

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
100 Cambridge Street, Suite 200  
Boston, MA 02114

STEPHEN N. MCCARTHY,  
*Appellant*

v.

D-23-038

TOWN OF ACTON,  
*Respondent*

Appearance for Appellant:

Joseph P. Kittredge, Esq.  
Lorena Galvez, Esq.  
Rafanelli Kittredge PC  
1 Keefe Road  
Acton, MA 01720

Appearance for Respondent:

Paul J. Hodnett, Esq.  
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Commissioner:

Shawn C. Dooley

**SUMMARY OF DECISION**

The Commission denied the Appellant’s appeal and affirmed the Town of Acton’s decision to suspend him as a police officer for 30 days for off-duty misconduct related to leaving the scene of an accident that caused property damage without notifying the police.

**DECISION**  
**(Corrected Copy Modifying Finding 54)**

On March 29, 2023, the Appellant, Stephen N. McCarthy (Appellant), filed a timely appeal with the Civil Service Commission (Commission) pursuant to G.L. c. 31, § 43. The appeal challenged the Town of Acton’s (Town) decision to suspend the Appellant for 30 calendar days

without pay.<sup>1</sup>

The Commission held a remote pre-hearing conference on April 25, 2023. On September 19, 2023, I conducted an in-person full hearing. The hearing was recorded via the Webex videoconferencing platform, and copies were provided to the parties.<sup>2</sup> On November 13, 2023, the parties filed proposed decisions, whereupon the administrative record closed. For the reasons set forth below, the Appellant's appeal is denied.

### **FINDINGS OF FACT**

The Town submitted into evidence 17 exhibits (Exhibits 1-17; R0001-R0101). And the Appellant submitted into evidence six exhibits (Exhibits 18-23; A0097-A0139). The following witnesses testified in the hearing:

#### *Called by the Town:*

- Officer Nathan Meuse, Acton Police Department
- Inspector Ronald Holsinger, Concord Police Department
- Lieutenant Brian Goldman, Concord Police Department
- James Cogan, Chief of Police Acton Police Department
- John Mangiaratti, Town Manager, Acton

#### *Called by the Appellant:*

- Stephen N. McCarthy (Appellant)
- Appellant's wife

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, et seq., apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

<sup>2</sup> A link to the audio/video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish 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 provided to the parties should be used to transcribe the hearing.

Based on the documents submitted, the testimony of the above witnesses, and reasonable inferences drawn from the credible evidence, and taking administrative notice of pertinent statutes, regulations, policies, and stipulations, a preponderance of the evidence establishes the following findings of fact:

1. The Appellant, Officer Stephen N. McCarthy, has been employed by the Acton Police Department for over 18 years and is currently a patrol officer. (Testimony of Appellant)
2. Officer Nathan Meuse (Meuse) has been employed by the Acton Police Department for over 10 years and is currently a detective. (Testimony of Meuse)
3. Tyler Russell (Russell), at the time of the accident, was an Acton Police Officer but is no longer employed by the Acton Police Department. (Testimony of Cogan)
4. The Acton Police Department issues Rules and Regulations when officers are appointed to the Department and reissues the Rules and Regulations annually. (Testimony of Meuse; Exhibit 4).
5. On February 25, 2020, the Appellant, Meuse, and Russell attended a Bruins game, where first responders were being honored. Meuse met the Appellant at his house in Concord and the Appellant drove Meuse and himself to the West Concord commuter rail station. They took the commuter rail to North Station. Russell joined them at the West Acton stop. (Testimony of Meuse).
6. Before the game, the three officers stopped by McGann's Irish Pub where they met up with another Officer by the name of AJ Rotella. (Testimony of Meuse)
7. Meuse had two or three beers at McGann's Pub and the Appellant was also drinking beer. (Testimony of Meuse)
8. The Appellant had dinner and a few beers at McGann's Pub. (Testimony of Appellant)

