

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

ROBERT NAVAS,

Appellant

v.

DEPARTMENT OF STATE POLICE,

Respondent

D-15-82

Appearance for Appellant:

Margaret A. Rubino, Esq.
Rafanelli & Kittredge, PC
1 Keefe Road
Acton, MA 01720

Appearance for Respondents:

Suzanne T. Caravaggio, Esq.
Division of Standards and Training
MSP
470 Worcester Road
Framingham, MA 01702

Commissioner:

Paul M. Stein¹

DECISION

On July 13, 2015, the Appellant, Robert Navas, acting pursuant to G.L.c.31,§43 and G.L.c.22C,§13 as amended by St. 2002, c.43, to the Civil Service Commission (Commission) from the decision of the Massachusetts Department of State Police (MSP) suspending him without pay from his position as a Trooper and requiring a forfeiture of ten days of vacation and personal leave. A pre-hearing was held on May 19, 2015. The full hearing was conducted on July 29, 2015 and August 17, 2015.² The hearing was digitally recorded and the parties received a CD of the hearing³. Both parties submitted proposed decisions to the Commission.

¹ The Commission acknowledges the assistance of Law Clerk Barbara Grzonka in the drafting of this decision.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence

³ 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 he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

FINDINGS OF FACT:

Fifty (50) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

Called by the Respondent:

- J.A. [Private Investigator]
- M.R. [Private Investigator]
- V.R. [Private Investigator]
- MSP Detective Lieutenant Paul Zipper, MSP

Called by the Appellant:

- MSP Trooper Robert Navas
- Mrs. Navas [spouse of Trooper Navas]

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies, and reasonable inferences from the credible evidence; a preponderance of credible evidence establishes the following facts:

1. Trooper Navas has been a Massachusetts State Trooper since 1993. (Exhibit 4; Testimony of Trooper Navas)
2. Trooper Navas' employment record contains one prior disciplinary action for violating Article 5.5 (Reporting for Duty) and Article 5.26 (Use of Equipment) of the MSP Rules and Regulations. This discipline was imposed in 1998 and resulted in Trooper Navas forfeiting three (3) vacation days. (Exhibit 4)
3. Trooper Navas has been married for eighteen (18) years and has two children. (Testimony of Mrs. Navas)
4. On October 24, 2011, Mrs. Navas fell on a set of stairs at her place of employment. She sustained injuries to her head, neck, right hand and wrist. (Testimony of Mrs. Navas; Exhibits 11, 13, 22)

5. Mrs. Navas filed a workers' compensation claim with her employer. She was out of work from October 24, 2011 to March 24, 2012. (Testimony of Mrs. Navas; Exhibit 15)
6. Following the submission of Mrs. Navas' workers' compensation claim, her employer opened an investigation into her claim. (Exhibits 15, 18, 21, 22)
7. The employer hired E.V., a licensed private investigator, to conduct surveillance of Mrs. Navas. (Exhibits 11, 16, 17, 18)
8. On November 7, 2011, E.V. was in his vehicle conducting surveillance of Mrs. Navas' home when a MSP cruiser operated by Trooper Navas stopped behind his vehicle. E.V. was approached by Trooper Navas, who was in uniform and on duty at the time. Trooper Navas asked for E.V.'s license and registration and inquired into what E.V. was doing in the area. E.V. replied that he was working on a workers' compensation case and motioned towards the direction of the Navas' home. Trooper Navas went to his police cruiser with E.V.'s license and registration. Trooper Navas returned to E.V.'s vehicle in less than five (5) minutes. (Exhibits 16, 18)
9. Although E.V. did not identify the subject of his investigation, Trooper Navas stated that she (Mrs. Navas) had "made" him and that E.V. was making her nervous. Trooper Navas also stated that the subject being surveilled was his wife. (Exhibits 16, 18)
10. E.V. stated "I guess my day is over." (Exhibits 16, 18)
11. E.V. notified the employer of his encounter with Trooper Navas and was advised that his assignment was terminated. (Exhibit 18)
12. On November 8, 2011, the employer hired a different private investigations firm to resume surveillance of Mrs. Navas. (Testimony of V.R.)

