

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

**NEAL A. MULLANE, Jr.,**

*Appellant*

*v.*

**BOSTON FIRE DEPARTMENT,**

*Respondent*

Docket Number:

D-24-060

Appearance for Appellant:

Francisco Fernandez, Esq.

14 Manor Street

Dorchester, MA 02122

Appearance for Respondent:

Robert J. Boyle, Jr., Esq.

Boston City Hall, Room 624

Boston, MA 02201

Commissioner:

Angela C. McConney

**SUMMARY OF DECISION**

The Commission affirmed the decision of the Boston Fire Department to suspend a District Fire Chief for four tours of duty based on his off-duty misconduct, including violation of the Department's social media policy.

**DECISION**

On November 4, 2024, the Appellant, District Fire Chief Neal A. Mullane, Jr. (Appellant or Mr. Mullane), pursuant to G.L. c. 31, § 43, appealed to the Civil Service Commission (Commission) the April 30, 2024 decision of the Boston Fire Department (Department or BFD) to issue him an official reprimand and suspend him for four tours of duty (from April 10-14, 2024).

The Commission held a remote pre-hearing conference on June 4, 2024, and I held an evidentiary hearing on July 31, 2024 at the offices of the Commission, located at 100 Cambridge Street, Suite 200, Boston, MA 02114.<sup>1</sup> The hearing was recorded via Webex and a link was provided to the parties.<sup>2</sup> The parties submitted their post hearing briefs in October 2024, whereupon the administrative record closed.

For the reasons stated herein, the appeal is denied.

## **FINDINGS OF FACT**

I admitted the Appellant's exhibits (A. Exhibits 1-3), and the Respondent's exhibits into evidence (R. Exhibits 1-15). I admitted the Appellant's appeal form as Appellant's Exhibit 4 (A. Exhibit 4). Based on the documents submitted and the testimony of the following witnesses:

*Called by Appellant:*

- Neal A. Mullane, Jr., the Appellant

*Called by the Department:*

- Richard Francis, Deputy Chief of Personnel, Boston Fire Department
- Rodney Marshall, Deputy Chief, Chief of Operations, Boston Fire Department

and taking administrative notice of all pleadings filed in this case, plus pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from all the credible evidence, I make the following findings of fact:

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. § 1.01 (Formal Rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> The Commission provided a link to the parties. Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission's official recording.

1. Neal A. Mullane, Jr. (Mr. Mullane or Appellant) worked for the New York Fire Department for three years before he was appointed by the Boston Fire Department (BFD or Department). (Testimony of Appellant)

2. Mr. Mullane has worked for the Department for 25 years; 20 years as an officer, and the last eight years as a Chief Officer. He is currently a District Fire Chief. (Testimony of Appellant)

3. The suspension which is the subject of this appeal is Mr. Mullane's first disciplinary matter. (R. Exhibit 12; Testimony of Appellant)

4. The Department's *Social Media Policy*, effective since March 2, 2011, provides:

Purpose of this policy

Social Media usage comes with a lot of responsibility. The proper usage may be beneficial to the user (employer) and the department. *However, improper usage can have instant and long term damage to the perception of the department and user.*

Social Media

Social media is content created by individuals using technologies through the internet. Examples of social media include Facebook, blogs (a shortened term for web log), My Space, RSS, YouTube, Twitter, LinkedIn, Flickr, etc.

Potentially Damaging Use of Social Media

Members of the Boston Fire Department shall not use:

- a. Profane language or content;
- b. *Content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation ...*

(R. Exhibit 1) (Emphasis added)

5. Mr. Mullane signed annual acknowledgments of the *Social Media Policy* throughout his tenure. (R. Exhibits 2-6)

6. According to Department's *Rules and Procedures* § 18.44:

The following offenses are specifically forbidden:

- (a) Conduct unbecoming a member, whether on or off duty, which tends to lower

- the service in the estimation of the public.  
(j) Conduct prejudicial to good order.

(R. Exhibit 14)

7. On March 16, 2024, Mr. Mullane went out to dinner to celebrate St. Patrick's Day with his wife and children. (Testimony of Mullane)

8. As a female customer was leaving the restaurant, she approached the Mullane family's table and advised that they should take their kids to Papa Gino's. The Appellant's wife, Ms. Mullane, who is a Boston police officer, began recording the interaction on a cell phone. (R. Exhibit 7; Testimony of Mullane)

9. The video recording, 1:53 minutes long, opens with Mr. Mullane's back to the camera, and the female customer facing the camera. Off camera, Ms. Mullane says, "I've never had a problem, anywhere." Mr. Mullane says, "Remove her from the [inaudible]." A restaurant server then leans over the table to deposit the check. (R. Exhibit 7)