9. At the game, Meuse sat next to the Appellant and the Appellant consumed at least one beer during the game. (Testimony of Meuse)
10. Appellant could not recall how many beers he had during the game. (Testimony of Appellant)
11. After the game, Appellant had one more beer at McGann's Pub before going to the train station. (Testimony of Appellant)
12. Once at the train station, Appellant had pizza and a soda before getting on the train to West Concord. (Testimony of Appellant)
13. The train ride was about 40 minutes. (Testimony of Appellant)
14. All three officers took the train back to the Concord train station where the Appellant's vehicle was parked. (Testimony of Meuse; Testimony of Appellant)
15. Appellant drove his personal vehicle down Central Street in Concord, in the direction of his home, a trip which typically takes approximately five minutes. (Testimony of Appellant)
16. Russell sat in the back seat of the car and Meuse sat in the front passenger seat. (Testimony of Meuse)
17. At some point, Meuse noticed that the car was not slowing down as they were approaching a stop sign at an intersection and Meuse looked over at Appellant who appeared to have fallen asleep. (Testimony of Meuse)
18. Meuse attempted, without success, to wake Appellant by yelling his name. (Exhibit 16 – Interview of Meuse)
19. Appellant's vehicle went through the stop sign, without stopping, across the street, and onto a property on Westvale Drive, crashing through a flowerbed and a stone wall, then striking the garage. The vehicle ended up embedded in the garage. (Testimony of Meuse; Testimony of Appellant; Exhibit 13 photos)

20. The airbags did not deploy. (Testimony of Meuse; Testimony of Appellant; Testimony of Goldman)
21. After the vehicle struck the garage, Meuse got out of the vehicle and asked Appellant and Russell if they were okay, and they both responded in the affirmative. Meuse looked into the garage from the outside and determined that nobody was inside the garage. (Testimony of Meuse)
22. Appellant attempted to locate his cell phone which he customarily leaves in the center console but was unable to locate it. (Exhibit 16 – Interview of Meuse; Testimony of Appellant)
23. Meuse has no recollection of Appellant asking him or Russell to use their cell phone to report the accident to the Concord Police. (Testimony of Meuse)
24. Appellant directed Meuse and Russell to leave the scene and that he would “take care of everything.” (Testimony of Meuse)
25. All three left by foot to Appellant’s home where Officer Meuse’s truck was parked. Appellant’s home is three houses away from the accident. (Testimony of Meuse)
26. Meuse, with Russell as a passenger, drove his truck from Appellant’s house and dropped Russell off at his car. Meuse then proceeded home. (Testimony of Meuse)
27. While Meuse was driving his truck, Appellant’s wife called him to see if he was okay. (Testimony of Meuse)
28. Upon arriving home, Appellant told his wife what had occurred and asked her to go to the scene in his stead. (Exhibit 15; Testimony of Appellant)
29. Appellant’s wife has been married to the Appellant for twelve years. (Testimony of Appellant’s wife)

30. At approximately 11:32 pm, Concord Dispatch received a call for a vehicle crashing into a garage on Brown Street (later identified as the home on the corner of Brown Street and Westvale Drive). Officer John O'Connor as well as Concord Fire and EMS were dispatched to the scene. (Exhibit 12)
31. Appellant's wife went down the street towards the scene of the accident and met with an officer who told her to wait at home and someone would come speak to Appellant. (Exhibit 15; Testimony of Appellant's wife)
32. Ronald Holsinger has been employed as a Police Officer by the Concord Police Department for ten years and prior to that for eight years at the Carlisle Police Department and two years as a Northeastern University police officer. His current title is Inspector. (Testimony of Holsinger)
33. At 11:30 pm on February 25, 2020, Holsinger, who was scheduled for the midnight to 8 am shift, was at roll call when he was dispatched to Westvale Drive. The dispatch information that Holsinger received was that three individuals were walking away from an accident scene. When Holsinger arrived to Westvale Drive, he observed a gray Toyota Tundra that had crashed into the side of the garage. It took approximately five to seven minutes for Holsinger to arrive at the accident scene once dispatched. There was no one around the accident scene. (Testimony of Holsinger)
34. When another Concord officer ran the license plate number of the Toyota Tundra, the plate came back to the Appellant as the owner of the vehicle. Holsinger, who at the time lived in the general area of the accident scene, knew the Appellant before that night and knew that the Appellant was an Acton Police Officer. (Testimony of Holsinger)

