

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

Decision mailed: 12/5/11  
Civil Service Commission 03

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

**MICHEAL LEAR,**  
*Appellant*

v.

**REVERE HOUSING  
AUTHORITY,**  
*Respondent*

**Case No.:** D1-10-230

**DECISION**

After careful review and consideration, the Civil Service Commission voted at an executive session on December 1, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated October 14, 2011. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell and Stein [Marquis, absent], Commissioners) on December 1, 2011.

A true record. Attest.



Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or 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.

Notice to:

Douglas Louison, Esq. (for Appellant)  
Michelle Randazzo, Esq. (for Appointing Authority)  
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
CHIEF ADMINISTRATIVE MAGISTRATE

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October 14, 2011

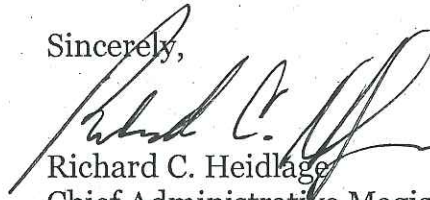
Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

**Re: Michael Lear v. Revere Housing Authority**  
**DALA Docket No. CS-11-122**  
**CSC Docket No. D1-10-230**

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,

  
Richard C. Heidlage  
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Douglas Louison, Esq.  
Michelle Randazzo, Esq.

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**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

**Division of Administrative Law Appeals**

**Michael Lear,**  
Appellant

v.

Docket No. D1-10-230  
DALA No. CS-11-122

**Revere Housing Authority,**  
Respondent

**Appearance for Appellant:**

Douglas Louison, Eq.  
Louison, Costello, Condon & Pfaff  
101 Summer Street  
Boston, MA 02110

**Appearance for Respondent:**

Michelle Randazzo, Esq.  
Kopelman & Paige, P.C.  
101 Arch Street  
Boston, MA 02110

**Administrative Magistrate:**

**Maria A. Imparato, Esq.**

**SUMMARY OF RECOMMENDED DECISION**

The Revere Housing Authority had reasonable justification for terminating the Appellant from his position of Painter in the Maintenance Department when he made threats of physical violence to co-workers, and frightened another co-worker when he deliberately nearly hit him with a truck, in violation of a work rule that prohibits the use of threatening language towards co-workers, and prohibits attempting bodily injury to another employee.

**RECOMMENDED DECISION**

Michael Lear filed a timely appeal under M.G.L. c. 31, s. 43 and M.G.L. c. 121B, s. 29 of the August 30, 2010 decision of the Revere Housing Authority (RHA) to terminate him from his

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employment as a Painter in the Maintenance Division for making threatening comments to his coworkers.

I held a first day of hearing on March 28, 2011 at the Division on Administrative Law Appeals, 98 North Washington Street, Boston, MA, and a second day of hearing on May 6, 2011 at the office of the Civil Service Commission, One Ashburton Place, Room 503, Boston, MA.

I admitted documents into evidence. (Exs. 1 – 13.) The hearing was digitally recorded.

The Appellant, Michael Lear, testified on his own behalf, as did Paul King, a painter in the Maintenance Division.

Testifying on behalf of the RHA were: Linda Shaw, RHA Executive Director and the Appointing Authority; Peter Romano, Director of Maintenance; Peter Pitrone, Working Foreman; Anthony Morrico, Assistant Foreman; Ramon Brandariz, Maintenance Mechanic I; James McCraney, Mechanic I; Joseph Garbarino, Mechanic; and Alan Coscia, Mechanic I.

The record closed on June 24, 2011 with the filing of proposed findings of fact and a proposed decision by each party.

### **FINDINGS OF FACT**

1. Michael Lear worked for the RHA for twenty-four (24) years until he was terminated from his position as Painter in the Maintenance Division on August 30, 2010, a position he had held for the previous fifteen (15) years. Mr. Lear had also held the positions of Groundskeeper, Mechanic I and Mechanic II. (Testimony, Lear; Ex. 1.)
2. On August 3, 2010, James McCraney, a mechanic in the RHA maintenance department, told Peter Romano, the Director of Maintenance, that he should speak with Ramon Brandariz, another mechanic, about issues Mr. Brandariz was having with Mr. Lear. (Ex. 3; Testimony, McCraney; Romano.)

