

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

ANTHONY MONIZ,
Appellant

v.

CASE NO: D1-11-296

CITY OF NEW BEDFORD,
Respondent

Appellant's Attorney:

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AFSCME Council 93
8 Beacon Street
Boston, MA 02108

Respondent's Attorney:

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Commissioner:

Paul M. Stein¹

DECISION

The Appellant, Anthony Moniz, duly appealed to the Civil Service Commission (Commission), acting pursuant to G.L. c. 31 §§41-43, from a decision of the City of New Bedford (New Bedford), the Appointing Authority, to terminate him from his civil service position of a Diesel Engine Repairman on September 28, 2011. A full hearing was held by the Commission at the University Of Massachusetts School Of Law at Dartmouth on February 10, 2012 and March 30, 2012. The hearing was declared private. Witnesses were not sequestered. The hearing was digitally recorded. Both parties subsequently submitted proposed decisions.

¹ The Commission acknowledges the assistance of Law Clerk Amanda Belanger in the drafting of this decision.

FINDINGS OF FACT

Based upon the documents entered into evidence, Exhibits 1 through 28 and the testimony of Joan Jones, Thomas Vick, Anthony Moniz, Jaime Kenny, and Kenneth Blanchard, I make the following finding of fact:

The Appellant

1. The Appellant, Anthony Moniz was hired by New Bedford on September 16, 1998 to the civil service position of Motor Equipment Operator (*Exhibit A.A.-1*)
2. Moniz was promoted to Heavy Equipment Operator on October 5, 1998. He then attained the rank of a Diesel Engine Repairman on October 25, 2005. (*Exhibit A.A.-1*)

Prior Disciplinary History

3. On March 3, 1999, Moniz agreed to a 17 day suspension for using city equipment on his own private property. The agreement stated it was his “final warning” and “any further discipline will result in my immediate dismissal”. (*Exhibit A.A.-3b and Exhibit A.A.-3c*)
4. On February 2, 2002, Moniz was given another warning because he refused an assignment and went home sick. (*Exhibit A.A.-4*)
5. On March 6, 2006, Moniz again was warned because he failed to report for a snow emergency. (*Exhibit A.A.-5*)
6. On December 21, 2010, Moniz was suspended for one day because he did not show up for work. (*Exhibit A.A.-1, Exhibit A.A.-8c and Exhibit A.A.-8d*)
7. In March of 2011, Kenneth Blanchard, the Superintendent of Public Works for the Department of Public Facilities gave Moniz a verbal warning after learning about an allegation that Moniz drove past a co-worker’s house and stared at his sister-in-law. Blanchard warned Moniz about violating the sexual harassment policy and reminded him

of the Anti-Discriminatory Harassment Policy, which Moniz signed an acknowledgment sheet for. *Exhibit A.A.-9b, Exhibit A.A.-9c, Exhibit A.A.-11*)

8. On April 6, 2011, Blanchard again counseled Moniz about allegations that Moniz threatened a co-worker. During this conversation, Moniz denied making any direct threat but admitted that he would like to “bash his head in”, referring to the co-worker. Blanchard verbally warned Moniz that if he raised a hand to another employee, he would be fired, but took no other disciplinary action. *.(Exhibit A.A.-9d and Testimony of Kenneth Blanchard)*
9. Despite his disciplinary history, Moniz consistently received satisfactory performance reviews from his supervisors from 1997 through 2010. *(Exhibit A.A.-26)*

Circumstances Giving Rise to the Current Appeal

10. On July 3, 2011, Moniz was involuntarily transferred from the Department of Public Facilities to the New Bedford Airport as a Diesel Engine Repairman – Airport. His function was to perform skilled “repair and operation of airport diesel, gasoline, natural gas, electric and other powered equipment and systems.” *(Exhibit A.A.-1, Exhibit A.A.-2)*
11. Thomas Vick, recently hired as the Airport Manager, became Moniz’s supervisor. *(Testimony of Thomas Vick and Anthony Moniz)*
12. Before Mr. Moniz’s transfer, Moniz met with Vick and discussed the Diesel Repairman position at the Airport. *(Testimony of Thomas Vick and Anthony Moniz)*
13. When Moniz started working for Vick at the airport, Vick initially allowed Moniz to wear a T-shirt while working. Moniz had told Vick that he did not want to wear collared shirts because it irritates his skin. Vick told him that they would be able to work something out. *(Testimony of Anthony Moniz and Thomas Vick)*