35. Upon arriving at the scene, Holsinger radioed and asked for the shift supervisor to respond to the scene. Sgt. Goldman (now Lt. Goldman) was the shift supervisor. Goldman has been employed for thirty-one years as a police officer. (Testimony of Goldman)
36. Holsinger walked to the Appellant's house about 100 yards away and knocked on the front door. Appellant's wife answered the door. (Testimony of Holsinger)
37. Appellant's wife informed Holsinger that her husband was home and in the bathroom. Holsinger told her that his supervisor wanted to speak with the Appellant. Holsinger estimated it was ten to seventeen minutes from the time he left the Concord Police station to when he spoke with Appellant's wife. Holsinger remained outside the Appellant's residence waiting for Sgt. Goldman to arrive. (Testimony of Holsinger)
38. Appellant's wife was unsure whether her husband took a shower while he was in the bathroom. She knew he changed clothes. She estimated that it was twenty to thirty minutes that her husband was in the bathroom prior to going out to meet with Holsinger and Goldman. (Testimony of Appellant's wife)
39. When Appellant finally emerged, Goldman and Holsinger asked Appellant to step outside the home and onto the walkway. (Testimony of Holsinger; Exhibit 12)
40. Holsinger cannot remember how Appellant was dressed. Goldman asked Appellant what had happened that evening. "[Appellant] stated he was driving the vehicle and was involved in the crash. [Appellant] stated he knew he made a mistake by leaving the scene of an accident, but that he became nervous and needed to use the bathroom.<sup>3</sup> [Appellant] told the officers that he

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<sup>3</sup> While the Appellant and the Appellant's wife testified that the Appellant has a history of having an urgent need to use the restroom in situations of high stress, I do not credit this as being a reason for leaving the scene of the accident. I also find that the Appellant is attempting to use this issue to justify taking a shower, changing his clothes, not returning to the scene of the accident, and delaying his meeting with the Concord Police – all of which had the benefit of

had been driving west on Central Street when he fell asleep.” (Testimony of Holsinger; Exhibit 12)

41. Appellant told Holsinger and Goldman that he had consumed several beers earlier in the evening. (Exhibits 12 and 13)

42. The officers at the scene did not administer any field sobriety tests or ask the Appellant to take a breathalyzer test. (Testimony of Holsinger)

43. When Goldman asked Appellant why he did not call and report the accident to the Concord Police, Appellant responded that he “panicked and thought he was going to get in trouble at work.” (Testimony of Holsinger; Exhibit 13)

44. Goldman and Holsinger asked Appellant to provide the names of his passengers and he declined to do so. (Testimony of Goldman; Exhibit 13)

45. Appellant was cited for 1) 90/24/E Negligent Operation of Motor Vehicle c. 90 §24(2)(a); 2) 90/24/C Leave Scene of Property Damage c. 90 §24(2)(a); and 3) 89/9 Stop/Yield, Fail To \*89 §9 and a summons was issued for a Magistrate’s hearing. (Exhibits 10, 11, 12, and 13; Testimony of Holsinger)

46. Three days after the crash, on February 28, 2020, Appellant filed a Motor Vehicle Crash Report. (Exhibit 5)

47. On February 28, 2020, the Acton Police Department placed the Appellant on administrative leave. The Appellant was informed that he was being investigated for violations of Acton Police Department Rules and Regulations, specifically Conduct Unbecoming an Officer for

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minimizing any appearance of intoxication and minimizing the risk of incurring further criminal charges.



actions arising out of an off-duty motor vehicle accident on February 25, 2020. (Exhibit 2; Testimony of Cogan)

48. On May 6, 2020, Appellant was advised that he was being returned to duty, as the coronavirus pandemic had impacted the investigation moving forward given that Court closures had delayed his Clerk-Magistrate's hearing, but that an investigation would be resumed upon the resolution of same and he might be disciplined depending on the results of the investigation. (Exhibit 2)