13. V.R., the owner of the second private investigative firm was informed that Mrs. Navas was married to a Massachusetts State Trooper and that he had recently confronted another private investigator who was assigned to conduct surveillance on Mrs. Navas. (Testimony of V.R.; Exhibits 21, 22)
14. Because of the incident involving E.V. and Trooper Navas, the employer authorized V.R.'s firm to use two (2) investigators, who would work as a team in order to conduct surveillance on Mrs. Navas. The purpose of the team was to enable the investigators to conduct surveillance from a greater distance away from Mrs. Navas. (Testimony of V.R.)
15. V.R. assigned the surveillance job to two (2) investigators in her firm whom she considered to be experienced, M.R. and J.A. (Testimony of V.R.)
16. M.R. has been a private investigator since 1996 and J.A. has been a private investigator since 1997. (Testimony of M.R.; Testimony of J.A.)
17. M.R. is married to V.R.. (Testimony of M.R.)
18. V.R. provided M.R. and J.A. with Mrs. Navas' case history and instructed them to use "kid gloves" because Mrs. Navas is married to a state trooper who had already confronted another private investigator. (Testimony of V.R.)
19. V.R. was informed by the employer that Mrs. Navas had fallen down the stairs, sustained a right hand injury and a concussion and that she could not drive. (Testimony of V.R.; Exhibit 22)
20. The employer also informed V.R. that Mrs. Navas had a doctor's appointment scheduled for November 9, 2011. (Exhibit 22; Testimony of V.R.)
21. V.R. relayed Mrs. Navas' driving restriction information to M.R. and J.A.. (Testimony of J.A.)

22. On November 9, 2011, M.R. and J.A. conducted surveillance on Mrs. Navas and observed her driving her child to school, driving to a Dunkin Donuts and driving to her doctor's appointment. There were no incidents during this surveillance. (Exhibits 22, 23, 24, 25)
23. Beginning between 6:30 a.m. and 7:00 a.m. on November 14, 2011, M.R. and J.A. set up surveillance along Mrs. Navas' expected route of travel in order to conduct additional surveillance. (Exhibits 25,26)
24. On November 14, 2011, Trooper Navas was on duty and assigned a day shift from 7:00 a.m. to 3:30 p.m. out of the Revere Barracks. (Testimony of Trooper Navas; Exhibits 12, 29, 30)
25. Trooper Navas' patrol area included the area where his home is located. (Exhibit 46)
26. At 7:27 a.m. on November 14, 2011, M.R. observed Trooper Navas leave his home and drive away in an MSP vehicle. (Testimony of M.R.; Exhibit 25)
27. Shortly thereafter, at 7:44 a.m., M.R. observed Mrs. Navas leave her home with her child and drive towards the child's school. (Testimony of M.R.; Exhibits 24, 25)
28. M.R. followed Mrs. Navas from a distance of several cars lengths to the area of her child's school. He did not drive down the street where the school is located. M.R. then drove to a location where he believed Mrs. Navas would drive towards when leaving the school area. (Testimony of M.R.; Exhibits 24,25)
29. J.A. was already in place near the school to record Mrs. Navas dropping off her child. He recorded video of Mrs. Navas dropping off her child. The video was recorded from a distance of 300-500 feet away from the entrance of the school. (Testimony of J.A.; Exhibit 47)
30. Upon arriving at the school, Mrs. Navas pulled into a parking space in front of the school. Her child exited the vehicle and stood outside and spoke to another child. Mrs. Navas then

pulled back into traffic, drove down the street and took a left turn. (Testimony of J.A.; Exhibit 25)

31. A crossing guard was present near Mrs. Navas' vehicle when she dropped her child off in front of the school. (Testimony of J.A.; Exhibit 11)

32. Mrs. Navas did not exit her vehicle at the school or speak to the crossing guard. (Testimony of Mrs. Navas)

33. Mrs. Navas was the victim of a carjacking in 2004. (Exhibits 35,36) Because of that incident she is "hyper-aware" of her surroundings. She makes it a practice of frequently checking her rear view mirror in order to observe her surroundings. (Testimony of Mrs. Navas; Exhibit 11)