3. On August 4, 2010, Mr. Romano spoke with Mr. Brandariz. Mr. Brandariz said that Mr. Lear had said to him on more than one occasion, "I have a bullet with your name on it." Mr. Romano asked Mr. Brandariz for a written statement. (Ex. 3; Testimony, Romano, Brandariz.)
4. Mr. Brandariz prepared a written statement indicating that Mr. Lear had made the remark to him about two months previously for the third or fourth time in the previous year and one half. Mr. Brandariz indicated that he feared for his safety, in light of a workplace shooting that had occurred in Connecticut on August 3, 2010 in which eight people were killed. (Ex. 7.)
5. Mr. Romano contacted the Maintenance Foreman, Peter Pitrone, and requested to speak with Mr. Lear. Mr. Pitrone said that Mr. Lear had called in sick. Mr. Romano asked Mr. Pitrone to speak with Mr. Brandariz, and to see whether any other RHA employee had knowledge of the alleged incidents. (Ex. 3; Testimony, Romano.)
6. Mr. Pitrone reported to Mr. Romano that Joseph Garbarino, a mechanic, had heard Mr. Lear make threatening remarks referring to a weapon. (Ex. 3; Testimony, Romano.)
7. Mr. Garbarino prepared a written statement on August 4, 2010 indicating that about two months previously he heard Mr. Lear say to Mr. Brandariz, "I have a bullet with your name on it," or "I have a bullet for you." Mr. Garbarino heard Mr. Brandariz say, "Why would you say something like that?" Mr. Lear did not respond. (Ex. 9; Testimony, Garbarino.)
8. James McCraney, a mechanic, had previously heard Mr. Lear on a handful of occasions make a remark about how he was going to "shoot up the shop." Mr. Lear told Mr. McCraney that he had recently purchased a gun. (Testimony, McCraney; Ex. 8.)

9. Several months prior to August 4, 2010, Mr. McCraney was in the maintenance shop working on a table saw in one of three parking bays. Two maintenance trucks are stored in each bay, parked nose to tail. The first truck came into the bay where Mr. McCraney was working and parked about six feet away from Mr. McCraney. Mr. McCraney then heard a crash and the screeching of tires as Mr. Lear hit the back of the parked truck with his truck, and pushed the first truck five feet forward towards Mr. McCraney. Mr. McCraney jumped out of the way and was not hit by the truck, but he was so frightened that he experienced fecal incontinence. (Testimony, McCraney, Garbarino, Coscia; Ex. 8.)
10. Mr. McCraney told Mr. Lear that that better not happen again. Mr. Lear made no apology or comment to Mr. McCraney. (Testimony, McCraney.)
11. Mr. McCraney reported the truck incident to Mr. Pitrone. The next day in the office, Mr. Pitrone, Mr. Romano and Ms. Shaw, the RHA Executive Director, gave Mr. Lear a verbal warning about the incident and told him he could not act that way. Then Mr. Romano brought up the rumor that Mr. Lear had said he was going to "shoot up the shop." Mr. Lear said, "I dreamt about that. I wouldn't do it." (Testimony, Pitrone, Romano, Shaw.)
12. Mr. Lear said that the truck incident was a joke; he did not mean to hurt Mr. McCraney. Ms. Shaw gave Mr. Lear the benefit of the doubt and decided that a verbal warning was sufficient; she did not write up a written warning about the truck incident. (Testimony, Shaw.)
13. On August 4, 2010, Ms. Shaw asked Revere Police Officer Andrew Lauria to investigate the complaints made by Mr. Brandariz and Mr. Garbarino. Officer Lauria arrived at the maintenance shop on the morning of August 5, 2010 and learned that Mr. Lear had called



in sick. Officer Lauria checked in Massachusetts and New Hampshire and learned that Mr. Lear did not have a license to carry in Massachusetts, and his license to carry in New Hampshire had expired. Officer Lauria left a telephone message for Mr. Lear. When Mr. Lear called Officer Lauria back, Mr. Lear said he kept a rifle in his vacation home in New Hampshire. Officer Lauria asked Mr. Lear to voluntarily surrender the weapon to police. Mr. Lear turned in his rifle to New Hampshire police on August 6, 2010.

(Testimony, Shaw; Ex. 12.)

14. By letter of August 5, 2010, Mr. Lear was placed on paid administrative leave, pending an investigation into the allegations of misconduct made by Mr. Brandariz and Mr. Garbarino. Mr. Lear was also served with an RHA No Trespassing Notice for violation of work rule #3 which prohibits the use of "profane, abusive or threatening language towards fellow employees, supervisors or tenants." (Exs. 4, 5.)
15. Ms. Shaw met with Mr. Lear on two occasions while he was on administrative leave prior to his disciplinary hearing on August 26, 2010. When Ms. Shaw asked Mr. Lear at the first meeting why he made the remarks about the bullet with Mr. Brandariz's name on it and the remark about shooting up the shop, Mr. Lear said he was joking and he was sorry. Mr. Lear did not deny making the statements. (Testimony, Shaw.)
16. At Ms. Shaw's second meeting with Mr. Lear, in the presence of Mr. Pitrone and Mr. Romano, Mr. Lear said that he had disliked Mr. Brandariz and Mr. McCraney for a long time, and he would be willing to accept discipline short of termination. (Testimony, Shaw.)
17. By letter of August 19, 2010, Ms. Shaw issued notice to Mr. Lear as his Appointing Authority of a disciplinary hearing to be held on August 26, 2010 because of "allegations

that you have made threats of physical violence against your co-workers, in violation of the Maintenance Department Work Rules, Rule No. 3.” (Ex. 2.)