14. On August 1, 2011, Moniz called Vick and told him he needed to get a product at Fairhaven TruValue Hardware. The receipt indicates he bought the product at 11:11 A.M., however Moniz did not return to the Airport until 12:30. When he returned, Vick met with Moniz to discuss the uniform and told him that Moniz would be required to wear a collared shirt to work. Vick did not ask Moniz to explain his delay in returning from the hardware store. (*Testimony of Thomas Vick and Exhibit A.A.-20*)
15. Vick had implemented a requirement for airport employees to complete a daily activity sheet in March 2011.² (*Testimony of Thomas Vick*)
16. Vick advised Moniz when he transferred to the airport job that Moniz would not need to submit daily activity sheets prior to August 1, 2011. Moniz did not submit any daily logs until September 15, 2011. (*Testimony of Thomas Vick*)
17. There was no exact or consistent way in which the activities logs were supposed to be completed by the employees. (*Testimony of Thomas Vick and Exhibits A.A.-14 through Exhibit A.A.-19*)
18. The daily activity logs submitted by most employees are not detailed enough to identify the exact time and exact location of an employee at any given time. (*Testimony of Thomas Vick and Exhibits A.A.-14 through Exhibit A.A.-19*)
19. Moniz usually guessed the times he did his job tasks and duties on his daily logs. (*Testimony of Anthony Moniz*)
20. The Diesel Engine Repairman job description does not list a requirement for filling out a daily activity log. (*Testimony of Thomas Vick and Exhibit A.A.-2*)

² Vick never bargained the implementation of the daily activity logs with the Union and the Union filed a charge of unfair labor practice over New Bedford's failure to bargain a change in working conditions that implemented a work rule under which they could be disciplined. (*Testimony of Thomas Vick and Jaime Kenny; and Exhibit A.A.-28y*)

21. In September of 2011, Vick left behind a list of assigned projects for Moniz to complete while he went away for a few days. One of the tasks assigned to Moniz was to “Paint snow plows on ramp”..*(Testimony of Anthony Moniz, Testimony of Thomas Vick, and Exhibit A.A.-12)*
22. Painting of snow removal equipment was a maintenance function that was not expressly contained within Moniz’s job description of Diesel Engine Repairman, but Moniz did not protest the assignment. *(Testimony of Anthony Moniz; Exh. A.A.-2))*
23. The airport had two “snow pushers” (attached to a loader and used to push snow straight ahead) and several “snow plows” (which are attached to a vehicle and plow snow at an angle). Moniz painted the top of one of the snow pushers which was on the ramp. The other pusher needed welding before it could be painted. Moniz painted only the pusher because that is what he thought Vick meant. Moniz checked off on his assigned list that he painted the plows. *(Testimony of Anthony Moniz, Thomas Vick, Exhibit A.A.-12 and Exhibit A.A.-13a through Exhibit A.A.-13t)*
24. When Vick returned, he could see that the plows had not been painted. When Vick asked Moniz whether he finished painting the plows, Moniz told him that he did, except for one, which needed welding. Moniz was referring to the snow pushers. Moniz had not painted any of the snow plows at this point. *(Testimony of Anthony Moniz, Thomas Vick, Exhibit A.A.-12 and Exhibit A.A.-13a through Exhibit A.A.-13t)*
25. Moniz did not paint the snow plows until after he was given a written warning on September 14, 2011. Vick told Moniz that the entire job of painting the snow plows needed to be completed. Until that point, Moniz and Vick did not have the same understanding of the terms snow plow, snow bucket and snow pusher. *(Testimony of*

Anthony Moniz, Thomas Vick, Exhibit A.A.-12 and Exhibit A.A.-13a through Exhibit A.A.-13t)