10. The Mullanes then begin speaking over each other in loud heckling tones. Ms. Mullane says, "So you have a problem with my children having a good time in a restaurant?" Mr. Mullane says, "Get outta here." Ms. Mullane says, "There's nobody back here, we're being good." Mr. Mullane says, "Just leave." Ms. Mullane continues, "We're laughing, having a good family night, and you're going to make a comment about my children that we should go to Papa Gino's?" Mr. Mullane then gets closer to the customer, and says, "You should leave. Where're you from? Where're you from?" Ms. Mullane continued, "We live here, we live in the neighborhood. We come here all the time, and I've never had a problem, anywhere." Mr. Mullane says, "Where're you from? Where're you from, bitch? Where're you from?" as he leans in closer to the diner. Ms. Mullane says, "So you wanna know the owners, call the owners, that's

fine.” Mr. Mullane continued, “I’m asking you because I wanna know where you’re from.” (R. Exhibit 7)

11. In a quiet voice, the customer denied that she had asked the Mullanes to take their children elsewhere. Then Mr. Mullane said, “We have witnesses here. What’s your point then, what’s your point? You miserable bitch. Go on, get outta here.” He continued, “Move it along. Move it along. I’m sitting here with my family. Get outta here, we don’t wanna [inaudible]. Take your miserable, disgusting witchy self outta here. Now, thank you. Oh, send your husband in. Yea, you heard me. You heard me. Move it along. So I can have a chat with him.” (R. Exhibit 7)

12. Throughout the interaction, the customer’s demeanor remained calm. (R. Exhibit 7)

13. Later that evening, Mr. Mullane uploaded the video recording from the restaurant to his personal Facebook page at 10:41 p.m. with the following message:

Anyone know this kid-hating Karen. We had an incident at the [ ] Restaurant while celebrating St. Patrick’s Day with my family. We had some awesome accomplishments with the kids to celebrate and *I have to work 24 hours tomorrow* so we didn’t let her ruin it. Video to follow. Stay tuned, *but a nice BFD shirt* to whoever knows this POS aged like rawhide looking droopy faced douche. Thanks. I gave her a chance. Here’s the encounter.

(R. Exhibit 8) (Emphasis added)

14. Mr. Mullane is identified in his Facebook post by his first and last names, including the suffix of Jr. In his quest to dox the customer, he identified the restaurant by name. The video shows the customer’s face clearly, so it would be possible for someone to identify her. (R. Exhibit 8)

15. Because Mr. Mullane offered a reward of “a nice BFD shirt” and stated that he had to “work 24 hours tomorrow” (a standard Department shift length) a reasonable person could infer that he was a Boston firefighter. (R. Exhibit 8)

16. Lt. Gary Cullinane and Firefighter Eddie Glasheen were assigned to the Department's Personnel Office at the Department's Headquarters in March 2024. They began to receive complaints about the Facebook post over the weekend of March 16, 2024. (Testimony of Francis, Testimony of Marshall)

17. The Department's Public Information Office also received complaints about the Facebook post over the weekend of March 16, 2024. (Testimony of Francis, Testimony of Marshall)

18. Dep. Chief Rodney Marshall has been Chief of Operations for two years. Among his job duties, he is responsible for scheduling firefighters and fire personnel, overseeing disciplinary matters and scheduling the return of firefighters and personnel on leave back to work. (R. Exhibit 12)

19. On March 18, 2024, Lt. Cullinane asked Dep. Chief Rodney Marshall if he ought to report the Facebook post to the Fire Commissioner. (Testimony of Francis, Testimony of Marshall)

20. Dep. Chief Marshall instructed Lt. Cullinane to inform Dep. Chief Richard, the Chief of Personnel, upon his return to work on Tuesday, March 19, 2024. (Testimony of Francis)

21. When Dep. Chief Francis returned to work on March 19, 2024, he learned about the Facebook post and watched the attached restaurant video with Lt. Cullinane and Firefighter Glasheen. (Testimony of Francis)

22. A retired firefighter, living out of state, texted a screenshot of the Facebook post to Dep. Chief Francis on March 19, 2024. (Testimony of Francis)

23. At some point, Mr. Mullane deleted the Facebook post. (Testimony of Mullane)

24. Dep. Chief Francis interviewed Mr. Mullane on March 20, 2024, in the presence of his union representative. (R. Exhibit 9; Testimony of Francis)

25. Mr. Mullane admitted to uploading the March 16, 2024 video from the restaurant to his Facebook account. Although he was unhappy that the customer had said that his children should have been dining at Papa Gino's, Mr. Mullane reported that there was some niceness and politeness among the parties before the recorded escalated interaction. He did not mention that the customer used any profanity. (R. Exhibits 9 and 11; Testimony of Francis)

26. Dep. Chief Francis completed a March 20, 2024 report after the interview stating the following regarding his interview with Mr. Mullane:

Eating meal woman comes to his table and states your kids should not be in this restaurant.