49. James Cogan ("Cogan") is the Acton Police Chief and has held that position since December 2022. Prior to that point, Cogan served as Deputy Chief of the Acton Police Department for seven years. (Testimony of Cogan)

50. When appointed, Acton police officers are provided a copy of the Acton Police Department Rules and Regulations. Current officers receive annual training electronically in the Department and they are provided with a copy annually of the Rules and Regulations. (Testimony of Cogan)

51. On February 26, 2020, Chief Burrows, the former Chief, informed Cogan that the Appellant had been involved in an off-duty motor vehicle accident and that Appellant had been cited by the Concord Police for that incident. Chief Burrows asked Cogan to contact the Concord Police and obtain information about the matter. (Testimony of Cogan)

52. When he reviewed the Appellant's motor vehicle crash report, Cogan became aware that other Acton Police officers were passengers in Appellant's vehicle at the time of the incident. (Testimony of Cogan; Exhibit 5).

53. Cogan learned that Concord Police had served the Appellant with a citation with criminal charges for his conduct from on or about February 25, 2020, and he requested a hearing before

a clerk-magistrate that was continued several times due to the pandemic, and the closure of the courts. (Testimony of Cogan)

54. On December 16, 2022, a clerk-magistrate hearing took place at the Ayer<sup>4</sup> District Court to determine whether to issue the criminal charges listed in the February 25, 2020 citation. The magistrate found no probable cause and no complaint issued for the following charges: 1) 90/24/E Negligent Operation of Motor Vehicle c. 90, §24(2)(a); 2) 90/24/C Leave Scene of Property Damage c. 90, §24(2)(a); or 3) 89/9 Stop/Yield, Fail To \*89 §9. (Exhibits 2 and 12)
55. Soon thereafter, Cogan became aware that a clerk magistrate held a hearing into the citation issued to Appellant and had declined to issue criminal complaints. Officers Meuse and Russell were served with notice that they were being investigated because of their actions after the motor vehicle crash. Cogan interviewed both officers. (Testimony of Cogan)
56. During these interviews, Meuse and Russell informed Cogan that the Appellant directed them to leave and that he was going to handle the matter, so Meuse and Russell had left the scene. Meuse informed the Chief that on the night of the accident he would have acted differently if he had known that Appellant was going to refuse to identify them to the Concord Police officers. (Testimony of Cogan; Exhibit 16).
57. Meuse and Russell were not disciplined for leaving the scene of the accident because the Appellant was the driver of the vehicle involved in the accident, the Appellant informed Meuse and Russell that he was going to handle the matter, and the Appellant told them they were free to leave. (Testimony of Cogan)

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<sup>4</sup> Subsequent to the issuance of the decision, the Town confirmed that the Magistrate's hearing took place in Ayer District Court, not Concord District Court.

58. On January 26, 2023, Appellant received notice from Cogan that the investigation was being resumed. (Exhibit 8)
59. Cogan instructed Appellant to answer questions regarding the incident. (Testimony of Cogan; Exhibits 14 and 15).
60. Cogan recommended that the Town Manager hold a hearing to determine whether Appellant should be disciplined. (Testimony of Cogan)
61. Appellant has prior discipline that resulted in a three-day suspension without pay and a directive to successfully complete a five-day driver training course. The discipline was for causing a motor vehicle accident while on duty. Appellant was cited for violating G. L. c. 89, § 7B and certain department policies and procedures: (1) failing to come to a full stop at a red light before entering the intersection and proceeding with caution and (2) due regard for the safety of persons and property. (Testimony of Cogan; Exhibit 17).
62. On February 17, 2023, Appellant received a Notice of Hearing from the Town Manager advising him of a February 28, 2023 hearing to demonstrate why he “should not be disciplined or terminated.” (Exhibit 3)
63. John Mangiaratti (Mangiaratti) is the Town Manager in Acton and has held the position for a little over five years. (Testimony of Mangiaratti)
64. The Notice of Hearing advised Appellant of the following allegations:
- Your actions while off duty of leaving the scene of an accident after causing property damage, failing to identify yourself at the scene, failing to check for injuries to those in the residence at [redacted] and failing to identify the occupants of your vehicle when questioned by the Concord Police are violations of the Acton Police Department Rules and Regulations—specifically Conduct Unbecoming An Officer which prohibits an officer from engaging in improper behavior that reflects discredit upon the officer and/or the APD (Conduct Unbecoming an Officer, Acton Police Department Rules and Regulations, page 1-11) (Exhibit 3)*

