaz in the drafting of this decision.

DECISION

On July 29, 2021, the Appellant, John Keeley (Appellant), filed this timely appeal with the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 43, contesting the decision of the Boston Fire Department (BFD) to suspend him for four tours of duty and an official reprimand due to alleged misconduct on June 13, 2021.

I conducted a remote pre-hearing conference on August 17, 2021. Commissioner Ittleman held a remote full hearing on November 10, 2021.³ The full hearing was recorded via Webex, and both parties received a link to the recording via email.⁴ As no written notice was received from either party, the hearing was declared private. The parties submitted post-hearing briefs in the form of proposed decisions on December 29, 2021.

FINDINGS OF FACT

Fifteen Respondent Exhibits (Exhibits R1 – R15) and twelve Appellant Exhibits (Exhibits A1– A12) were entered into evidence. Based on these exhibits, the testimony of:

Called by the BFD:

- James Greene, Deputy Chief, Division 1, BFD
- Brian Sellon, Acting District Fire Chief, District 3, BFD

Called by Appellant:

- John Keeley, Appellant, Captain, Marine Unit (District 3, Division 1), BFD
- Wesley Alleyne, Firefighter, Deckhand, Marine Unit, BFD
- Thomas Stanton, Firefighter, Pilot, Marine Unit, BFD

³ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

⁴ Should either party file a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to supply the court with a transcript of this hearing to the extent that he/she/it 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, the recording should be used to transcribe the hearing.

- Ralph Dean, Firefighter, Pilot, Marine Unit, BFD (retired)

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies and reasonable inferences drawn from the evidence; I make the following findings of facts based upon a preponderance of the evidence:

Background Information

1. The Appellant has been employed by the BFD for over thirty-two years. He has been a Captain in the Marine Unit since 2017. He has no prior discipline in his personnel record.
(Testimony of Appellant)
2. Deputy Chief (DC) James Greene has been employed by the BFD for over nineteen years. He has been a Deputy Chief (DC) for approximately two years. DC Greene is assigned to Division 1, which covers the downtown area of Boston, including the Marine Unit.
(Testimony of Greene)
3. Marine Firefighter Pilot (MFP) Thomas Stanton has been employed by the BFD for over thirty-two years. He joined the Marine Unit in 2018 as a firefighter and deckhand. He became a Pilot in the Marine Unit in 2019. (Testimony of Stanton)
4. The chain of command of BFD officers ranks down from: Chief of Operations, Deputy Fire Chief, District Fire Chief, Fire Captain, Fire Lieutenant, Senior Firefighter. Therefore, DC Greene ranks above the Appellant, and the Appellant ranks above MFP Stanton. (Testimony of Appellant; Testimony of Greene; Exhibit R1)
5. The Marine Unit (MU) is in Division 1, District 3 of the BFD. It is located on a pier along a civilian walkway in the Boston Harbor, on the first floor of a residential living complex. The MU has officer quarters and a living room that contains a television area and kitchen.
(Testimony of Greene; Testimony of Alleyne)

6. The Marine Unit contains three vessels, the largest of which is the John S. Damrell (Damrell), also known as Marine Unit 1 or the “big boat.” (Testimony of Appellant; Testimony of Greene)
7. The Damrell must be operated by a licensed pilot, who is a firefighter. Licensed pilots have a 100-ton license from the United States Coast Guard. (Testimony of Dean)
8. The crew of the Damrell typically includes one licensed pilot, an officer, and two firefighters from the Marine Unit known as deckhands. There must always be one licensed pilot and one officer for the Damrell to operate. (Testimony of Appellant; Testimony of Greene)
9. When a member of the Marine Unit calls in sick or is absent, the Deputy Chief can detail in one non-Marine Unit firefighter to be an officer or deckhand in the Marine Unit for that shift. Previously, only Marine Unit members could cover these absences. During the Fall of 2020, BFD Chief of Operations Bernard Tully determined that non-Marine Unit members could fill these vacancies as well. This is not a written policy in the BFD. (Testimony of Greene; Testimony of Dean)
10. A licensed pilot cannot be detailed in. When a licensed pilot is absent for a shift, another licensed pilot from the Marine Unit will cover the shift on overtime. (Testimony of Greene; Testimony of Appellant)

MFP Stanton’s Prior Complaint

11. On March 11, 2021, the BFD detailed in two non-Marine Unit Firefighters, an officer and a deckhand, into the Marine Unit. MFP Stanton’s complaint stated that he did not feel comfortable operating the Damrell with two firefighters who did not have experience on the boat and viewed this as a safety concern. (Testimony of Greene; Exhibit R8).

