

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

KEITH LAYNE,  
Appellant

v.

D-04-58

TOWN OF TEWKSBURY,  
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

John J. Guerin, Jr.

**DECISION**

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Keith Layne (hereinafter "Appellant") is appealing an action by the Respondent, Town of Tewksbury (hereinafter "Town") as Appointing Authority, terminating him from his position as a Permanent Police Officer on January 31, 2004 for allegations of (1) actions unbecoming a police officer due to rudeness, use of profanity, incompetence, untruthfulness, filing an

inaccurate report, and interfering with an internal investigation; (2) a pattern of citizen abuse, and (3) a pattern of avoiding responsibility, thereby affecting his credibility. The Appellant filed a timely appeal. A hearing was held on January 23, 2006 and February 7, 2006 at the offices of the Civil Service Commission (hereinafter “Commission”) in Boston. Six (6) tapes were made of the hearing. The hearing was stipulated to be a public hearing, however, witnesses were sequestered. Proposed Decisions were filed by the parties thereafter, as instructed.

### **FINDINGS OF FACT:**

Based on the documents entered into evidence (13 Joint Exhibits marked as 1, 2 & 4-14)<sup>1</sup> and the testimony of the Appellant, Joel Foster, Lt. Robert Budryk, Police Officer Jessica Mulvey, retired Chief of Police John Mackey, current Chief of Police Alfred Donovan and Deputy Chief of Police Timothy Sheehan, I find the following facts:

1. The Appellant was appointed to a position as a Permanent Police Officer with the Tewksbury Police Department on October 1, 2001. He served as a patrol officer until his termination on January 31, 2004. Before becoming a tenured Civil Service employee, the Appellant worked as a civilian dispatcher and as an Auxiliary Police Officer. (Testimony of Appellant)

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<sup>1</sup> The exhibit proposed to be marked as No. 3 was denied submission by this Commissioner on January 23, 2006 over the strenuous objection by the Respondent’s counsel. After two oral motions and a written Motion for Reconsideration of the Evidentiary Ruling on proposed Exhibit 3, a final ruling was issued denying the submission of the exhibit on March 16, 2006. The proposed Exhibit was related to a

2. On August 10, 2003, at approximately 12:25 a.m., the Appellant was dispatched to the intersection of Shawsheen Street and Lowe Street for a reported motor vehicle accident. Upon arriving at the scene, he observed damage to a telephone pole as well as skid marks leading from the pole across the street to an unoccupied black Taurus and a second vehicle facing the Taurus. Upon further observation, the Appellant noticed that the second vehicle had a male driver, a female front seat passenger and a male passenger in the back seat, all of whom were roughly the same age. (Id.)
3. The Appellant first directed his attention to the driver of the second vehicle, Joel Foster. The Appellant told Foster to stay in the car, asked for his license, asked him if he had been drinking and took his license. The Appellant then requested that Foster step out of the car in order to interview him to determine what had taken place. The Appellant asked Foster if he had been in an accident and Foster said no. (Testimony of Appellant and Foster)
4. The Appellant instructed Foster to turn and face the police cruiser and then advised him of his Miranda rights even though Foster had not been placed under arrest. (Id.)
5. The Appellant asked Foster about the accident and Foster responded by denying any knowledge of the accident, stating he had come upon the scene and offered to assist the accident victim. (See Exhibit 1E)

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November 25, 1999 incident which resulted in a disciplinary action against the Appellant as an Auxiliary Police Officer, prior to his being selected as a Permanent Full Time Police Officer in Tewksbury.