65. On March 10, 2023, a local hearing was conducted and Appellant was represented by Counsel.  
(Exhibit 2)

66. Mangiaratti asked Appellant at the disciplinary hearing if he would do anything differently that night. Appellant said he would not and that he would act the same. Mangiaratti found that answer to be concerning and so he asked Appellant the same question a second time at the end of the hearing. Appellant replied again that he would not do anything differently. (Testimony of Mangiaratti; Exhibit 2)

67. On March 24, 2023, Appellant received a Notice of Discipline imposing a 30-day suspension without pay for having failed to satisfy the standard contained in the Rules and Regulations under the “Duty Status” requirement and violating the Prohibited Conduct section of the Rules and Regulations by engaging in Conduct Unbecoming an Officer (Conduct Unbecoming an Officer, Acton Police Department Rules and Regulations, page 1-11). (Exhibit 2)

#### **APPLICABLE CIVIL SERVICE LAW**

Sections 41 to 45 of G.L. c. 31 allow discipline of a tenured civil servant for “just cause” after due notice, a hearing (which must occur prior to discipline other than a suspension from the payroll for five days or less), and a written notice of the decision that states “fully and specifically the reasons therefore.” G.L. c. 31, § 41. An employee aggrieved by such disciplinary action may appeal to the Commission, pursuant to G.L. c. 31, § 42 and/or § 43, for de novo review by the Commission “for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006). As prescribed by G.L. c. 31, § 43, the Appointing Authority bears the burden of proving “just cause” for the discipline imposed by a 24 preponderance of the evidence:

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’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” Town of Falmouth, 447 Mass. at 823 and cases cited. The Commission also enforces “basic merit principles,” which means “assuring fair treatment of all applicants and employees in all aspects of personnel administration,” “providing of training and development for employees, as needed, to assure the advancement and high-quality performance of such employees,” and ensuring that all employees “are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. Basic merit principles require that discipline be remedial, not punitive, “correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected . . . .” Id.

Section 43 of G.L. c. 31 also vests the Commission with the authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated

“considerable discretion” in this regard, albeit “not without bounds” so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. See, e.g., Police Comm’r v. Civil Service Comm’n, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; Falmouth v. Civil Service Comm’n, 61 Mass. App. Ct. 796, 800 (2004); Faria v. Third Bristol Div., 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). The Commission’s role is relatively narrow, and it owes substantial deference to the appointing authority’s exercise of judgment, and “[u]nless the [C]ommission’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 [C]ommission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation.” Town of Falmouth, 447 Mass. at 824.

Additional consideration must be given when a police officer’s off-duty conduct is the subject of disciplinary action. Off-duty behavior by a public employee must bear a direct and significant nexus to his or her ability to perform the official duties of the position for it to be subject to discipline. See, e.g., Baldassaro v. City of Cambridge, 50 Mass. App. Ct. 1, 4, rev. den., 432 Mass. 1110 (2002).

The Commission considers the special responsibilities imposed upon police officers, who carry a badge and a gun and all of the authority that accompanies them, and which requires them to comport themselves in an exemplary fashion, especially when it comes to exhibiting self-control and to adhere to the law, both on and off duty. “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 Comm'r of Boston v. Civil Service Com., 22 Mass. App. Ct. 364, 371 (1986). Thus, officers “must comport themselves in accordance with the laws that they are sworn to enforce *and* behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel.” Id. “[P]olice officers voluntarily undertake to adhere to a higher standard of conduct . . . [and] must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement . . . . [T]hey implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” Attorney General v. McHatton, 428 Mass. 790, 793-74 (1999) and cases cited. See also Falmouth v. Civil Service Comm’n, 61 Mass. App. Ct. 796, 801-802 (2004); Police Commissioner v. Civil Service Comm’n, 39 Mass. App. Ct. 894, 601-602 (1996); McIsaac v. Civil Service Comm’n, 38 Mass. App. Ct. 473, 475-76 (1995); Police Commissioner v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986). See also Spargo v. Civil Service Comm’n, 50 Mass. App. Ct. 1106 (2000), *rev. den.*, 433 Mass. 1102 (2001).