12. On April 28, 2021, MFP Stanton submitted a Form 5A to the Fire Commissioner regarding what he believed were safety concerns during this shift on March 11, 2021. (Exhibit R8)
13. The BFD evaluated MFP Stanton's concerns from this event but did not make any changes to this policy. The BFD continued to detail in non-Marine Unit firefighters into the Marine Unit and did not view this as a safety concern. (Testimony of Greene) MFP Stanton continued to work occasional shifts with one non-Marine unit detail, when absences occurred. (Testimony of Stanton)

Staffing Concerns on June 13, 2021

14. On June 13, 2021, the Appellant was working a shift at the Marine Unit and was scheduled to work overtime on a shift beginning at 8:00 AM, to cover for another Marine Unit officer. The Appellant was at the Marine Unit quarters, as the prior shift he was working ended at 8:00 AM. (Testimony of Appellant)
15. At approximately 6:40 AM, the pilot scheduled to work the shift beginning at 8:00 AM called out sick. The Marine Unit firefighter scheduled to serve as deckhand for the same shift had also called out sick that prior evening. The Appellant relayed this information to the District Chief (he was not sure which one), who requested that he (the Appellant) call another Marine Unit Pilot to work the shift. (Testimony of Appellant)
16. Also on that call, the Appellant expressed that he was concerned to have a non-Marine Unit firefighter detailed in, because the other deckhand scheduled, FF Wesley Alleyne, was new to the Marine Unit and had limited experience with the Damrell. FF Alleyne had been in the Marine Unit for about two weeks. The Appellant stated on this call that due to the "special circumstances" of FF Alleyne being new to the Marine Unit, FF Alleyne should be treated as a non-Marine Unit detail and the deckhand to be called in to cover the firefighter who had

called in sick should be a permanent member of the Marine Unit. The District Chief told the Appellant that he would get back to him. (Testimony of Appellant; Testimony of Alleyne)

17. The Appellant called MFP Stanton to come in and serve as the pilot for the shift beginning at 8:00 AM. MFP Stanton arrived at the Marine Unit at approximately 7:00 AM. The Appellant explained to him that someone would need to replace the sick deckhand. (Testimony of Appellant; Testimony of Stanton)

18. A District Chief (the Appellant was not sure which one) soon got back to the Appellant and notified him that the BFD was detailing in a firefighter from Rescue 2 who is not a permanent member of the Marine Unit. The Appellant informed MFP Stanton of the staffing. (Testimony of Appellant; Testimony of Greene)

19. MFP Stanton had safety concerns over having a crew with what he considered to be an inexperienced new Marine Unit deckhand, FF Alleyne, and a replacement from outside of the Marine Unit. MFP Stanton told the Appellant that he would not operate the Damrell with this crew. (Testimony of Stanton)

20. The Appellant called Acting District Chief (A/DFC) Brian Sellon to let him know that MFP Stanton would not operate the Damrell due to his safety concerns. A/DFC Sellon then notified DC Greene that the Damrell may be taken out of service. DC Greene requested A/DFC Sellon to come with him to the Marine Unit to discuss the situation and the safety concerns. The Appellant was then notified, by A/DFC Sellon's driver, that DC Greene and A/DFC Sellon were headed to the Marine Unit. (Testimony of Sellon; Testimony of Greene; Testimony of Appellant)

DC Greene and A/DFC Sellon Arrive at the Marine Unit

21. DC Greene and A/DFC Sellon arrived at the Marine Unit separately but entered together around 8:00 AM. (Testimony of Greene; Testimony of Appellant)
22. DC Greene was upset about the situation and requested to see the Appellant in the Appellant's office with A/DFC Sellon. (Testimony of Greene; Testimony of Appellant)
23. In the Appellant's office, DC Greene and A/DFC Sellon stood while the Appellant sat at his desk. DC Greene told the Appellant that if MFP Stanton would not operate the Damrell, he would send MFP Stanton home with overtime and find another pilot who would operate the boat. (Testimony of Greene; Testimony of Appellant) DC Greene found the Appellant to be "agitated" (Testimony of Greene), and the Appellant found DC Greene to be "aggressive" during this discussion. (Testimony of Appellant)
24. The Appellant told DC Greene that he "did not like the way the conversation was going" and he requested to have a union representative called before continuing, as he was concerned that MFP Stanton would face some form of discipline. (Testimony of Appellant).
25. DC Greene, in his testimony, stated "I felt like because I was not there to discipline anyone that [a union representative] was not necessary or ... they were not necessarily entitled to union representation. However, I had no problem with them being part of the conversation, so *I paused our conversation* and I gave Captain Keeley the opportunity to call Local 718 ... So I said ..., 'Be my guest,' basically, *go call the union and we'll wait until they get here and we'll continue our conversation.*" (Testimony of Greene)
26. The Appellant, at this time, did not believe that he himself would be disciplined, but felt that MFP Stanton could face discipline for refusing to pilot the Damrell. (Testimony of Appellant).