6. At this point, the Appellant pointed out the damage to the black Taurus and the telephone pole, pointed his finger at Foster and told him either “do not play friggin games with me” (according to the Appellant’s supplemental report on the incident) or “don’t play fucking games with me” or “don’t fuck with me” (according to complaints submitted by Foster and Ms. Corinne Mazzola, the girlfriend of Foster, who was the female passenger in the vehicle, and the supplemental report and testimony of Officer Mulvey). (Exhibits 1I, 1D, 1G & 1Q and Testimony of Appellant and Mulvey)
7. Officer Jessica Mulvey (“Mulvey”) next arrived at the scene of the accident and was flagged down by Mazzola. Mazzola explained to Mulvey that neither she nor Foster knew how the accident occurred and that they had come upon the scene after the single-car accident and were in the process of assisting the accident victim who was seated in the back seat of Foster’s car. Mazzola reported that she and Foster were giving the victim a ride to Haffner’s Gas Station when the victim said he had forgotten his cell phone in his vehicle. That is why they all returned to Shawsheen Street in Foster’s vehicle. Upon hearing the Appellant read the Miranda Rights to Foster, she became scared and nervous that the Appellant was intent on arresting Foster. (Testimony of Mulvey)
8. Officer Mulvey conveyed Mazzola’s story to the Appellant. After this, the focus of the investigation turned toward Christopher Kerger, the accident victim, who was still seated in the back seat of the Foster motor vehicle.

Foster and Mazzola were then allowed to leave. Realizing Kerger had been the driver of the vehicle in the accident and suspecting that he may be intoxicated, the Appellant performed a field sobriety test on Kerger which he passed. The Appellant then performed a “pat frisk” or “pat down” search of Kerger. The Appellant then requested Kerger to take the portable breath test and Kerger refused. The Appellant then ordered Kerger to do so or be arrested. Kerger took the test and it registered .088 which is over the legal Massachusetts limit. When later asked why he did not act upon the illegal reading, or even report and log that he had administered such a test as required, the Appellant reported to then Deputy Chief Albert Donovan that he performed the test as an “educational tool”. (Testimony of Appellant, Mulvey and Donovan and Exhibit 1K)

9. Deputy Chief Donovan testified at the Commission hearing that Tewksbury Police Department policy regarding portable breath tests is that the subject must assent to taking the test. Also, he explained that the “pat down” procedure was not proper in this case because an officer is required to suspect that the subject is armed prior to performing such a search. (Testimony of Donovan)
10. Officer Mulvey then gave Kerger a ride to Dunkin’ Donuts on Main Street. After learning from dispatch that a complaint had been filed against him by Foster and Mazzola, the Appellant went to the Dunkin’ Donuts to speak with Kerger. He testified that he did so for his own “professional development” to learn from Kerger if he had been fair with

Foster and Mazzola. Deputy Chief Donovan testified that he was concerned about the Appellant's conflicting statements relative to his visit with Kerger at the Dunkin' Donuts. First the Appellant stated that he was pursuing professional development but then reported that he needed more information from Kerger's New Hampshire driver's license. (Testimony of Appellant, Mulvey and Donovan)

11. Foster testified that he recalled clearly that the Appellant said "fucking", not "friggin", and also said "You're fucking lying." I found Foster's testimony to be very credible and he had a strong recall of events. He exhibited a polite and well-mannered demeanor and appeared to have to summon a certain amount of courage to testify in this matter. He did so and provided answers appropriately and without hesitation. He did not add unfounded facts nor did he contradict those already admitted. (Testimony and Demeanor of Foster)
12. Upon her arrival at her home, immediately following the incident, Mazzola contacted the Tewksbury Police Department by phone to complain about the way Foster had been treated by the Appellant at the scene of the accident. Mazzola's complaint was first received by a reserve dispatcher with the Police Department who then turned the call over to Lt. Robert Budryk ("Lt. Budryk"). Lt. Budryk testified that he advised Mazzola to take out a formal complaint and a witness statement against Appellant if she believed she had reason to do so. Lt. Budryk testified that the Department's uniform practice is to "strongly urge" a complainant to

come to the station and memorialize a complaint in writing. Having been advised of this, Mazzola and Foster came to the police station shortly thereafter to take out a formal complaint and witness statement. (Testimony of Lt. Budryk and Exhibits 1C, 1D and 1H)