34. While on route from her home to the school, Mrs. Navas began to suspect that she was being followed by two (2) vehicles. Mrs. Navas called Trooper Navas and told him she was being followed and gave Trooper Navas a description of both vehicles. One vehicle was gold and the other was dark green.⁴ (Testimony of Mrs. Navas)

35. Mrs. Navas avers that the cars pulled up to the curb in front of the school behind her when she was dropping off her child. (Testimony of Mrs. Navas)

36. J.A. obtained video of Mrs. Navas pulling up in front of the school, her child getting out of the vehicle, and standing outside and talking to another child before going into the school. (Exhibit 47)

37. The video also shows the crossing guard standing in front of Mrs. Navas' vehicle for the majority of the time Mrs. Navas was at the school. (Exhibit 47)

⁴ In her written statement which was submitted to the MSP for its investigation and when testifying before the Commission Mrs. Navas was able to provide a more detailed description of the vehicles. In order to protect the privacy of the private investigators, the Commission will refer to the vehicles as the gold car and the green car.

38. Mrs. Navas was still on the phone with Trooper Navas and told him she did not want to go home and was going to go to Dunkin Donuts. Trooper Navas told her to go to the Dunkin Donuts. (Testimony of Mrs. Navas; Testimony of Trooper Navas)
39. Mrs. Navas drove to the nearby Dunkin Donuts and went through the drive thru. (Testimony of Mrs. Navas; Exhibit 25)
40. After completing his surveillance near the school, J.A. drove into a Hess gas station parking lot which was across a busy roadway from the Dunkin Donuts in order to obtain additional surveillance video of Mrs. Navas. (Testimony of J.A.)
41. Trooper Navas was in the area when he received the call from Mrs. Navas. Trooper Navas drove towards her intended location. He passed her car and saw the gold car she described following behind her. (Testimony of Trooper Navas; Exhibit 29)
42. Trooper Navas told Mrs. Navas he could see her at the Dunkin Donuts. (Testimony of Mrs. Navas; Testimony of Trooper Navas)
43. Trooper Navas then pulled into a nearby Walgreens parking lot. (Testimony of Trooper Navas)
44. M.R. followed Mrs. Navas to the Dunkin Donuts, parked in a parking space and began collecting video of Mrs. Navas going through the drive through. (Testimony of Mrs. Navas; Exhibits 25, 48)
45. J.A. also obtained video of Mrs. Navas going through the Dunkin Donuts drive -through from his location at the Hess gas station across the street. (Testimony of J.A.; Exhibits 25, 47)
46. Once Mrs. Navas left the Dunkin Donuts she drove home. M.R. followed Mrs. Navas home and drove past the Navas' home. (Testimony of Mrs. Navas)

47. Trooper Navas was on the phone with Mrs. Navas until she got inside her home. (Testimony of Mrs. Navas; Testimony of Trooper Navas)
48. J.A. drove from the Hess gas station to the nearby Walgreens parking lot where Trooper Navas was still parked. Upon seeing Trooper Navas' cruiser, J.A. drove out of the parking lot. (Testimony of Trooper Navas; Testimony of J.A.)
49. Trooper Navas exited the Walgreens parking lot and stopped J.A.'s vehicle on the street. (Testimony of Trooper Navas)
50. Trooper Navas asked J.A. to produce his license and registration and told J.A. that he stopped him due to a report of suspicious activity. (Testimony of Trooper Navas; Testimony of J.A.; Exhibit 29)
51. Trooper Navas wears a nametag with "Navas" displayed on his uniform. J.A. knew Trooper Navas was Mrs. Navas' husband as soon as he saw the nametag. (Testimony of J.A.)
52. Trooper Navas observed a laptop sitting on the passenger seat of J.A.'s vehicle and asked J.A., "How do I know you didn't steal that?" (Testimony of Trooper Navas)
53. J.A. entered his password into the laptop to show that he owned the laptop. (Testimony of J.A.)
54. Trooper Navas asked J.A. what he was doing in the area. J.A. lied and said he was employed by an HVAC company located nearby and he was in the area to meet his boss for a job. J.A. could not provide the name of this boss. (Testimony of Trooper Navas; Testimony of J.A.)
55. Trooper Navas checked J.A.'s license plate number and saw that it had been queried twenty-four (24) times in numerous locations in a short period of time. Trooper Navas also contacted the Cambridge Police Department (CPD) because one of the most recent queries

had been conducted by CPD. Trooper Navas was informed that J.A.'s interactions with the CPD had consisted of a routine motor vehicle stop. (Testimony of Trooper Navas)

