

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

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COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

JOHN MOCCIO

vs.

TOWN OF AGAWAM & another<sup>1</sup>

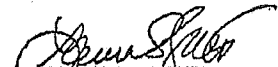
SUPERIOR COURT  
CIVIL ACTION

No. 1779CV0719

HAMPDEN COUNTY  
SUPERIOR COURT

FILED

JUL 10 2018

  
CLERK OF COURTS

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

This action arises from the Town of Agawam's ("Town") termination of the plaintiff, John Moccio ("Moccio"), as a police officer for violation of the Agawam Police Department ("APD") procedures. The Civil Service Commission ("Commission") upheld the termination. Moccio now moves for judgment on the pleadings against the Town and Commission pursuant to G. L. c. 30A, § 14, and G. L. c. 31, § 44, and requests to be reinstated as a police officer and otherwise made whole. The Town and the Commission cross move for judgment on the pleadings asserting that the termination should be upheld as a matter of law. For the reasons discussed below, Moccio's motion is **DENIED**, and the Town and Commission's cross motion is **ALLOWED**.

**BACKGROUND**

The following facts are taken from the administrative record. See Superior Court Standing Order 1-96, § 5; Mass. R. Civ. P. 12 (c). Moccio was employed by the APD from 1997 until his termination in 2016, following these events. On June 19, 2016, Moccio and another officer responded to a call related to a disorderly intoxicated male

<sup>1</sup> Civil Service Commission

citizen ("Doe") at the Tiki Bar at Six Flags New England. Doe was refusing to leave the bar and demanding another alcoholic beverage. He attempted to strike the officers several times and was only subdued after several minutes of struggle and a one-second burst of pepper spray. The officers handcuffed Doe, placed him in a cruiser, and brought him to the Agawam Police Station.

Upon arrival at the station, Doe appeared compliant and the handcuffs were removed in the booking room. Moccio walked in "close proximity" to Doe at least twice before exiting the booking room to properly secure his firearm. A few minutes later, Doe once again became belligerent and the supervising officer decided to move Doe to a cell to "sober up" before completing the booking procedure. A total of four officers escorted Doe to the cell; due to his belligerence and the logistics of closing the door, they accompanied him inside and attempted to subdue him on the bench rather than simply pushing him inside. A struggle lasting approximately sixty seconds ensued.

During this struggle, Moccio struck Doe with his baton over a dozen times, primarily in the shin and thigh but also four times on the lower back. The Monadnock Baton Chart ("Chart") is used by the APD to train officers on appropriate baton strike locations: green areas result in minimal trauma; yellow areas in moderate to serious trauma; and red areas in the highest level of trauma. According to the Chart and APD policies, red areas may only be struck if the police officer faces serious bodily harm. At least two of Moccio's baton strikes were to Doe's kidney area, a red area.

After the initial struggle on the cell bench, Doe was lying down and appeared compliant, and the officers began to exit the cell. When Doe sat upright and then began to stand, Moccio verbally warned him to stay, then physically confronted him again.

Moccio shoved Doe back down onto the bench and struck him multiple times with the baton before the other officers assisted him in handcuffing and securing Doe's legs. Once the officers left the cell, Moccio did not have any further interaction with Doe. Later that evening, Moccio completed a Use of Force Report in addition to his arrest report. He reported striking only green areas with his baton.

On July 14, 2016, Moccio was notified of an internal investigation by the APD and placed on administrative leave. After a hearing held by the Town Mayor, Moccio received notice of termination on October 19, 2016. He appealed to the Commission.

In hearing the appeal, the Commission considered joint exhibits, including extensive video from the booking room and cell; stipulated facts; and testimony by witnesses both for the Town and Moccio, including Moccio himself and use of force experts for both parties. The Commission upheld the Town's decision to terminate Moccio based on his use of excessive force, failure to secure his firearm, and untruthfulness. The Commission found excessive force in both the strikes to Doe's kidney area and the second altercation in the cell, where Moccio shoved Doe back onto the bench and struck him several times with the baton after he had ceased being assaultive. The Commission also found that by walking in close proximity to Doe with an unsecured firearm, Moccio violated APD Policy and Procedure No. 3.03. Additionally, the Commission determined that Moccio on multiple occasions "appeared to omit or misstate facts that were highly relevant to the core issue of whether he engaged in excessive force."

## DISCUSSION

### A. Standard of Review

Massachusetts General Law provides for review by the Commission for “a person aggrieved by a decision of an appointing authority.” G. L. c. 31, § 43. The Commission makes a de novo finding of fact and then decides by the preponderance of the evidence whether there was “reasonable justification” for the authority’s decision. *Id.*; *Falmouth v. Civil Service Comm’n*, 447 Mass. 814, 823 (2006). A termination under review by the Commission is “justified” if 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.” *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 304 (1997). When considering use of force specifically, the Commission assesses the officer’s actions using the “objectively reasonable” standard articulated by the Supreme Court in *Graham* and incorporated into the APD policies and procedures. See *Graham v. Connor*, 490 U.S. 386 (1989). Use of force examined under *Graham* “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396.

As the party challenging the Commission decision, the plaintiff bears the burden of establishing the decision’s invalidity. *Police Dept. of Boston v. Kavaleski*, 463 Mass. 680, 689 (2012). In reviewing the agency’s decision, the court must give “due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.” G. L. c. 30A, § 14 (7). See *Cobble v. Commissioner of Dep’t of Soc. Servs.*, 430 Mass. 385, 390 (1999). The Court may only modify or set aside an agency’s decision if it is “[b]ased upon an error of law . . .