13. Foster's August 11, 2003 complaint alleged that he was read his Miranda rights without any explanation as to what crime he was being charged with, that the Appellant would not allow Foster an opportunity to explain his story and that the officer accused him of lying. It also stated that the Appellant said "don't fuck with me." (Exhibit 1G)
14. Mazzola's voluntary statement form stated that the Appellant had said to Foster during the course of the interrogation "don't fuck with me" and "don't fucking lie" and that the Appellant had read Foster his rights without informing him of the charges against him. (See Exhibit 1D)
15. In the Appellant's first report, filed on August 10, 2003 at 2:12 AM, he is silent as to the use of profanity and as to his follow up visit with Kerger at Dunkin' Donuts after he learned a complaint had been filed against him. (Exhibit 1E)
16. Then Deputy Chief Donovan interviewed the Appellant on August 12, 2003. The Appellant denied using the word "fuck" or "fucking" and stated that he used the phrase "don't play *freaking* games with me." The Appellant stated that, after learning a complaint had been filed against him, he had returned to Dunkin' Donuts to ask Kerger if he felt the

Appellant had been fair. After the interview, Donovan directed the Appellant to file a further, supplemental report. (Exhibit 1K)

17. The Appellant filed a supplemental report on August 12, 2003. In this report, the Appellant denied using the word “fuck”. He stated that he spoke with Kerger for his own professional development and to determine his (Kerger’s) perception of the incident. (Exhibit 1I)
18. In a subsequent interview with Donovan on August 22, 2003, the Appellant again denied using the word “fuck” and said that he told Foster “don’t play *freaking* games with me.” (Exhibit 1V)
19. At the Commission hearing, the Appellant testified that it was possible that he swore while speaking to Foster. (Testimony of Appellant)
20. Lt. Budryk testified that he instructed Mulvey to write a report due to a complaint being filed. Mulvey testified that in this report, she did not include profanity the Appellant used in order not to “get him in trouble”. Donovan ordered Mulvey to write another, detailed report after finding her first report vague and to include a statement as to whether she heard the Appellant swear and to include what he had actually said. On August 15, 2003, Mulvey filed a supplemental report, confirming Foster and Mazzola’s reports. Mulvey testified that when she arrived at the scene she heard the Appellant say, “Don’t play fucking games with me” or “Quit playing fucking games with me.” (Testimony of Mulvey, Budryk and Exhibits 1L, 1Q and 1R)



21. I found Officer Mulvey's testimony to be clear and straightforward. It was apparent that she was uncomfortable providing potentially damaging information about the Appellant's actions but she was equal to the task of doing so credibly and responsively. While it was clearly an error in her own judgment to not state that the Appellant had used profanity to Foster in her initial report on the incident, the fact that she admitted not wanting to get the Appellant "in trouble" by doing so was believable. Because this change in her reports could have been adverse to her, I find the information and testimony she provided to be an honest assessment of the events in question. (Testimony and Demeanor of Mulvey)
22. Lt. Budryk was a credible witness with good recall and a professional, composed demeanor. He offered details with clarity and answered questions without hesitation. He gave every impression that his testimony was straightforward and believable. Despite the Appellant's assertions that Lt. Budryk harbored animosity towards him, there was no indication from his testimony or the facts submitted that the Lieutenant had any ax to grind with the Appellant. (Testimony and Demeanor of Budryk)
23. Donovan stated that, after he heard from Mulvey, he believed that there were issues of truthfulness involved on the part of the Appellant that merited a "full-blown" investigation. He stated that if the complaint was merely rudeness, he may have had Lt. Budryk handle it. Chief of Police John Mackey testified that he was very confident in Donovan's conduct of internal investigations. (Testimony of Donovan and Mackey)