Felt that he was defending himself

Shouldn't have sent post but thought that restaurant behavior was justified

Manager removed woman

Only posted to friends

Asked about wanting to know who the woman was said he was venting and wants to stay away from her

(R. Exhibit 9; Testimony of Francis)

27. On April 9, 2024, Dep. Chief Francis issued Mr. Mullane a four-tour suspension, without pay, for violations of the following:

Violation of Department Social Media Policy

Making statements, postings or otherwise disseminating content in a social media forum that is discriminatory or compromising of the Department's mission and operations where such improper usage can have instant and/or long term damage to the perception of the department and user.

Rule and Procedure § 18.44 (j)

Conduct prejudicial to good order.

(R. Exhibit 10)

28. The suspension began at 0800 hours on April 10, 2024 and continued to 0800 on April 14, 2024. Dep. Chief Francis supplied the following narrative in support of the violations:

**SPECIFICATIONS:**

In that District Fire Chief Neal A. Mullane, on March 16, 2004 violated the above referenced rules and policies by disseminating via a social media platform, a video where Chief Mullane used offensive and disrespectful language toward a member of the public and a derogatory and disrespectful post that was directed at a member of the public on the basis of her physical characteristics. Chief Mullane admitted to posting the comment and video when he spoke to A/Deputy Chief Richard Francis on March 20, 2024. This inappropriate behavior which was shared with members of the general public, has lowered the service in the estimation of the public and caused damage to the perception of the department. District Chief Mullane has exercised a standard of judgment well below that which is demanded and expected from a member of the department[.]

(R. Exhibit 10)

29. In a separate document, Dep. Chief Francis issued Mr. Mullane an April 9, 2024 official reprimand, finding that he had “exercised a standard of judgment far below that is demanded and expected from a member of this Department,” in violation of the Social Media Policy (as set forth in the previous finding of fact) and the following rule:

Rule and Procedure 18.44 (a)

Conduct unbecoming a member, whether on or off duty, which tends to lower the service in the estimation of the public.

(R. Exhibit 10)

30. The deputy chief further advised Mr. Mullane that “further infractions of the Department Rules and Regulations may result in additional progressive discipline being imposed, up to and including discharge.” (R. Exhibit 10)

31. Mr. Mullane requested a local Section 41 hearing, and the Department duly scheduled the hearing for April 23, 2024. (R. Exhibit 12)

32. Mr. Mullane appeared for the April 23, 2024 hearing with his union representative. Dep. Chief Marshall presided. (R. Exhibit 12)



33. At the local hearing, Mr. Mullane stated:

*Before the video, what's not seen is a civilian, as Chief Francis said, unsolicited came over to my table and there was a period of politeness.* There was: "Who are you?" "Can you just leave my family alone?" "Can you leave my table alone?" She was looking kind of, you know, bizarre and, I felt at that point, I like started to feel like this could possibly be an endangerment to my family. I don't know who this woman is. Now, as you know, we had a Firefighter who was killed by small woman who was a dear friend of mine within one second. My hackles were up a little bit. Especially where I have [children]. And a wife who can talk. I thought I was just protecting my family. And as far as the post was, all the comments on it were positive towards, "This isn't right what she did." Somebody identified this woman because she said she lives in my neighborhood and comes to that restaurant a lot and knows the owner. I would apologize if it brought the Boston Fire Department into bad light. I made a bad choice on using colorful words. I did not use any vulgarity. I don't believe I did anything that would be considered like hate speech or anything like that. There was a couple off color comments. Because the truth was I was angry. She did ruin my night. I did fear for my children. And, in lieu of filing a police report, I posted her face so, I want to know if she's someone who is in my little world over there by Port Norfolk. Again, I know what I did was wrong. I look at it now where it could be recognize[d] ... it could be construed as in bad light. But I just disagree with the punishment if it is progressive discipline based upon past performance.

(R. Exhibit 11)

34. As a sentencing guideline, Dep. Chief Francis cited a February 28, 2022 four-tour suspension after Dep. Fire Chief Gerard Viola preferred charges to a firefighter for violations of Rule 18.44(a); Rule 18.44(j); and the Social Media Policy. In that incident, the firefighter made derogatory and disrespectful comments about a female public official's physical characteristics on social media while on duty. (R. Exhibits 11 and 15)

35. In his April 24, 2024 recommendation to the Fire Commissioner, Dep. Chief Marshall opined that the proposed discipline was "fair and consistent" when taking into consideration the circumstances. Dep. Chief Marshall considered the seriousness of the charge, the pertinent Rules and Regulations, the principles of the Progressive Discipline Guidelines, the needs of the Department and public perception. (R. Exhibit 12)