## **ANALYSIS**

After careful consideration of the record, I find that the Appointing Authority has shown, by a preponderance of the evidence, that there was just cause to discipline the Appellant. There is substantially no argument over the primary facts of this case, only the rationale surrounding the actions of the Appellant and whether the punishment is reasonably justified.

### **Appellant’s Conduct**

The events leading up to the events in question are also not disputed. The Appellant and other Acton Police Officers attended a Boston Bruins game. While the Appellant admitted to consuming alcohol before, during, and following the event, the Concord Police did not find the

Appellant to be intoxicated when interviewed at his home, although they failed to conduct a field sobriety test or ask the Appellant to take a breathalyzer. I address the four reasons cited by Respondent as supporting the charge of Conduct Unbecoming an Officer and failure to act within the rules and regulations of the Acton Police Department as follows:

1. *Failure to notify the Concord Police.*

The Appellant was operating his motor vehicle when he fell asleep at the wheel and failed to stop at the stop sign; crashed through a flower bed, over a stone wall, down a decline, and into a garage attached to a residence. He left the scene and failed to notify the Concord Police of the accident at any time. He stated the reason for failing to notify the Concord Police of the accident was that his cell phone fell during the crash. I find this excuse to be lacking as the Appellant never asked his passengers to use their cell phones to notify the police nor did he ask these passengers / fellow police officers to make the call themselves. In addition, the Appellant did not contact the police once he returned home. Further, he did not ask his wife to call the Concord Police. The Appellant is an eighteen-year veteran of the Acton Police Department and he knew it was wrong not to report the accident and he admitted this fact to the Concord Police when they questioned him. The Appellant has given different reasons to the Commission, the Town, and the Concord Police for not reporting the accident. In the Concord Police report, the Appellant stated that he “panicked” and was afraid he may get in trouble at work and he knew this was a mistake. To the Commission and the Town, he stated it was because his cell phone fell during the crash and he could not locate it. I find that the Appellant knew that he should have called to report the accident and his actions were deliberate and intentional.

2. *Failure to check for injuries at the scene*



The Appellant's motor vehicle went into the garage of a residence and the Appellant failed to check for injuries. While a fellow officer and passenger of the vehicle looked into the garage from the outside and did not see anything, it does not relieve the Appellant of his responsibility to make sure that no one was in the garage and there was not any immediate damage that could cause harm to persons occupying the residence. Also troubling was the fact that the Appellant knew and had a good relationship with the person who owned the house, did not try to contact them at the time of the accident, and did not contact them until the following day. While this issue is somewhat mitigated by Officer Meuse stating that he "looked into" the garage, this does not follow protocol of what an officer should do in the case of an accident.

3. *Leaving the scene of an accident after causing property damage*

The Appellant left the scene of the accident and did not return. The Appellant admitted on several occasions that he knew he made a mistake by leaving the scene of the accident. His rationale was that due to the anxiety and stress brought on by the accident, he had to immediately use the restroom. I find this argument unpersuasive. Even after purportedly using the restroom, the Appellant still did not return to the scene but decided to shower and change into different clothing. As an experienced police officer, the Appellant knew and told the Town Manager that drivers leave the scenes of crashes to avoid responsibility. Given that knowledge, it is not unreasonable for the Town Manager to conclude that the Appellant also left the scene intentionally to avoid responsibility and manage the situation for his own benefit.