24. Deputy Chief Donovan was a very credible witness and I assigned his statements a great deal of weight. He was professional in demeanor and was responsive and unhesitant in his answers. His recall of events and interviews exhibited clarity and detail that was indicative of accuracy and reliability. (Testimony and Demeanor of Donovan)
25. On August 12, 2003, Donovan wrote a memorandum indicating that the investigation into the complaint for rudeness and conduct unbecoming an officer against the Appellant indicated there may be additional violations of departmental policy and procedure and the investigation would continue. (Exhibit 1J)
26. Donovan testified that superior officers had concerns about trusting the Appellant's judgment and ability to assess a situation, as well as his treatment of the public following the "snowball" incident in February 2003. This incident involved the Appellant entering a trailer with sick children living in it and allegedly threatening the mother with a referral to the Department of Social Services because he believed the home was not sufficiently clean. Donovan testified that he believed the Appellant had lied in his reports on this incident, and emphasized the importance of truthfulness for a police officer. Chief Mackey also stated that the incident showed that the Appellant was insubordinate and untruthful. The Appellant accepted a ten-day suspension to be served for the incident with a ten-day suspension stayed assuming no further disciplinary matter and a

ten-day punishment detail. He emphasized the importance of truthfulness for a police officer. (Testimony of Donovan, Mackey and Exhibit ?)

27. On August 15, 2003, Donovan wrote a memorandum to Mackey stating that, as Mulvey's supplemental report indicated that the Appellant's report is not accurate and is untruthful, the investigation was revealing that the Appellant had been untruthful and rude, as well as having submitted an untruthful report and, perhaps, having interfered in an internal investigation. The memorandum raised prior incidents of misconduct involving the Appellant and that Donovan believed the Appellant had exhibited a clear and disturbing pattern of citizen abuse. (Exhibit M)
28. On August 18, 2003, the Town Manager issued a notice of possible discipline to the Appellant for three reasons: 1) action unbecoming an Officer due to rudeness, use of profanity, incompetence, untruthfulness, filing an inaccurate report, and interfering with an internal investigation; 2) a pattern of citizen abuse; and 3) a pattern of avoiding responsibility, thereby affecting the Appellant's credibility. (Exhibit 1R)
29. On August 19, 2003, Donovan wrote to Police Chief Mackey that his investigation into the citizen complaint filed against the Appellant showed violations of department policy, procedure, rules and regulations that prove beyond a reasonable doubt that the Appellant was being untruthful. Donovan recommended his immediate termination. Donovan also recommended termination based on his history as he had investigated prior

complaints against the Appellant, including the “snowball” incident.  
(Exhibit 1S)

30. Mackey reviewed Donovan’s report and determined that termination was appropriate. Mackey testified that vulgarity should not be used when officers deal with the public. He stated that Mulvey’s report corroborating the citizens’ reports, as well as the Appellant’s prior history, had motivated his decision to terminate the Appellant. Mackey also explained that the Town cannot keep a “bad” officer employed or the Town will be liable for their continued poor behavior. He was very clear in explaining that untruthfulness on the part of a Police Officer can very possibly be used to impugn the credibility of that officer by opposing counsel during any future legal examination and testimony. I found Mackey to be a credible witness as he was extremely knowledgeable of the subject matter displayed no other motivation for his actions than to uphold the integrity of the Tewksbury Police Department. (Testimony and Demeanor of Mackey)
31. On August 15, 2003, Mackey placed the Appellant on administrative leave. (Exhibit 1P)
32. Donovan issued his final report on September 7, 2003. (Exhibit ?)
33. A hearing was held on September 10, 2003 in accordance with G.L. c. 31, § 41. The Hearing Officer issued his decision on January 20, 2004, finding that the Appellant violated Rules and Regulations, Section C, Professional Responsibilities, Section F, Required Conduct, Section G,

Prohibited Conduct. The Hearing Officer concluded that evidence sustained the Town Manager's August 18, 2003 notice as to the reasons for the contemplated disciplinary action. (Exhibit ?)