26. Even after receiving clarification, Moniz did not completely finish painting all of the plows. Vick took photos of the plows, which illustrate that the bottom of some of plows were not painted or not painted entirely. *(Testimony of Anthony Moniz, Thomas Vick, Exhibit A.A.-12 and Exhibit A.A.-13a through Exhibit A.A.-13t)*
27. Moniz serviced two of the generators at the airport. Moniz needed Vick's approval to be driven to one of the generators located on the airfield. The generator needed attention after Hurricane Irene. A strong odor and an alarm sounding off was reported to Vick. The generator contained a faulty battery. Although the delay in attending to the generator was not entirely attributable to Moniz and did not result in any operational problems, it was a priority matter that Moniz had responsibility to address. *(Testimony of Anthony Moniz and Thomas Vick)*
28. Moniz continued to be seen wearing a T-shirt in public places, including the airport terminal building. During a meeting on September 6, 2011, Vick reiterated to all employees that required attire should be worn at all times. Moniz continued to work without wearing the required attire. *(Testimony of Joan Jones and Thomas Vick)*
29. The absence of an employee wearing his uniform does not interfere with the safety of the airport's operations or with the employee's job. *(Testimony of Thomas Vick)*
30. On September 14, 2011, Vick gave Moniz a written warning because he did not wear his uniform, did not complete the required daily logs, and did not finish his assigned task of painting the snow plows. The written warning was for insubordination and substandard

work. Moniz refused to sign the warning. Moniz threw the written warning back at him.

(Testimony of Thomas Vick, Anthony Moniz, and Exhibit A.A.-10)

31. On September 19, 2011, Moniz demanded that Vick speak to him about the written warning Vick gave him on September 14, 2011. He walked towards Vick's desk. Vick told him he did not appreciate the way he was going about speaking with him about the warning. *(Testimony of Thomas Vick)*

32. Moniz could not be located by Airport personnel on September 19, 2011 between 12:15 p.m. and 2:15 p.m., even though his daily log stated that he took his lunch break at 1:20 p.m. *(Testimony of Thomas Vick and Exhibit A.A.-15)*

33. Moniz admits that his time sheet was not accurate as he wrote it on September 19, 2011. Moniz did perform the tasks that he indicated he performed on his September 19, 2011 time log, but the times were approximate and were not marked exactly. *(Testimony of Testimony of Anthony Moniz, Thomas Vick and Exhibit A.A.-15)*

34. On September 20, at about 2:45 p.m., Moniz entered the airport office and asked the Account Clerk, Joan Jones's whether she heard if he pissed off "Chiefie" yesterday, referring to Vick. Moniz laughed when he said this. Moniz told her he was not going to "let it go" and Jones told him that he could not grieve a warning. Moniz told her that he knew this but was not going to "let it go". *(Testimony of Joan Jones and Exhibit A.A.-21)*

35. On September 20, 2011, Moniz was asked to assist wiring contractors working in the office of the airport restaurant. *(Testimony of Anthony Moniz)*

36. On September 20, 2011, Moniz was standing in the doorway with his arms folded as Vick walked into the area. Three other people, believed to be construction workers, were in the

office. Moniz's back was to the other three people in the office. Vick was aware that three other people were present in the area. (*Testimony of Thomas Vick*)

37. Moniz did not try to intimidate or threaten Vick on September 20, 2011. Vick was unable to identify any specific verbal or physical act on Moniz's part that suggested any intent to intimidate or threaten Vick. Vick proceeded to leave the area without speaking to Vick. (*Testimony of Anthony Moniz & Thomas Vick*)

38. On September 21, 2011, Moniz received a letter from Vick stating that Moniz was suspended immediately and his termination was being contemplated for repeatedly not wearing his prescribed uniform, being absent from work areas for excessive amounts of time, for substandard work and insubordination, for falsifying daily logs, and for creating a hostile work environment on September 20, 2011. (*Testimony of Thomas Vick and Exhibit A.A.-22*)