4. *Failure to identify the passengers in his motor vehicle to the Concord Police.*

When questioned by the Concord Police, the Appellant refused to identify the passengers in his vehicle at the time of the crash. During the hearing, when asked why he failed to identify the other officers, the Appellant statements ranged from 'he didn't know', 'he just didn't want to',

and ‘he didn’t think he had to.’ I find it troubling that, in addition to the other aspects of this case, the Appellant would not be fully cooperative with the Concord Police. My concern is the Appellant did not name his passengers as he knew they had been consuming alcohol, left the scene, and could possibly be driving under the influence of alcohol. By refusing to identify them at that time, it prevented local or state police from proactively pulling them over and determining whether they were above the legal limit to be operating a vehicle. A police officer’s primary concern must always be the public’s safety.

### **Discipline Imposed**

I considered whether a modification in the Appellant’s discipline is warranted. As a preliminary matter, I note that the findings of the Commission closely mirror the findings of the Town of Acton. I further find that the lack of discipline on the other two off-duty officers who were with the Appellant at the time of the incident does not implicate any political considerations, favoritism, or bias. Based on these findings alone, there is no adequate explanation or basis to modify the penalty imposed by the Town of Acton. See Town of Falmouth, 447 Mass. at 824. I further find that off-duty conduct enumerated above so clearly calls into question, by both his fellow police officers and members of the public, his ability and fitness to perform his official responsibilities as a police officer, that the discipline imposed by the Town of Acton was warranted.

Additionally, given the seriousness of the Appellant’s misconduct, including the property damage done to a private residence; the Appellant’s insistence that, upon reflection, he would do nothing differently; and because of the Appellant’s prior discipline, a reduction in the penalty is not warranted here. I further find that the discipline imposed by the Appointing Authority is more than reasonable given the totality of the circumstances.

Finally, that the other two off-duty officers with the Appellant on the night of incident were not disciplined is of no consequence, where here there is no implication of political considerations, favoritism, or bias. See City of Boston v. Boston Police Patrolmen's Ass'n, 443 Mass. 813, 822 n.9 (2005) ("That other police officers may have received lesser sanctions for their serious misconduct avails nothing here. Each case must be judged on its own facts, and the factual record in those cases is not before us. In any event, there is no suggestion that the reason for [the officer's] termination were pretexts or motivated by improper considerations.").

### **Additional Considerations**

I further find that the Appellant's "Duty Status" argument -- that he is not beholden to the Rules and Regulations of the Acton Police Department because of a policy that you cannot be "on duty" within four hours of drinking alcohol and, therefore, he is not able to be disciplined for Conduct Unbecoming an Officer -- to be irrational and unfounded. The policy is that if an officer is off duty and consumes alcohol, they would not be permitted or required to *work* at that time and for at least four hours thereafter. The Appellant is misinterpreting and misconstruing this rule to bolster his case. The four-hour alcohol duty rule does not allow an officer to engage in actions that violate the Acton Rules and Regulations simply because they have consumed alcohol. Nor does excessive consumption of alcohol temporarily relieve them of the responsibility to conduct themselves appropriately or the expectation of being held to the higher standard expected of a law enforcement officer.

That the Clerk-Magistrate in Ayer District Court declined to find probable cause for the criminal charges included in the citation is neither dispositive nor persuasive and it does not preclude a finding that the discipline was justified for the reasons cited by the Appointing Authority, specifically for violations of the Acton Police Department Rules and Regulations -

Conduct Unbecoming an Officer. The Commission has consistently held police officers to a high standard of conduct. In accepting employment by the public in a role that does not cease at the end of the workday, police officers “implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” Police Comm’r v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, *rev. den.*, 398 Mass. 1103 (1986).

## CONCLUSION

For all of the above reasons, the Commission affirms the decision of the Town of Acton to suspend Officer McCarthy for 30 days without pay for violations of the Acton Police Department Rules and Regulations, specifically Conduct Unbecoming an Officer; and his appeal under Docket No. D-23-038 is hereby *denied*.

Civil Service Commission

/s/ Shawn C. Dooley

Shawn C. Dooley  
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on December 14, 2023.

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 the 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:

Joseph P. Kittredge, Esq. (for Appellant)  
Lorena Galvez, Esq. (for Appellant)  
Paul J. Hodnett, Esq. (for Respondent)