34. Pursuant to a notice dated January 23, 2004, the Town Manager notified the Appellant that, based on the Hearing Officer's report, there was just cause to terminate him on January 31, 2004. (Exhibit ?)
35. The reasons for discharge listed by the Town Manager were as follows:  
"1) Your actions and conduct as set forth in the Hearing Officer's findings including but not limited to subsidiary findings 1-8, constitute actions unbecoming a Police Officer in that you were rude, used profanity, was incompetent, was untruthful, filed an inaccurate report and interfered with an internal investigation; 2) your actions and conduct as set forth in the Hearing Officer's findings including but not limited to subsidiary findings 1-8, constitute conduct demonstrating a pattern of citizen abuse; and 3) your actions and conduct as set forth in the Hearing Officer's findings including but not limited to subsidiary findings 1-8, constitute conduct demonstrating a pattern of avoiding responsibility and thereby affecting your credibility." The Town Manager stated that "my decision to dismiss you is based upon my determination that you have engaged in substantial misconduct which adversely affects the public interest." (Id.)
36. At the Commission hearing, the Appellant was professional, respectful and courteous in his vocal tone and his physical appearance. However, I find that the Appellant's testimony was largely crafted to place him in the

best light possible rather than to offer a completely honest assessment of his actions. Many of his answers under examination left the distinct impression that he was rationalizing his actions after the fact rather than providing a straightforward account. His assertions that some police administrators had conspired to get rid of him rang hollow. His protestation that the punishment in this matter is overblown and does not comport with his misdeeds ignores the long-held principle that police officers are held to a higher standard of behavior, especially when the ramifications of being untruthful are considered. (Testimony and Demeanor of Appellant)

## **CONCLUSION:**

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). 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). An action is “justified” when it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” City of Cambridge at 304, quoting Selectmen of Wakefield v.

Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The proper inquiry for determining if an action was justified is, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983). School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). This burden must be met by a preponderance of the evidence. G.L. c. 31, § 43.

In order to carry out the legislative purpose of the civil service laws, the appropriate inquiry for the commission is “whether the employee has been guilty of substantial misconduct which affects the public interest by impairing the efficiency of the public service.” Murray v. Justices of Second District Court of Eastern Middlesex, 389 Mass. 508, 514 (1983). Substantial misconduct by police officers adversely affects the public interest, perhaps more than any other civil service position. 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 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. Police officers are routinely called upon to prepare reports, provide sworn testimony, make public statements and mediate disputes. Integrity must necessarily be a trademark feature of anyone aspiring to work in law enforcement. Credibility is a paramount characteristic. Such is the level of public trust placed in a police officer that nearly any public indiscretion could be regarded as conduct unbecoming a police officer. School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 491-492 (1997); McIssac v. Civil Service Commission, 38 Mass. App. Ct. 473, 475 (1995).

In the present matter, the Appointing Authority has established that just cause exists for the Appellant’s discharge based on his conduct during the August 10, 2003 incident and his subsequent actions of violating Department Rules and Regulations by repeatedly lying about the incident, interfering with an internal affairs/citizen’s complaint, incompetence by using poor judgment, conduct unbecoming an officer and filing an inaccurate and incomplete report. The evidence demonstrated that the Appellant lied in his two reports and two interviews with Donovan as indicated by contradictions to his account in Mulvey’s report. Lying and filing false reports are just cause for the termination of a police officer. Meaney v City of Woburn, 18 MCSR 129, 133 (2005). The Appellant’s past disciplinary problem also factored into the decision to discharge



him, as the instant matter coupled with his prior misconduct indicates a propensity for rude and discourteous behavior.

The Civil Service Commission has determined that the Appointing Authority has sustained its burden, by a preponderance of the credible evidence, of proving just cause for terminating the Appellant. Therefore, the appeal on Docket No. D-04-58 is hereby *dismissed*.

Civil Service Commission

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John J. Guerin, Jr.  
Commissioner

By vote of the Civil Service Commission (Henderson, Chairman; Taylor, Guerin, Marquis and Bowman, Commissioners) on June 21, 2007.

A true record. Attest:

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Commissioner

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

Under the provisions of GL c. 31 s. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Kenneth H. Anderson, Esq.  
Michael J. Long, Esq.