[u]nsupported by substantial evidence; or . . . [a]rbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.” G. L. c. 30A, § 14.

“It is for the agency, not the courts, to weigh the credibility of witnesses and resolve factual disputes.” *School Comm. of Wellesley v. Labor Relations Comm’n*, 376 Mass. 112, 120 (1978). The court may not substitute its judgment for that of the agency, and “must apply all rational presumptions in favor of the validity of the administrative action . . . .” *Consolidated Cigar Corp. v. Department of Pub. Health*, 372 Mass. 844, 855 (1977).

As a result, “this standard of review is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom.” *Brackett v. Civil Serv. Comm’n*, 447 Mass. 233, 242 (2006), quoting *Flint v. Comm’ner of Pub. Welfare*, 412 Mass. 416, 420 (1992).

#### **B. Legal Analysis**

All the conclusions of the Commission were supported by substantial evidence. G. L. c. 30A, § 14 (7) (e); *Raytheon Co. v. Director of Div. of Employment Sec.*, 364 Mass. 593, 595 (1974) (“[I]f an agency’s finding of fact is supported by such evidence as a reasonable mind might accept as adequate to support a conclusion, it will not be disturbed by a reviewing court” [internal citation and quotation marks omitted]). “A decision is arbitrary and capricious when it lacks any rational explanation that reasonable persons might support.” *Cambridge*, 43 Mass. App. Ct. at 303. There is no evidence of this type of decision-making in the record. Throughout its Decision, the Commission clearly states the basis for its conclusions and cites extensively to both the record before it and the hearing it undertook.

Moccio claims the Commission improperly applied the *Graham* standard and viewed the events through the 20/20 lens of hindsight rather than based on how a reasonable officer at the scene would perceive events. *Graham* 490 U.S. 386. However, the Commission's Decision acknowledges the different conclusions it would reach by applying the two standards, and correctly applies the "reasonable officer at the scene" test.

The fact the Commission's analysis did not explicitly enumerate the factors the APD policies and procedures list as factors for assessing the level of force required does not constitute an error of law because the circumstances are to be viewed in their totality rather than piecemeal. The record, including the testimony of expert witnesses and video from the cell, contains substantial evidence to support the Commission's conclusion that some of Moccio's actions constituted excessive force when viewed from the perspective of a "reasonable officer on the scene."

There was substantial evidence in the record for the Commission to find that Moccio engaged in excessive force by striking Doe in the kidneys, a red area, and also striking Doe when he had become non-assaultive. The video from the cell shows the location of the strikes to the kidney area. The Commission could have found from the video that Moccio had sufficient opportunity to exit the cell rather than re-engage Doe, as the video depicts Moccio already moving toward the door at the time he turned, shoved Doe onto the bench, and struck Doe with the baton again.

Moccio does not dispute his failure to secure his weapon in a timely manner, a violation of APD Policies and Procedures No. 3.03. Although Moccio asserts that the Commission erred by finding this to be a standalone terminable offense and thus an error

of law, the Commission did not single out the failure to secure the weapon as a terminable offense. Moccio himself acknowledges this was not explicitly stated in the Commission's decision. While the record reflects no history in the APD of termination of an officer resulting from only the failure to secure a weapon., the Commission considered the three violations together in upholding the Town's decision to terminate Moccio.

The Commission did not err in concluding that Moccio violated APD policies by providing incomplete or misleading statements regarding his actions. The Commission heard witness testimony firsthand and, relying on its "experience [and] technical competence" formed its own assessments regarding credibility. G. L. c. 30A, § 14 (7) See *Cobble*, 430 Mass. at 390. It also found Moccio's untruthfulness to constitute a pattern "geared toward deflecting responsibility" rather than an isolated moment. Among other examples, Moccio's Use of Force Report omitted mention of strikes to yellow areas despite his extensive training and experience; his incident report's vague phrasing described Doe's shin injuries as "due to his [Doe's] actions" rather than mentioning the baton strikes; and Moccio's statement before the internal investigator and Commission was inconsistent.

Lying in a disciplinary investigation alone is grounds for termination. *LaChance v. Erickson*, 118 S. Ct. 753 (1998), citing *Bryson v. United States*, 396 U.S. 64 (1969). Moccio asserted that he was unable to review video of the incident due to being on administrative leave; the Commission pointed to this as one example of untruthfulness, because Moccio was not placed on administrative leave for several weeks following the incident. Moccio now cites evidence in the record that the Chief of the APD did not allow officers to review the video.

Even if this constitutes an example of simple ambiguity or misunderstanding rather than intentional untruthfulness, the Commission's broader view of the pattern of Moccio's conduct as evidencing terminable untruthfulness remains supported by substantial evidence in the record.

Moccio's conduct "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 (1997). The Commission's finding by a preponderance of the evidence that taken together Moccio's use of excessive force, failure to secure his firearm, and pattern of untruthfulness were just cause for termination were supported by substantial evidence in the record and should be affirmed. G. L. c. 31, § 43. This court is not in a position to substitute its judgment for that of the Commission; nor has Moccio demonstrated any error of law.

**ORDER FOR JUDGMENT**

For the foregoing reasons, it is **ORDERED** that the Plaintiff's Motion for Judgment on the Pleadings is **DENIED**, the Town and the Commission's cross Motion for Judgment on the Pleadings is **ALLOWED**.

Judgment shall enter for the Defendants, the Town of Agawam and Civil Service Commission.

Dated:

7/10/18



Michael Callan  
Justice of the Superior Court