56. Trooper Navas then contacted the Revere State Police barracks and spoke with the desk officer who checked into the HVAC company J.A. listed as his employer. The desk officer informed Trooper Navas that the company was located in Billerica, not Revere as J.A. had stated. (Testimony of Trooper Navas)

57. The desk officer asked Trooper Navas if he wanted an additional cruiser dispatched to the location. Trooper Navas said that was not necessary since there was a Revere police officer on a detail nearby if Trooper Navas needed assistance. (Testimony of Trooper Navas)

58. Trooper Navas called the HVAC company that J.A. claimed to work for and left a message. (Testimony of Trooper Navas)

59. Trooper Navas returned to J.A.'s vehicle and told him that he tried to verify the information J.A. provided and it was not adding up. Trooper Navas then returned to his cruiser and called the State Police Certification Unit to ask if J.A. was a private investigator. (Testimony of Trooper Navas)

60. The Certification Unit oversees and provides credentials to private investigation firms. (Testimony of Det. Lt. Zipper)

61. The Certification Unit advised Trooper Navas that J.A. was not a licensed private investigator. Trooper Navas then provided the plate number for the second car. M.R.'s car and was told that M.R. is not a licensed investigator. However, there was a licensed investigator with the same last name (V.R.). Trooper Navas was given V.R.'s address and telephone number and was informed that non-licensed investigators are permitted to work under a licensed investigator. (Testimony of Trooper Navas)

62. Trooper Navas returned to J.A.'s vehicle and was very angry. He told J.A. that he knew why he was in the area and that J.A. needs to leave the area. Trooper Navas told J.A. to stop the "bullshit" and that if J.A. kept harassing his wife he would have to "crack some heads and start stepping on some fucking toes." Trooper Navas told J.A. to "get the fuck out of here and tell Manny to get the fuck out of here as well." (Testimony of J.A.; Exhibits 23, 26, 27)
63. Trooper Navas also commented something to the effect that he did not have the time to keep leaving work to chase off investigators. (Testimony of J.A.; Exhibit 23 & 26)
64. When testifying before the Commission, Trooper Navas admitted to "scolding" J.A. and speaking sternly to him. He also told J.A. that "you put her (Mrs. Navas) in fear and that's why I'm here." (Testimony of Trooper Navas)
65. Trooper Navas made no reference to scolding or speaking sternly to J.A. in his To/From Memoranda submitted to MSP Sgt. Ross or Det. Lt. Zipper, both of whom handled investigations into the incident with J.A.. (Testimony of Trooper Navas)
66. The stop was concluded once Trooper Navas confirmed that J.A. was a private investigator. (Testimony of J.A.)
67. In subsequent reports, interviews with members of the MSP, and when testifying before the Commission, J.A. admitted he initially lied to Trooper Navas about what he was doing in the area on the morning of November 14, 2011. J.A. lied in order to attempt to save his investigation. (Testimony of J.A.; Exhibits 23, 26 & 27)
68. The length of Trooper Navas' stop of J.A. was approximately twenty-eight (28) minutes. (Exhibit 11)
69. It is Trooper Navas' belief that stops for suspicious activity do not need to be entered into the PayStation database because PayStation only tracks M.G.L. c. 90 violations that result in

written warnings, written citations or verbal warning. There is no box on the form for suspicious activity. (Testimony of Trooper Navas)

70. After J.A. left the area where he was stopped by Trooper Navas, J.A. contacted V.R..

(Testimony of J.A.)