18. After a hearing on August 26, 2010, Ms. Shaw issued a Notice of Termination dated August 30, 2010, concluding that the statements Mr. Lear admitted to making, coupled with his longstanding dislike of Mr. Brandariz and McCraney “suggests that the statements were not made in jest. Regardless of whether you believed you were ‘joking,’ however, the fact is that your co-workers felt threatened enough to come forward with these allegations.” Ms. Shaw opined, “[T]hreatening physical harm against co-workers is an offense so serious that discharge is appropriate, without prior and/or progressive discipline.” (Ex. 1.)
19. Ms. Shaw took into consideration the truck incident involving Mr. McCraney when she decided to terminate Mr. Lear. (Testimony, Shaw.)
20. Mr. Lear’s previous discipline consists of: 1) a formal written warning dated January 22, 1998 for returning late from a coffee break and disrespecting a supervisor by closing a door in his face; 2) a written reprimand dated March 23, 1999 for returning late after a lunch break and insubordination; 3) and a verbal warning of August 25, 2005 for failing to go directly to his work assignment after leaving the Maintenance Shop. (Ex. 11.)
21. By letter of August 31, 2010, Daniel B. Jacobs, Psy.D., a Licensed Psychologist and Health Service Provider, indicated that he is Mr. Lear’s treating psychologist. Dr. Jacobs opined that Mr. Lear poses no risk of harm to himself or others and that “there is no indication that he is a risk to lose control or indication that he is a threat to anyone.” (Ex. 13.)



22. By letter of September 7, 2010, Mark D. Raizin, M.D., Mr. Lear's primary care physician, opined that in his medical opinion Mr. Lear "is in NO way a threat to anyone."  
(Ex. 13.)

### CONCLUSION AND RECOMMENDATION

The Revere Housing Authority had reasonable justification to terminate Michael Lear from his position as Painter in the Maintenance Department.

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, 3004 (1997). 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 rule of law. *Id.*, at 304, quoting *Selectmen of Wakefield v. Judge of First District Court of E Middlesex*, 2262 Mass. 477, 482 (1928); *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 211, 214 (1971). The Commission determines justification for discipline by inquiring "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." *Murray v. Second Dist. Ct. of E. Middlesex*, 389 Mass. 508, 514 (1983).

The Appointing Authority's burden of proof is one of a preponderance of the evidence, which is established "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." *Tucker v. Pearlstein*, 334 Mass. 33, 353-36 (1956). If the Commission finds by a preponderance of

the evidence that there was just cause for an action against the Appellant, the Commission shall affirm the action of the Appointing Authority. *Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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.” *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

Under RHA Maintenance Department Work Rules, Rule #3 prohibits, “Fighting or attempting bodily injury to another employee while on Authority property, or use [of] profane, abusive or threatening language toward fellow employees, supervisors or tenants.”

The Appellant clearly violated this rule by telling Mr. Brandariz on several occasions that he had a “bullet with your name on it.” The Appellant violated the rule when he said he was going to “shoot up the shop.” The Appellant violated the rule when he deliberately crashed his truck into another truck and nearly hit Mr. McCraney, scaring the daylights out of him in the process.

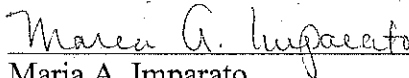
The witnesses at the hearing were clearly frightened of the Appellant and testified reluctantly, apparently fearing retaliation.

The RHA has an obligation to take threats of physical violence seriously and to provide a safe working environment for all of its employees. I agree with Ms. Shaw that “threatening physical harm against co-workers is an offense so serious that discharge is appropriate, without prior and/or progressive discipline.”

I accorded no weight to the opinions of the Appellant's treating psychologist and primary care physician with respect to whether the Appellant poses a threat to his co-workers. Making the threats that he made to Mr. Brandariz, and acting as he did towards Mr. McCraney, while admitting that he dislikes both men, is sufficient to find a violation of the work rules, and provides a sound basis to terminate the Appellant.

I recommend that the Civil Service Commission affirm the action of the Appointing Authority.

DIVISION OF ADMINISTRATIVE LAW APPEALS

  
\_\_\_\_\_  
Maria A. Imperato  
Administrative Magistrate

DATED: OCT 14 2011