27. DC Greene and A/DFC Sellon left the Appellant's office and went to stand outside on the pier while waiting for a union representative. The Appellant called the union but did not get an immediate response due to a memorial service happening that morning. (Testimony of Appellant; Testimony of Greene)

DC Greene and the Appellant's interaction on the pier

28. MFP Stanton, the Marine Unit pilot who raised the safety concerns, was also standing out on the pier outside the Marine Unit. DC Greene, contrary to previously agreeing to the Appellant's request to wait for a union representative to continue the conversation, began to speak to MFP Stanton about his safety concerns. (Testimony of Sellon; Testimony of Stanton)

29. The door to the Marine Unit was propped open, so the Appellant was able to hear DC Greene and MFP Stanton conversing on the pier. The Appellant rushed outside to let MFP Stanton know that he (the Appellant) had called the union and was waiting for a representative to arrive.⁵ (Testimony)

30. The Appellant interrupted DC Greene and MFP Stanton's conversation, saying they should "wait for the union" before DC Greene said anything else to MFP Stanton about the safety

⁵ Testimony conflicts as to the Appellant's gait and demeanor when he went outside. DC Greene and A/DFC Sellon both stated the Appellant "stormed out" (Testimony of Greene; Testimony of Sellon), while the Appellant stated he quickly went outside to inform them that the union had been contacted. (Testimony of Appellant) FF Alleyne and MFP Dean both testified that the Appellant went outside quickly, or "briskly" (Testimony of Alleyne; Testimony of Dean), while MFP Stanton insisted that the Appellant remained in the doorway. (Testimony of Stanton) Thus, while I cannot conclude that the Appellant stormed outside, I can conclude that he went outside rather quickly, as he was in a hurry to interrupt DC Greene and MFP Stanton's conversation.

concerns and urged DC Greene to end the conversation. The Appellant raised his voice at DC Greene.⁶ (Testimony, Exhibit R5)

31. DC Greene was upset that the Appellant was, in his opinion, “ordering” him, who ranked above the Appellant in the chain of command, not to speak to MFP Stanton. DC Greene indicated in a stern tone of voice that, as a Deputy Chief, he could speak to anyone he thought was necessary, including MFP Stanton. (Testimony of Greene)

32. The Appellant and DC Greene were upset with each other and were very closely facing each other. It is likely that the Appellant did take a step to become face to face with DC Greene.⁷ (Testimony of Greene; Testimony of Sellon)

33. Both men had raised their voices. DC Greene told the Appellant that he was “crossing a line” and that he should “step back.” (Testimony of Greene) The Appellant did not move immediately. (Testimony of Appellant) A few seconds later, DC Greene directed the

⁶ Testimony conflicts as to whether the Appellant was speaking or yelling. DC Greene testified that the Appellant yelled at him (Testimony of Greene), while in his Form 5A, filled out on the day of the incident, he wrote that the Appellant “came out raising his voice.” (Exhibit R5) A/DFC Sellon testified that the Appellant yelled (Testimony of Sellon), while his Form 5A states that the Appellant’s “tone and demeanor was both aggressive and disrespectful.” (Exhibit R6) While the Appellant did not speak to the volume of his voice, he did admit to interrupting the conversation. (Testimony of Appellant, Exhibit R6) MFP Stanton testified that he did not think the Appellant’s tone was aggressive during the conversation. (Testimony of Stanton) MFP Dean testified that the Appellant was “calm and nothing out of the ordinary.” (Testimony of Dean) Thus, it is most likely that the Appellant did somewhat raise his voice in order to be heard in his attempt to end DC Greene and MFP Stanton’s conversation by interrupting them, but the preponderance of the evidence does not support that the Appellant yelled at DC Greene.

⁷ Both DC Greene and A/DFC Sellon testified that the Appellant took a step toward DC Greene. (Testimony of Greene; Testimony of Sellon) The Appellant testified that DC Greene turned around and faced him. (Testimony of Appellant) The other witnesses could not recall who stepped toward whom. (Testimony of Stanton; Testimony of Alleyne; Testimony of Dean) While DC Greene also had an aggressive demeanor during the incident, this does not detract from the evidence that the Appellant did likely take a step toward DC Greene.