36. Fire Commissioner Paul F. Burke accepted Dep. Chief Marshall's recommendation and issued an April 30, 2024 disciplinary letter with the following specifications:

In that District Chief Neal A. Mullane, on March 16<sup>th</sup>, 2024 violated the above referenced rules and policies [Rule 18.44(a) conduct unbecoming a member whether on or off duty, which tends to lower the service in the estimation of the public and Violation of the Social Media Policy] by disseminating via a social media platform, a derogatory and disrespectful post that was directed at a member of the public on the basis of her physical characteristics. Chief Mullane admitted to posting the comment and video when he spoke to A/Deputy Chief Richard Francis on March 20<sup>th</sup>, 2024. This inappropriate behavior which was shared with members of the general public, has lowered the service in the estimation of the public and caused damage to the perception of the department. District Chief Mullane has exercised a standard of judgment well below that [which] is demanded and expected from a member of the department.

... The Department regards this offense [as] a matter of concern. I have accepted the recommendation of the hearing officer that there exists cause for discipline for failure to follow basic procedures established in the Rules and Regulations. The establishment of the Boston Fire Department rules, procedures and policies has to be taken into account. These rules and policies not only protect the public, but are also for its own members.

(R. Exhibit 13)

37. The Commissioner advised that "any further infractions of the department's rules, procedures and/or policies may result in more severe discipline being imposed." (R. Exhibit 13)

38. Mr. Mullane appealed to the Commission on May 7, 2024. (A. Exhibit 4)

39. Firefighters are required to know the Department's rules and policies, beginning in drill school. Dep. Chief Marshall considered this a classic case of conduct unbecoming, more so because Mr. Mullane identified himself as a Boston firefighter in the uploaded video and offered a Department tee shirt to whomever identified the woman in the video. (R. Exhibit 12; Testimony of Marshall)

40. Mr. Mullane created a transcript of the March 16, 2024 events, and shared it with his union representative. (A. Exhibit 3)

41. The transcript states, “Prior to the video she stated to me that children shouldn’t be allowed in this restaurant, that this is a nice restaurant and my kids were very disruptive.” (A. Exhibit 3)

42. In his testimony before the Commission, Mr. Mullane claimed that the woman said, “You can’t have children in here. You should take your kids to fucking Papa Gino’s. ... You shouldn’t have goddamn kids in here. You should take your fucking kids to Papa Gino’s.” (Testimony of Mullane)

43. Mr. Mullane never stated until his testimony before the Commission that he heard the customer use profanity. He did not mention her profanity during his March 20, 2024 investigative interview or the April 23, 2024 Section 41 hearing. Nor, as noted above, does Dep. Chief Francis mention any use of profanity by the customer in his contemporaneous report of the interview. (See Finding of Fact 23; R. Exhibits 9 and 11; Testimony of Francis)

### ***Applicable Legal Standard***

A person aggrieved by a disciplinary action of an appointing authority made pursuant to G.L. c. 31, § 41 may appeal to the Commission under section 43, which states in part:

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 ...

The Commission determines justification for discipline by inquiring whether the employee engaged in misconduct which adversely affects the public interest by impairing the efficiency of public service. *Police Comm’r of Boston v. Civil Serv. Comm’n*, 22 Mass. App. Ct. 364, 370, rev. den. 398 Mass. 1103 (1986). The Appointing Authority satisfies the preponderance of the evidence standard if its evidence on disputed facts appears more likely or probable to be true. *Tucker v. Pearlstein*, 334 Mass. 33, 35-36 (1956); *Selectmen of Wakefield v.*

*Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). The Commission conducts a de novo hearing to find facts. *Sullivan v. Municipal Court of the Roxbury Dist.*, 322 Mass. 566, 572 (1948). After making its de novo findings of fact, the Commission must pass judgment on the penalty imposed by the appointing authority. *Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 823 (2006). In so doing, the Commission must uphold the appointing authority’s action if the Commission finds “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.” *Id.* at 824; *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-728, rev. den. 440 Mass. 1108 (2003); *Watertown v. Aria*, 16 Mass. App. Ct. 331, 334, rev. den. 390 Mass. 1102 (1983).

The Commission reviews the penalty imposed in light of the underlying purpose of the civil service system: to guard against political considerations, favoritism, and bias in governmental employment decisions. *Falmouth*, 447 Mass. at 824. The Commission is not charged with a duty to fine-tune employee discipline. *See Boston Police Dep’t v. Collins*, 48 Mass. App. Ct. 408, 412 (2000); *Caira v. Waltham*, 28 MCSR 574, 578 (2015); *Blake v. Springfield Fire Dep’t*, 28 MCSR 313, 317 (2015). “Unless the commission’s findings of fact differ significantly from those reported by the [municipality] . . . the absence of political considerations, favoritism, or bias would warrant essentially the same penalty.” *Falmouth*, 447 Mass. at 824 (The Commission improperly substituted its judgment for towns where factual findings did not differ significantly). The Commission may not modify a penalty without a reasoned explanation. *Police Comm’r of Boston v. Civil Serv. Comm’n*, 39 Mass. App. Ct. 594, 600 (1996); *Faria v. Third Bristol Div. of the Dist. Ct. Dep’t*, 14 Mass. App. Ct. 985, 986 (1982).