71. Trooper Navas called V.R.'s firm in order to file a complaint about the manner in which J.A.

and M.R. conducted their investigation. Trooper Navas spoke to V.R.. (Testimony of Trooper Navas, Testimony of V.R.)

72. During the conversation with V.R., Trooper Navas said, "I stopped your investigator, J.A.

and I'm sure you heard about it. I snapped on the investigator because he was following her." (Exhibit 27)

73. Trooper Navas also asked V.R. who [M.R.'s first name] was and whether he was her

husband or her brother. (Testimony of V.R.; Exhibits 11,21,22)

74. V.R. thought that by asking her who [M.R.'s first name] was Trooper Navas was letting her

know that he had identified M.R. as also surveilling Mrs. Navas. (Exhibits 11, 22)

75. V.R. requested Trooper Navas' full name, badge number and a callback number. (Testimony

of Trooper Navas; Testimony of V.R.)

76. V.R. did not call Trooper Navas back. (Exhibit 27) Instead, V.R. called the Certification

Unit and spoke to Carol Patten. Ms. Patten advised V.R. that Trooper Navas had already called in order to determine if J.A. and M.R. were private investigators. Ms. Patten provided V.R. with the contact information of Mary Ritchie, who works at MSP headquarters in the event that V.R. wanted to file a complaint against Trooper Navas. (Testimony of V.R.)

77. At approximately 10:30 a.m. on November 14, 2011, Trooper Navas called V.R.'s firm again

and V.R. did not take his call. (Testimony of Trooper Navas; Testimony of V.R.; Exhibit 27)

78. On November 14, 2011, V.R. filed a Citizens Complaint concerning Trooper Navas with the MSP, Division of Standards and Training. (Exhibits 21 & 27)
79. In her complaint, V.R. alleges that Trooper Navas abused his authority as a Massachusetts State Trooper and impeded her company's investigation. (Exhibits 21 & 27)
80. As a result of V.R.' complaint, MSP Sergeant Joseph Ross was assigned to investigate the November 14, 2011 incident. (Testimony of Det. Lt. Zipper; Exhibits 11, 12, 28)
81. At the time of this investigation, Sgt. Ross was Trooper Navas' direct supervisor.
(Testimony of Det. Lt. Zipper)
82. According to the Department of State Police General Order, ADM-14 regarding Personnel Investigations, supervisors shall conduct investigations of both citizens' and internal complaints filed against employees they supervise. (Exhibit 5)
83. General Order ADM-14 states that "the investigating member shall make a conclusion of fact for each complaint and those conclusions shall be reviewed by the appropriate Troop/Section/Unit Commander. (Exhibit 5)
84. Sgt. Ross' report lists four (4) matters requiring investigation which originated from V.R.' complaint:

“(1) Did Trooper Navas stop the operator, J.A. for a valid reason and was his questioning of J.A. warranted? This specific complaint is categorized as Validity of Enforcement Action Taken.
(2) Was Trooper Navas on duty and on his assigned patrol when he initiated the motor vehicle stop of J.A.? This specific complaint is categorized as Officer Conduct.
(3) Did Trooper Navas use his office of authority to hamper the investigation conducted by [the second investigation firm]? This specific complaint is categorized as Officer Conduct.
(4) Did Trooper Navas conduct himself in an unprofessional manner, threatening J.A. with physical violence and swearing? This specific complaint is categorized as Officer Conduct.”
(Exhibit 12)
85. On December 1, 2011, Trooper Navas was advised that he was the subject of an investigation into a civilian complaint filed by V.R.. (Exhibit 28)