Appellant to “step back and go to [his] quarters,” to which the Appellant obeyed and went inside the Marine Unit. (Testimony of Appellant; Testimony of Greene)

34. As the Marine Unit pier is located along a civilian walkway, there were various members of the public walking nearby during this altercation. (Testimony of Greene; Testimony of Sellon)

35. MFP Stanton, the Marine Unit pilot who raised the safety concerns, was sent home and paid four hours overtime. The Appellant retained another marine pilot who was already at the Marine Unit from working the prior shift, to work this shift instead, as he was willing to operate the Damrell with this crew. (Testimony of Appellant; Testimony of Greene; Testimony of Dean)

36. Before leaving the Marine Unit, DC Greene ordered the Appellant to submit a “Form 5A” regarding “his disrespect.” DC Greene and A/DFC Sellon submitted Form 5As as well. MFP Stanton, MFP Dean, and FF Alleyne did not submit Form 5As. (Testimony of Appellant; Testimony of Greene; Testimony of Stanton)

Aftermath of 6/13 Incident and Appeal Hearing

37. On June 23, 2021 after conducting an investigation, DC Greene charged the Appellant with violations of Rule 18.44(a): “conduct unbecoming a member, whether on or off duty, which tends to lower the service in the estimation of the public”; Rule 18.44(e): “disrespect or insolence to a superior”; Rule 18.44(j): “conduct prejudicial to good order”; and Rule 18.45(c): “improper or offensive language, disorderly, boisterous, provoking, or mischievous conduct, fighting, or assault.” (Exhibit R4)

38. The Appellant was suspended for four (4) tours, a total of 48 hours, and received an official reprimand. (Exhibit R4)

39. The Appellant was granted an appeal hearing by the BFD on July 8, 2021. At the hearing, the Appellant did not testify or call any witnesses. (Exhibit R3)

40. On July 26, 2021, the BFD upheld the Appellant's four-tour suspension. (Exhibit R2)

Progressive Discipline in the BFD

41. The Progressive Discipline Code of the BFD states in relevant part:

“Discipline, although punitive, can promote change and better performance.

In each and every case, prior to imposing discipline, you must consider the following:

1. Your Goal:
To promote change and better performance.
2. The Particular Facts of the Incident:
What cause[d] the incident? Do you have all the facts you need? Are there any facts which are in dispute? Is there a reasonable explanation for what occurred? Who, what, when, why and where are the essentials.
3. The Member's Past Performance:
Is this the first violation of the rules? How long ago were the prior violations? Are past violations in writing? Are past violations related to the present problem? Are there any noteworthy positive factors in the member's past performance?
4. Equal Treatment and Past Practices:
Have similar violations been handled the same way in the past with other members? Have you ever let a similar violation pass without discipline? If so, why? Have you ever disciplined another member for a similar violation in a way that you do not intend to in the present case? Would other officers, members and the Civil Service Commission agree that the discipline you are imposing is reasonable?
5. Prior to Recommending Discipline:
Refer to this code with above factors in mind. Infractions which occur during emergency operations, including the preparation for, presence at, or returning from fire duty, are major violations and usually, charges should be preferred for the first offense. Consult with your Officers and the Personnel Officer through the chain of command on major violations.

The basic progression for infractions which occur during non-emergency operations is to first give an oral warning with company punishment.

In response to a non-emergency *second offense*, issue a written reprimand and consult with the District Chief regarding a recommendation of a one to five day suspension to the Deputy Chief under Boston Fire Department Rule 20.10.

Finally, prefer charges on the third reasonably related offense occurring within a reasonable period of time.

If an officer violates the rules and regulations, he will be treated as any member with the exception that he may be given an eight hour tour of clerical duty at Headquarters in lieu of in-house discipline.

In every case, the code is a guide which requires *consistent yet fair application of discipline while taking into account all of the circumstances*. Common sense, information, and the balancing of all of the above factors are essential to the proper use of this code. Your own supervisory strengths and ability to communicate the rules clearly can make the difference. Your goal is to use discipline to promote change and better performance.

This guide should also give you the basis for discussion when you are confronted with a disciplinary problem. This code will be distributed to members of all ranks. Use it in discussion with the member who violated the rules, and in consultation with others in determining fair and reasonable discipline before you impose the punishment.

Applicable Civil Service Law

G.L. c. 31, § 43 states in the relevant part:

“ ... 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 ...”.

The Commission determines just cause for discipline by inquiring "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 488, rev. den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983). The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals'" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism, and bias in governmental employment decisions.'" Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited.

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.