## *Analysis*

The Boston Fire Department, by a preponderance of the evidence, has proven that it had just cause to discipline Mr. Mullane.

Dep. Chief Francis conducted a thorough investigation and issued his findings in a March 20, 2024 report. On April 9, 2024, he issued Mr. Mullane a Letter of Reprimand and a four-tour suspension.

Dep. Chief Marshall later presided over an April 23, 2024 Section 41 hearing and recommended a Letter of Reprimand and a four-tour suspension.

In an April 30, 2024 disciplinary letter, Fire Commissioner Burke upheld Dep. Chief Marshall's recommendation of a four-tour suspension for violation of the Department's Social Media Policy and Rule and Procedure § 18.44 (j); and an official reprimand for violation of the Social Media Policy and Rule and Procedure 18.44 (a).

### *The Four-tour Suspension and Letter of Reprimand*

The Department's Social Media Policy prohibits:  
Making statements, postings or otherwise disseminating content in a social media forum that is discriminatory or compromising of the Department's mission and operations where such improper usage can have instant and/or long term damage to the perception of the department and user.

Rule and Procedure 18.44 (a) prohibits:  
Conduct unbecoming a member, whether on or off duty, which tends to lower the service in the estimation of the public.

Rule and Procedure § 18.44 (j) prohibits:  
Conduct prejudicial to good order.

(R. Exhibit 14)

The content of Mr. Mullane's March 16, 2024 Facebook post provides a *nexus* connecting his indiscretions to the Department. Within the post, he offered a "nice BFD shirt" and stated that he has "to work 24 hours tomorrow." By offering a Department tee shirt, and

describing his work-day as a 24-hour shift, a person could deduce that he was a Boston firefighter. Further, his Facebook post showed his real name, including his suffix of Jr. With this information, one could conduct an online search and learn his particulars, possibly including his employment. Further, because the Facebook post was online, it could be easily disseminated beyond Mr. Mullane's group of Facebook friends. Even if the post were deleted, as happened here, earlier screenshots could still be circulated.

Off-duty misconduct has a nexus with a District Fire Chief's employment where it violates established rules. *See Schiavone v. Civil Serv. Comm'n*, 83 Mass. App. Ct. 1118 (2013) (unpublished opinion). In this case, Mr. Mullane was required to know the rules of the Department, including the social media policy and Rule 18.44(a). Further, he signed annual acknowledgments that he read the Department's social media policy.

Mr. Mullane does not dispute that he created the March 16, 2024 Facebook post and attached the restaurant video thereto. Instead, he asserts that his four-tour suspension was excessive pursuant to the guideline of progressive discipline. In the video, Mr. Mullane used words that disparaged the female customer's age, gender, physical appearance and marital status by describing her as a "bitch," "miserable," "disgusting" and "witchy." Although the customer remained calm and spoke in a quiet voice, Mr. Mullane got closer to her and continued to raise his voice. Mr. Mullane repeatedly asked her to leave the restaurant and ended the tirade by asking her to send in her husband so that he could have a chat with him.

Mr. Mullane compounded the earlier videotaped insults with even more vitriol with the language in the later Facebook post. In the post, he insulted the customer based on her gender, physical appearance, and age. Mr. Mullane called the female customer a "kid-hating Karen" and a "POS aged like rawhide looking droopy faced douche."

Mr. Mullane’s spiteful, derogatory “statements lower the public’s estimation of the [BFD] in the eyes of city residents . . . [and] erode the public’s trust in the [BFD].” *Rowe v. Civil Serv. Comm’n*, 103 Mass. App. Ct. 1112 (2023) (unpublished opinion), *rev. den.* 493 Mass. 1106 (2024).

A public employee who makes a ‘stupid’ . . . ‘unthinking’ remark in circumstances that damage the effectiveness or integrity of [his] employing agency is not entitled to claim that [he was] naïve about the consequences of [his] speech and thereby protected from the obvious consequences of [his] behavior.

*Pereira v. Commissioner of Social Services*, 432 Mass. 251, 264 (2000).