39. On September 27, 2011, a disciplinary hearing was held. (*Exhibit A.A.-24*)

40. On September 28, 2011, Vick terminated Moniz's employment for violating New Bedford's Notice about Workplace and Domestic Violence on September 13, 19 and 20, 2011, for violating employment responsibilities, insubordination, falsifying daily logs, substandard work, and inability to account for work time. (*Exhibit A.A.-24*)

41. Moniz received good comments from his supervisors, and met the requirements of his job on each employee performance review between 1997 and 2010. (*Exhibit A.A.-26*)

42. At some point after Moniz began working at the airport, he told Vick that he was going to become the union shop steward. (*Testimony of Anthony Moniz*)

CONCLUSION

Under G.L.c.31,§43, a tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L.c.31,§41, may appeal to the Commission. The Commission must determine whether the appointing authority met its burden of proof by a “preponderance of the evidence” that “there was” just cause” for the action taken. G.L.c.31,§43. See, e.g., Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823, (2006); Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n, 38 Mass App.Ct.473,477 (1995); Town of Watertown v. Arria, 16 Mass.App Ct. 331,334, rev.den.,390 Mass. 1102, (1983). In performing its function:

“[T]he commission does not view a snapshot of what was before the appointing authority . . . the commission hears evidence and finds facts anew. . . . [in] ‘a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely. . . a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer’ . . . For the commission, the question is . . . ‘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.’ ”

Leominster v. Stratton, 58 Mass.App.Ct. 726,727-728 (2003) (affirming Commission decision rejecting evidence of appellant’s failed polygraph test and domestic abuse orders and crediting appellant’s exculpatory testimony).

It is also a basic tenet of the “merit principle” which governs Civil Service Law that discipline must be remedial, not punitive, designed to “correct inadequate performance” and only “separating employees whose inadequate performance cannot be corrected.” G.L.c.31,§1.

The term ‘just cause’ must be construed in light of the purpose of the civil service legislation in which it appears. The purpose is to ‘free public servants from political pressure and arbitrary separation. . . but not to prevent removal of those who have proved to be incompetent or unworthy to continue in the public service. [citation] ‘[I]n order to carry out the legislative purpose, the appropriate inquiry is whether the employee has

been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.’ [citations]

School Comm. of Brockton v. Civil Service Comm’n, 43 Mass.App.Ct. 486,488, rev.den.

426 Mass.1104 (1997) (*emphasis added*). See also Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited; Murray v. Second Dist. Ct., 389 Mass. 508,514(1983)

An appointing authority’s action 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." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971). See Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997) The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001). The Commission is entitled to “due weight for its experience, technical competence, and specialized knowledge, as well as to the discretionary authority conferred upon it. . .This standard is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom.’ ” Brackett v. Civil Service Comm’n, 447 Mass. 233, 241-42 (2006) and cases cited.

It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass.

130, 141 (1997). See also Covell v. Dep't of Social Services, 439 Mass. 766, 787 (2003) (where live witnesses gave conflicting testimony at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing)

Applying these principles to the present case, New Bedford did not demonstrate by a preponderance of the evidence that there was just cause to terminate Moniz from employment as a Diesel Engine Repairman.

A. Failure to Wear Proper Attire

Based on credible witness testimony, I find that Moniz frequently appeared at work with a T-shirt, rather than the required uniform or a collared shirt with attached I.D. badge. However, I do not find that New Bedford had just cause to terminate him for this reason. Vick advised Moniz when he started working that he would allow Moniz to wear a T-Shirt on the job because collared shirts irritated his neck. Although Vick had the right to impose the requirement of the uniform, I find that wearing a T-shirt shirt, as opposed to a collared shirt, does not interfere with safety or hinder the employee's ability to work efficiently or successfully. Even though Moniz should have obeyed the uniform requirement (or grieved it if he believed he had a good faith health or other reason to be excused from the requirement), I find this to be a minor violation that, under basic merit principles, warrants appropriate remedial discipline but does not constitute "just cause" for termination.