Analysis

By a preponderance of the evidence, the BFD has shown that the Appellant violated BFD rules when he failed to immediately comply with DC Greene's directive to "step back". The BFD has not shown, however, that the Appellant's other actions that morning constituted

misconduct. Specifically, I do not find that the Appellant coming out of his office, and informing MFP Stanton that a union representative was en route, constitutes misconduct, even if the Appellant interrupted the conversation between DC Greene and MFP Stanton and/or spoke in a raised voice. Ensuring that a colleague (and union member) was aware that a union representative was en route, and that DC Greene had agreed to await their arrival, was time-sensitive information that justified an interruption, even if it offended the superior officer who had agreed to await the union representative to begin with. Put in the proper context, it certainly does not constitute “substantial misconduct which adversely affects the public’s interest.”

In regard to whether the Appellant stepped forward in an “aggressive” manner, this allegation was overblown -- and took on a life of its own with the passage of time, with one witness testifying that he thought he would have to physically intervene that morning, while never mentioning that alleged concern in a Form 5A completed much closer in time to the incident. In their post-hearing brief, the BFD takes it a step further, labeling the Appellant’s actions as “disrespectful, insolent, disorderly, boisterous, and provoking to his commanding officer.” An objective view of the record simply does not support these overreaching conclusions.

In short, the Appellant, should have immediately complied with DC Greene’s directive to step back without having to be told a second time (after which he did comply with the directive).

“After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly. G.L. c. 31, § 43 (‘The commission may also modify any penalty imposed by the appointing authority.’) ... Such authority to review and amend the penalties of the many disparate appointing authorities subject to its jurisdiction inherently promotes the principle of uniformity and the ‘equitable treatment of similarly situated individuals.’ Police Comm’r of Boston v. Civ. Serv. Comm’n, 39 Mass. App. Ct. 594, 600 (1996). However, in promoting these principles, the commission cannot detach itself from the underlying purpose of the civil service system— ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” Falmouth v. Civ. Serv. Comm’n, 447 Mass. 814, 823-825 (2006), quoting Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300,304 (1997).

“Unless the commission’s findings of fact differ significantly from those reported by the [appointing authority] or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty. The commission is not free to modify the penalty imposed by the [appointing authority] on the basis of essentially similar fact finding without an adequate explanation.” Falmouth v. Civ. Serv. Comm’n, 447 Mass. 814, 823-825, citing Police Comm’r of Boston v. Civ. Serv. Comm’n, 39 Mass. App. Ct. 594, 600.

A modification of the four-tour suspension is warranted for the following reasons. First, as referenced in the analysis above, my findings do differ significantly from the BFD, having found that most of the Appellant’s action on the morning in question did not violate BFD rules. Second, a four-tour suspension seems wildly in conflict with the BFD’s rules regarding progressive discipline. These Guidelines state that “the basic progression for infractions which

occur during non-emergency operations is to first give an oral warning with company punishment.” Then, “in response to a non-emergency second offense, issue a written reprimand and consult with the District Chief regarding a recommendation of a one-to-five-day suspension to the Deputy Chief.” The Progressive Discipline Guidelines also have a checklist, that the officer fills out when determining the level of discipline necessary. Neither the Appellant nor the Commission has received the Progressive Discipline Checklist that DC Greene filled out regarding the Appellant’s discipline. The written decisions of DC Greene, Chief of Operations McMahon, and Fire Commissioner Dempsey fail to explain why, in this case, there is any justification for deviating from the Progressive Discipline Guidelines for first offenses and treating the Appellant’s violation as a second offense.

The BFD provided the Commission with examples of four other discipline cases involving insubordination to show that the Appellant had received equitable treatment compared to other BFD members. However, most of these cases are not comparable or factually like the Appellant’s incident. More on point is the case of Freeman v. Boston Fire Department, 31 MCSR 5 (2018). In Freeman, a fire dispatcher, after being explicitly informed by a fire alarm company that “there’s a real fire”, opted not to immediately dispatch firefighters to the scene, causing an undue delay in responding to a fire emergency. For that misconduct, which occurred in the context of an emergency, the BFD issued a more measured discipline of a one-four suspension against a 17-year employee, reinforcing that the four-four suspension against the Appellant, a 31-year employee with an unblemished record, for a less serious violation that did not involve an emergency call, was too severe.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. D-21-132 is hereby ***allowed in part***. The Appellant's four-tour suspension is hereby rescinded, leaving in place the official reprimand issued against the Appellant.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein, and Tivnan, Commissioners) on October 6, 2022.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:

Sheilah McCarthy, Esq. (for Appellant)
Robert J. Boyle, Jr., Esq. (for Respondent)