The fact that Mr. Mullane was off-duty when he made the post is not relevant to the Commission’s task. *Rowe*, 103 Mass. 1112, note 5. Rule 18.44(a) prohibits “[c]onduct unbecoming a member, whether on or off duty, which tends to lower the service in the estimation of the public.” The Department’s social media policy applies to all social media use, whether on or off duty. As in *Rowe*, “there is a substantial correlation or nexus between [the Appellant’s] off-duty conduct and his employment, thus enabling BFD to discipline him for his off-duty misconduct. *See Cambridge v. Baldasaro*, 50 Mass. App. Ct. 1, 4 (2000).” *Rowe*, 103 Mass. 1112, note 5. In *Cambridge v. Baldasaro*, the Appeals Court upheld the Commission’s decision to vacate the discipline of a heavy motor equipment operator on the basis that his off-duty misconduct (swearing at a parking enforcement officer) did not violate any municipal rule and there was no evidence of an impact on his ability to perform his job as he did not have a public-facing position.

However, public safety officials, such as District Fire Chiefs, are held to a higher standard than heavy motor equipment operators. For that reason, the Department may discipline District Fire Chiefs for conduct unbecoming, whether on or off duty. *See Lavery v. North Attleborough*, 30 MCSR 373, 380 (2017).

“[District Fire Chiefs] are quintessentially public servants. As such, part of their job is to safeguard the public’s opinion of them, particularly with regard to a community’s view of the respect that. . . [District Fire Chiefs] accord the members of that community.” *Locurto v. Giuliani*, 447 F.3d 159, 178-79 (2d Cir. 2006). Indeed, fire departments operate as “paramilitary” organizations in which “discipline is demanded, and freedom must be correspondingly denied.” *Maciariello v. Sumner*, 973 F.2d 295, 300 (4th Cir. 1992). “The BFD and its employees hold trusted positions in the community. In those positions, [District Fire Chiefs] must serve all residents of the city, regardless of their religion, sexual orientation, or race.” *Rowe, supra*, 103 Mass. App. Ct. 1112 (2023) (unpublished opinion).

Employees holding positions in public safety are held to a higher standard than other members of the public service. *See McIsaac v. Civil Serv. Comm’n*, 38 Mass. App. Ct. 473, 476 (1995). Firefighters like police officers “must comport themselves in accordance with the law 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.” *Police Comm’r of Boston v. Civil Serv. Comm’n*, 494 N.E.2d 27 (1986).

*Miller v. Boston Fire Dep’t*, 13 MCSR 121, 123 (2000). Conduct unbecoming a firefighter, when applied to concrete instances of misconduct, includes conduct that is surely an embarrassment to the Department and is not unconstitutionally vague. *McIsaac v. Civil Serv. Comm’n*, 38 Mass. App. Ct. 473 (1995); *see also Kelly v. Civil Serv. Comm’n*, 427 Mass. 75 (1998) (Termination for conduct unbecoming upheld); *Daley v. Judge of District Court of Western Hampden*, 304 Mass. 86 (1939) (termination for conduct unbecoming upheld).

As Mr. Mullane’s job required him to safeguard public opinion of the Department, he was appropriately suspended for his Facebook post which “jeopardized the public’s trust in firefighters.” In so venting publicly, “he frustrated the Fire Department’s public safety mission.” *Hussey v. Cambridge*, 2024 WL 1075296 (D.Mass. 2024). Moreover, “[m]aintaining the public’s



confidence in the [Department] is part of the [Appellant's] job responsibilities.” *Id.* In *Hussey*, it was immaterial that the employee in that matter deleted his Facebook post after about an hour. *Id.* “[T]he reach of his statement was amplified by it being on a social media platform. Writing on Facebook is accurately compared to ‘writing a letter to the local newspaper’ and ‘suggests an intent to ‘communicate to the public’ . . .” *Id.* quoting *Liverman v. Petersburg*, 844 F.3d 400, 410 (4<sup>th</sup> Cir. 2016).

In *Hussey*, the fact that the employee deleted his Facebook post (as was the case here) within hours was immaterial. Social media posts amplify the potential consequences for employers. Posts may be screenshot and preserved by others. In the within matter, Mr. Mullane failed to delete his Facebook post before someone took a screenshot of it and sent it to the Department’s Personnel Office. An employee’s intent to limit a Facebook post to family and friends is irrelevant because, by making the post, the employee is gambling that the post may end up on television or a newspaper. *Duke v. Hamil*, 997 F.Supp.2d 1291, 1302 (N.D.Ga. 2014). Over the weekend of March 16, 2024, the Department fielded calls made to the Personnel Office and the Public Information Office in complaint about the post. This was not an efficient use of the Department’s time.

The Department’s hearing officer and Chief of Operations, Dep. Chief Marshall, recommended that the Fire Commissioner uphold Mr. Mullane’s four-tour suspension. In addition to the seriousness of the charge, the pertinent Rules and Regulations and the principles of the Progressive Discipline Guidelines, Dep. Chief Marshall considered “the needs of the department and the public perception.”