86. Sgt. Ross sent Trooper Navas a To/From Memorandum with six questions Trooper Navas was required to answer. The questions asked Trooper Navas to provide a detailed account of J.A.'s stop including the reason for the stop, the tone and tenor of the conversation and whether Trooper Navas had any prior history with [the second investigation firm]. (Exhibit 28)
87. Trooper Navas responded to Sgt. Ross' questions in a To/From Memorandum. Trooper Navas admitted he was responding to a call from his wife, in which, she stated she was being followed by two (2) vehicles and that she was scared. (Exhibits 28, 29)
88. Sgt. Ross interviewed V.R., J.A. and Mrs. Navas as part of his investigation. He also reviewed the written complaint V.R. submitted and requested that Mrs. Navas produce a written account of the events of November 14, 2011 which Sgt. Ross included in his investigation. (Exhibit 12)
89. In her interview with Sgt. Ross, Mrs. Navas indicated that she had been the victim of a carjacking in 2004 which made her "keenly aware of her surroundings, causing her not only to immediately pick up on the surveillance on the morning of 14 November, but also to identify the same vehicles as having followed her to Boston on 9 November 2011." (Exhibit 12)
90. After completing his investigation, Sgt. Ross exonerated Trooper Navas on matters requiring investigation one (1) through three (3) and found that a complaint on matter four (4) could not be sustained. (Exhibit 12)
91. Sgt. Ross submitted his findings to Major Edward Amodeo, Commanding Officer of Troop A. (Exhibit 12)

92. Major Amodeo had additional questions and concerns about the investigation and ordered the matter be investigated further. (Testimony of Det. Lt. Zipper)
93. The matter was assigned to Det. Lt. Paul Zipper for further investigation. (Testimony of Det. Lt. Zipper; Exhibit 11)
94. Det. Lt. Zipper was not told what Major Amodeo's concerns regarding the initial investigation were. (Testimony of Det. Lt. Zipper)
95. During the course of his investigation, Det. Lt. Zipper interviewed E.V., V.R., J.A., M.R., Carol Patten of the Certification Unit of the MSP, an attorney from Mrs. Navas' place of employment and Lieutenant Mills, who was the Station Commander of the Revere Barracks at the time of the incident. (Testimony of Det. Lt. Zipper)
96. Det. Zipper also reviewed the Administrative Daily Journals for the State Police Revere Barracks for November 7, 2011 and November 14, 2011. (Testimony of Det. Lt. Zipper; Exhibit 11)
97. The Administrative Daily Journal is the police log of activity for a State Police barracks. (Testimony of Det. Lt. Zipper)
98. The Administrative Daily Journal for November 7, 2011 contains no entry or other record of Trooper Navas' encounter with E.V. on that day. (Exhibit 37)
99. The Administrative Daily Journal for November 14, 2011 contains no entry or other record of Trooper Navas' encounter with J.A. on that day. (Testimony of Det. Lt. Zipper; Exhibits 11, 30)
100. The Administrative Daily Journal for November 14, 2011 contains no entry or other record of suspicious or erratic motor vehicle operation in the area where Trooper Navas stopped J.A.. (Exhibit 30)

101. During the course of his investigation, Det. Lt. Zipper became suspicious that Mrs. Navas had a pattern of filing insurance claims. Because of this suspicion, Det. Lt. Zipper obtained a list of insurance claims filed by Mrs. Navas. (Testimony of Det. Lt. Zipper)
102. Det. Lt. Zipper also obtained cell phone records for Trooper Navas and Mrs. Navas. (Testimony of Det. Lt. Zipper)⁵
103. On October 12, 2012, Det. Lt. Zipper submitted his investigation report to Major Arthur W. Sugrue, who commanded Troop A at that time. Det. Lt. Zipper's report summarized Mrs. Navas' injury and workers' compensation claim, her employers' request to open an investigation into the claim, Trooper Navas' interaction with E.V. of [name redacted] Investigations and Trooper Navas' interactions with J.A. and V.R. on November 14, 2011. (Exhibit 11)
104. Det. Lt. Zipper's report outlined seven (7) matters that required investigation:
- "1) Did Trooper Robert Navas use his badge or authority of office to impede an investigation that was being conducted by [name redacted] Investigations? The specific Complaint is categorized as *Officer Conduct*.
 - 2) Did Trooper Robert Navas use his badge or authority of office to impede an investigation that was being conducted by [name redacted] Investigations? This specific complaint is categorized as *Officer Conduct*.
 - 3) Did Trooper Navas conduct himself in an unprofessional manner, threatening [J.A.] with physical violence and swearing? This specific complaint is categorized as *Officer Conduct*.
 - 4) Did Trooper Navas stop the operator, J.A. for a valid reason and was his questioning of J.A. warranted? This specific complaint is categorized as *Validity of Enforcement Action Taken*.
 - 5) Did Trooper Robert Navas fail to enter into the PayStation Citation Entry Form as mandated by 07-SO-009 when he detained [S.V.] on November 7, 2011? This specific complaint is categorized as *Department Policy*.