B. Improper Time Logs

Although Moniz admitted during his testimony that he "guessed" on his daily logs because he did not write the exact time he completed or started a task, there was no persuasive evidence that he did not perform the tasks he described or intentionally falsified any entries. Based on other

employee logs, it can be shown that Moniz's log is filled out in a similar way, with roughly an equal amount of detail. None of the employee logs, including Moniz's log, would be able to indicate the exact time and place of an employee at any given time throughout the day, although Vick stated in his testimony that this was the reason for the logs. I do not find that the two isolated examples of inconsistencies surrounding Moniz's unaccounted for time are attributable to improper behavior or falsification of his logs. Furthermore, Vick never showed Moniz a specific way he wanted the logs to be filled out. Finally, although it would not excuse compliance, Moniz's union had raised a substantial question as to whether the requirement of a time log was appropriate at all, and that is a factor that is worthy of notice. Ultimately, I find that Moniz's logs were no less detailed, inaccurate or incomplete than any other employees. Therefore, New Bedford had not met its burden to establish just cause for discipline on this basis.

C. Painting the Snow Plows

Regarding Moniz's assignment to paint the snow plows, even though the painting instructions were confusing originally, Moniz was unable to explain why he did not paint the snow plows even after he received clarification from Vick. When Vick returned, he specifically told Moniz which plows needed painting and that the job needed to be complete. Although the task was not strictly within Moniz's normal job duties or area of expertise, he was then clearly on notice and could reasonably been expected to take initiative and make sure that he is complying with his supervisor's instructions. This Moniz failed to do this. The photos of the snow plows indicate that Moniz did not fully finish painting the entire plow even after receiving clarification. It was within reason for Vick to conclude that Moniz was not just confused but shirking his responsibility in completing this assignment.

D. Neglecting the Generator

Moniz also failed to maintain two generators that he was responsible for. Although it was difficult for him to get to one of the generators, it is ultimately his responsibility to complete all of his required job duties. Due to the serious consequences that could have ensued from Moniz's failure to maintain the generator, significant discipline would be warranted.

E. Hostile Work Environment

Although an employer would have just cause to terminate an employee who has created a hostile work environment, New Bedford has failed to meet its burden to prove that Moniz was responsible for doing so. The only direct evidence that might support such a charge was Vick's testimony concerning the encounter near the airport restaurant. Although Vick claimed he was put in fear, I do not credit that testimony. I find that his fear, if any, had no reasonable basis in fact. Vick exaggerated the situation and unreasonably interpreted Moniz's facial expression and his stance to be threatening. The encounter was brief, did not involve any verbal or physical confrontation and took place within the presence of several others. While Vick clearly found Moniz an annoyance, and may even have been justified in believing Moniz's other behavior indicated an insubordinate streak, that, alone, does not establish the sort of hostile work environment that within the meaning of the New Bedford's workplace violence policy which defines violence shall mean an act or behavior that:

"A reasonable person would perceive as obsessively directed and reasonably likely to result in harm or threats of harm to persons or property"

"Consists of a communicated or reasonably perceived threat to harm another individual or in any other way endanger the safety of the individual"

“Would be interpreted by a reasonable person as carrying potential for physical and/or psychological harm to the individual”

New Bedford has not established by a preponderance of the evidence that Vick “reasonably” perceived Moniz to convey some imminent harm or violence on any of these dates alleged in the termination letter. Vick was unable to persuade me that Moniz communicated any threat or violence to him on any of the alleged hostile confrontations. No testimony or other evidence supports what Vick perceived.

F. Modification of Penalty

G.L.c.31,§43 vests the Commission with the authority to affirm, vacate or modify the penalty imposed by the appointing authority. The Commission has been delegated with “considerable discretion”, albeit “not without bounds”, to modify a penalty imposed by the appointing authority, so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. E.g., Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited; Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594,600 (1996) and cases cited.

“It is well to remember that the power to modify is at its core the authority to review and, when appropriate, to temper, balance, and amend. The power to modify penalties permits the furtherance of uniformity and equitable treatment of similarly situated individuals. It must be used to further, and not to frustrate, the purpose of civil service legislation, i.e., ‘to protect efficient public employees from partisan political control’ . . and ‘the removal of those who have proved to be incompetent or unworthy to continue in the public service’.”