Fire Commissioner Burke accepted Dep. Chief Francis' recommendation and upheld both the reprimand and suspension, noting that Mr. Mullane had violated established departmental rules.

I find that Mr. Mullane's March 16, 2024 Facebook post was violative of the Department's social medial policy, where he disseminated content in social media that was discriminatory and compromised the Department's mission with instantaneous damage to the perception of the department and Mr. Mullane himself. Mr. Mullane's misconduct referenced the female customer's age, gender, physical appearance and marital status.

Although Mr. Mullane's misconduct was off duty, it lowered the fire service in the estimation of the public. Rule and Procedure § 18.44 (a). Moreover, Mr. Mullane's misconduct was further prejudicial to good order. Rule and Procedure § 18.44 (j).

*Mr. Mullane's Facebook Post was not Protected Speech*

As a matter of law, "basic merit principles" of civil service law include a requirement to assure "fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation . . . and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens." G.L. c. 31, §1. Thus, in almost all circumstances, political speech and conduct that is protected by the U.S. Constitution and the Massachusetts Declaration of Rights cannot be used as the basis for discipline of a tenured employee.

Thus, the Department may not discipline a tenured firefighter for engaging in political speech or conduct to the extent that the speech or conduct falls squarely within the employee's interest in freedom of speech, his constitutional rights and the statutory protection provided under basic merit principles of civil service law. *See, e.g., Rowe v. Civil Serv. Comm'n*, 103

Mass. App. Ct. 1112 (2023) (Rule 23), *quoting Rankin v. McPherson*, 483 U.S. 378, 383 (1987).

However, a public employee's rights are not absolute, and they must accept certain limitations on freedom of speech. *See Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006). To determine where those limitations exist, Massachusetts law generally follows the federal law in matters of protected public speech and, accordingly, employs a three-prong framework. *Pereira v. Commissioner of Social Services*, 432 Mass. 251, 252 n.2, 257 n.15 (2000), *citing Pickering v. Board of Educ.*, 391 U.S. 463 (1968); *Connick v. Myers*, 461 U.S. 138 (1983); *Decotiis v. Whittemore*, 635 F.3d 22, 29-30 (1st Cir. 2011).<sup>3</sup>

While courts have long held that a public employee maintains a First Amendment right to speak out on matters of public concern; the Courts have further stated when public employee speech is directed to matters only of personal interest, “absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee’s behavior.” *Connick v. Myers*, 461 U.S. 138, 147 (1983).

First, it must be determined whether the employee was speaking “as a citizen upon matters of public concern” when making the statements at issue. *Pereira*, 432 Mass. at 257 (2000), *quoting Connick*, 461 U.S. at 147 (1983). If so, the second prong, known as the *Pickering* balancing test, requires “a balance between the interests of the [employee], as a

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<sup>3</sup> Although I am relying on federal court precedents to analyze the Appellant’s First Amendment defense, Massachusetts appellate courts have signaled that a similar analysis governs review of disciplinary action in the face of disruptive public employee speech under the Massachusetts Declaration of Rights. In *MacDonough v. Board of Directors of Massachusetts Hous. Fin. Agency*, for example, the Appeals Court of Massachusetts explicitly adopted the federal courts’ articulation of the free speech versus efficient operations balancing test. 28 Mass.App.Ct. 538, 544 (1990).

citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Pickering*, 391 U.S. at 568 (1968); *DeCotiis*, 635 F.3d at 29. In performing that balance, the question becomes “whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public.” *Garcetti*, 547 U.S. at 418. The third prong requires the employee to provide “sufficient evidence” that the protected speech was “a substantial or motivating factor” in the adverse employment decision. *Antonellis v. Department of Elder Affairs*, 98 Mass. App. Ct. 251, 260 (2020), quoting *Guilloty Perez v. Pierluisi*, 339 F.3d 43, 55 (1st Cir. 2003). If the employee satisfies that initial burden, the burden of persuasion shifts to the employer to prove that “it would have taken the same action regardless of the protected speech.” *Id.*

Mr. Mullane’s defense to violating the Department’s social media policy is that the statements he made in the Facebook post were protected by the First Amendment, and thus do not qualify. *See Roca v. Holyoke*, No. 2384CV01229 (Suff. Sup. Ct., Sept. 12, 2024) (extensive disruptions caused by Appellant’s reckless accusations stripped his statements of First Amendment protection); *Abasciano v. Boston Police Dep’t*, 37 MCSR 332 (2024) appointing authority unnecessarily penalized Appellant’s speech in balance of Appellant’s constitutional free speech rights and its institutional and reputational prerogatives). Mr. Mullane repeatedly argues that his public accusations were matters of public concern, and thus could not form the basis for disciplinary action beyond a written reprimand.