⁵ Appellant contends that Det. Lt. Zipper did not obtain the Navas' permission to obtain copies of their cell phone records. Instead Det. Lt. Zipper informed the Middlesex District Attorney's Office that he was investigating a potential criminal matter (insurance fraud). Thus, Det. Lt. Zipper was able to obtain a subpoena and obtain the cell phone records. The records were entered into evidence and I give them the weight they are due, which is limited to confirming that Mrs. Navas called Trooper Navas to alert him that she was being followed on November 14, 2011. Both parties admitted before the Commission that Mrs. Navas called Trooper Navas on that morning and informed him she suspected she was being followed.

6) Did Trooper Robert Navas fail to enter into the PayStation Citation Entry Form as mandated by 07-SO-009 when he detained [J.A.] and conducted a search of his computer on November 14, 2011? This specific complaint is categorized as *Department Policy*.

7) Was Trooper Robert Navas on duty and in his assigned patrol area on November 7, 2011? This specific complaint is categorized as *Officer Conduct*.”
(Exhibit 11)

105. Ultimately, Trooper Navas was charged with five (5) charges of violating Article 5.1 of the Rules and Regulations for the governance of MSP. The charges were:

Charge I: Violation of Article 5.1 of the Rules and Regulations for the governance of the Department of State Police to wit: Violation of Rules:

Specification 1: In that Trooper Robert Navas...on or about November 7, 2011, did conduct himself in such a manner as to violate a MSP Rule, Regulation, Policy, Procedure, Order or Directive. This occurred when Trooper Navas violated State Policy Policy and Procedure 10-SM-06⁶ relative to entering officer initiated traffic stops into the Paystation database. The action is in direct violation of Article 5.1. This is a Second Offense Class D violation.

Specification 2: In that Trooper Robert Navas...on or about November 14, 2011 did conduct himself in such a manner as to violate a MSP Rule, Regulation, Policy, Procedure, Order or Directive. This occurred when Trooper Navas violated State Police Policy and Procedure 10-SM-06 relative to entering initiated traffic stops into the Paystation database. This action is in direct violation of Article 5.1. This is a Second Offense Class D violation

Charge II: Violation of Article 5.2 of the Rules and Regulations for the governance of the Department of State Police to wit: Unbecoming Conduct.

Specification 1: In that Trooper Robert Navas...on or about November 14, 2011 did conduct himself in such a way as to bring the MSP into disrespect or reflect discredit upon himself as a member of the MSP. Further, Trooper Navas impaired the operation, efficiency, or effectiveness of the MSP. This occurred when Trooper Navas interfered with an ongoing private investigation and used abusive language while doing so. This action is in direct violation of Article 5.2. This is a Class B violation.

Charge III: Violation of Article 5.8 of the Rules and Regulation for the governance of the Department of State Police to wit: Unsatisfactory Performance

Specification 1: In that Trooper Robert Navas...on or about November 14, 2011, failed to conform to the work standards established for the member’s rank, title or position and/or

⁶ The Respondent introduced MSP Special Order 07-SO-009 (Exhibit 45), not 10-SM-06, which is the order that outlines the procedure for entering traffic stops into the PayStation database. Special Order 07-SO-009 became effective on June 5, 2007. Det. Lt. Zipper references Special Order 07-SO-009 in his report when outlining which matters required investigation.

failed to take appropriate action on a condition deserving State Police attention; or absent without leave. This occurred when Trooper Navas stopped J.A. for personal reasons. This action is in the direct violation of Article 5.8.2. This is a Class B violation.