Id., 39 Mass.App.Ct. at 600. (*emphasis added*). See Faria v. Third Bristol Div., 14 Mass.App.Ct. 985, 987 (1982) (remanded for findings to support modification)

As the facts found vary in a material respect from those relied upon by New Bedford, the Commission must consider whether to exercise its discretion to modify the penalty imposed on Moniz. The most serious charge against him – creating a hostile work environment –the only

significant alleged misconduct following the verbal warning on September 14, 2011, was not proved. The other charges of misconduct and substandard performance, standing alone or in combination, most of which pre-dated his written warning, do not justify his termination. His delay in attending to the generator, which was part of his required job duties, could have resulted in serious consequences, but he did eventually complete that assignment. His failure to properly complete the painting assignment, neglect of his time records and failure to comply with the airport's attire policy are less serious, but they do all carry a thread of an insubordinate spirit that cannot be tolerated in the public service.³

I conclude that the Commission should exercise its discretion in this matter and modify Moniz's termination to a suspension. Although Moniz had several prior instances of misconduct, New Bedford had consistently treated his behavior as warranting only warnings, up to and including his last written warning of September 14, 2011. New Bedford's choice to not to carry through with any more significant progressive discipline beyond a warning since 1999 for any of Moniz's subsequent offenses is an additional factor to be properly considered in fashioning appropriate progressive discipline.

Considering the nature of the misconduct and the prior history of discipline, the Commission modifies the termination to a suspension of one year and nine months. This represents a significant step in progressive discipline for the actual misconduct proved in this case and is intended to serve as an appropriate and clear signal to Moniz that his insubordinate behavior does leave much to be desired and needs to improve immediately.

³ Although painting the snow plows or maintaining accurate time records was not an explicit part of his regular job description, neither was an unreasonable assignment. See Santos v. New Bedford, 22 MCSR 47 (2009) (assignment of ancillary duties of toilet cleaning to Water Inspectors).

For all of the above reasons, the Appellant's appeal filed under Docket No. D1-11-296 is hereby *allowed in part*.

Civil Service Commission

Paul M. Stein, Commissioner

By a 3-2 vote of the Civil Service Commission to allow the appeal in part (Bowman [NO], Chairman; Ittleman [YES], Marquis [NO], McDowell [YES] and Stein [YES], Commissioners) on June 27, 2013

A true record. Attest:

Commissioner

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)(1), 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 a Civil Service Commission's final decision.

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

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CIVIL SERVICE COMMISSION**

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ANTHONY MONIZ,
Appellant

v.

CASE NO: D1-11-296

CITY OF NEW BEDFORD,
Respondent

OPINION OF COMMISSIONERS BOWMAN AND MARQUIS

We concur with the majority's conclusion that there is just cause to discipline Mr. Moniz.

We do not concur, however, with the decision to convert his termination to a long-term suspension.

Prior to being transferred to the City's airport, Mr. Moniz had a lengthy and eyebrow-raising disciplinary history that included verbal and written warnings, a 1-day suspension and a 17-day suspension. The seriousness of these prior offenses should not be understated. Mr. Moniz failed to show up for work and/or refused an assignment on three occasions. On another occasion, he was found, *while on duty*, using City-owned property to remove tree stumps from his private yard. As recently as 2011, he received two warnings for allegedly violating the City's harassment policies. While he denied those allegations, he nonetheless acknowledged to his supervisor that he wanted to "bash [a co-worker's] head in."

With this as a backdrop, we are hard-pressed to understand how anything less than termination is warranted for his most recent transgressions which include refusing to wear the proper uniform while on duty at the City's airport, failing to satisfactorily complete an

assignment; and failing to properly maintain generators at the airport. Further, while we defer to the findings that Mr. Moniz did not harass his supervisor, it is noteworthy that Mr. Moniz, at a minimum, boasted to at least one other airport employee about how he had “pissed off Chiefy.”

The City’s decision to terminate Mr. Moniz was justified and was consistent with the principles of progressive discipline. The Commission should not provide a safe harbor for Mr. Moniz or any other individuals who continuously engage in behavior that tarnishes the image of public service.

For the minority.

Christopher C. Bowman
Chairman