However, Mr. Mullane’s March 16, 2024 Facebook post was the public display of a vituperative *private* confrontation in a restaurant, and cannot qualify as a matter of public concern.

Thus, we do not reach the second prong of the *Pickering* test.

I find that Mr. Mullane's March 16, 2024 Facebook post is unprotected speech, constitutes misconduct, is violative of the Department's social media policy and Rule and Procedure 18.44 §§ (a) and (j), and provides just cause for his four-tour suspension. Mr. Mullane's Facebook post was uploaded a) as a private citizen, b) while off duty, c) using a Facebook identity with his real name, and d) disclosing information that would lead one to believe that he was a Boston firefighter. Accordingly, the Department's imposition of discipline was neither a violation of state or federal constitutional law.

It is the role of the Commission's hearing officer to determine the credibility of testimony presented. *Dion v. New Bedford School Dep't*, 23 MCSR 517, 519 (2010) citing *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 729 (2003); see also *Correia v. Department of Correction*, 22 MCSR at 370, 374 (2009) ("It is the function of the hearing officer to determine the credibility of the testimony presented before him.")

Mr. Mullane asserted that he acted in order to protect his family and that the customer swore at him before the recording began. This is not credible. Dep. Chief Francis does not mention that the customer was profane in his contemporaneous report of the interview. Further, Mr. Mullane had multiple opportunities to report that this woman allegedly swore – in the investigative interview, in the Section 41 hearing, and even in the transcript that he created for his union representative.

There is no excuse for Mr. Mullane's over-the-top response or his attempt to dox the customer on social media.

*Commission's Authority to Modify a Penalty*

The “power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded to the appointing authority.” *Falmouth v. Civil Service Comm’n*, 61 Mass. App. Ct. at 800, quoting *Police Comm’r v. Civil Service Comm’n*, 39 Mass. App. Ct. 594, 600 (1996).

Even if the Commission were inclined to reduce Mr. Mullane’s suspension, it must be noted that the same disciplinary penalty is warranted “unless the commission’s findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way.” *Falmouth v. Civil Serv. Comm’n*, 447 Mass. at 824. Additionally, the “power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded to the appointing authority.” *Falmouth v. Civil Service Comm’n*, 61 Mass. App. Ct. at 800, quoting *Police Comm’r v. Civil Service Comm’n*, 39 Mass. App. Ct. at 600. When the Commission passes judgment on an appointing authority’s selected disciplinary measure, it does not “act without regard to the previous decision of the [appointing authority].” *Falmouth v. Civil Service Comm’n*, 447 Mass. at 823, quoting *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

Mr. Mullane does not dispute the events of March 16, 2024. Instead, he argues that the Department did not follow the principles of progressive discipline. He asserts that his discipline of a reprimand *and* a four-tour suspension was excessive and proposed that the discipline be reduced to a written reprimand with anger management counseling.

Dep. Chief Francis testified at both the Section 41 hearing and before the Commission that the letter of reprimand and the four-tour suspension were consistent with the level of discipline imposed upon a similarly situated firefighter who had violated the Social Media

policy, and Rules 18.44 (a) and (j). In that incident, an on-duty firefighter disparaged a female public official's physical characteristics on social media.

I have carefully reviewed and considered the arguments of both parties. Intervention by the Commission in the form of a modified penalty is not warranted here.

Mr. Mullane's conduct on the evening of March 16, 2024 was extremely unfortunate. After he became annoyed by the female customer's comments about his children's conduct, he escalated the situation by berating her in their presence. Mr. Mullane then compounded his unbecoming conduct by uploading the video to social media via Facebook. In attempting to "out" the woman, he effectively identified himself as Department personnel, and promised a Department tee shirt to whomever disclosed the woman's identity. This misconduct diminished the Department in the eyes of the public.

I find no allegations here of political considerations, favoritism, or bias. Moreover, the underlying material facts found by the Department's hearing officer are backed by the testimony and documentary evidence I have reviewed. Thus, even if the Commission were inclined to modify Mr. Mullane's suspension, it would lack a rational justification for doing so.

## **CONCLUSION**

Based on the preponderance of credible evidence presented at the hearing, I conclude that the Boston Fire Department had just cause to discipline Neal A. Mullane, Jr.

Accordingly, the appeal docketed at D-24-060 is hereby *denied*.

Civil Service Commission

/s/ Angela C. McConney  
Angela C. McConney  
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on June 26, 2025.

Either party may file a motion for reconsideration within ten days of receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 C.M.R. § 1.01(7)(1), 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. 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:

Francisco Fernandez, Esq. (for Appellant)

Robert J. Boyle, Jr. Esq. (for Respondent)