Charge IV: Violation of Article 5.6 of the Rules and Regulations for the governance of the Department of State Policy to wit: Neglect of Duty

Specification 1: In that Trooper Robert Navas...on or about November 7, 2011 and/or November 14, 2011, did engage in an activity which caused him to neglect or be inattentive to duty. This occurred when Trooper Navas while on duty involved himself with an ongoing investigation into the activities of a member of his family which took him away from his normal patrol functions. This action is in direct violation of Article 5.6. This is a Class C violation.

Charge V: Violation of Article 5.15 of the Rules and Regulations for the governance of the Department of State Police to wit: Abuse of Position

Specification 1: In that Trooper Navas...on or about November 7, 2011, did use his official position and badge for personal gain. This occurred when Trooper Navas while on duty and in uniform, involved himself with an ongoing investigation being conducted by [name redacted] Investigations resulting in the compromise and termination of the investigation. This action is in direct violation of Article 5.15.1. This is a Class A violation.

Specification 2: In that Trooper Navas...on or about November 14, 2011 did use his official position and badge for personal gain. This occurred when Trooper Navas while on duty and in uniform, involved himself with an ongoing investigation being conducted by [second investigation firm] resulting in the compromise and termination of the investigation. This action is in direct violation of Article 5.15.1. This is a Class A violation.
(Exhibit 10)

106. One April 8, 2015, the MSP Trial Board convened at State Police Headquarters in Framingham, MA. After the hearing and a review of the evidence, the Board made the following findings:

Charge 1	Specification 1	Not Guilty	
Charge 1	Specification 2	Guilty	Second Offense Class D
Charge 2	Specification 1	Guilty	First Offense Class B
Charge 3	Specification 1	Not Guilty	
Charge 4	Specification 1	Guilty	First Offense Class C
Charge 5	Specification 1	Not Guilty	
Charge 5	Specification 2	Guilty	First Offense Class A

(Exhibit 2)

107. According to the MSP Discipline Guidelines, the recommended discipline for a second offense of a Class D violation is a written reprimand up to and including a suspension of not more than five (5) days. The recommended discipline for a first offense of a Class B violation is a suspension of not less than five (5) days not more than thirty (30) days. The recommended discipline for a first offense Class C violation is a written reprimand up to and including suspension of not more than five (5) days. Finally, the recommended discipline for a first offense Class A violation is suspension of not less than thirty (30) days up to and including termination. (Exhibit 9)
108. Based upon the guilty findings and a review of Trooper Navas' employment history, the Board recommended a minimum sanction of a thirty (30) day loss of accrued time. (Exhibit 2)
109. The Trial Board also petitioned the Colonel/Superintendent to consider the mitigating factors in this case. The Trial Board concluded that when Trooper Navas received the frantic call from his wife on November 14, 2011 in which she told him she was being followed by two (2) vehicles, he was "significantly influenced by concern for his wife and not motivated by personal gain." It was the Trial Board's opinion that Trooper Navas' behavior was motivated by "an emotional reaction and not a desire for personal gain." (Exhibit 2)
110. Because of this mitigating factor, the Trial Board recommended that Trooper Navas only lose ten (10) days. (Exhibit 2)
111. The MSP's Article 6 Regulations Establishing Disciplinary Procedures and Temporary Relief from Duty states that all judgments of guilt entered or discipline recommended by the Trial Board shall be subject to the approval of the Colonel/Superintendent. (Section 6.9.5) Section 6.9.7 states that "the Colonel/Superintendent may impose discipline that departs from

the Guidelines if facts, circumstances, evidence, aggravation or mitigation factors or any other matters so dictate. In the event the Colonel/Superintendent departs from the Guidelines, the Colonel/Superintendent shall put forth in writing his/her justification for such departure.” (Exhibit 7)

112. On April 23, 2015, Colonel/Superintendent Timothy P. Alben determined that Trooper Navas should forfeit thirty (30) days of accrued time. Because Trooper Navas had less than thirty (30) days of accrued time to forfeit at the time his discipline was imposed, Trooper Navas was suspended without pay for a period of twenty (20) days, forfeited seven (7) vacation days and forfeited three (3) personal days. (Exhibits 1 & 3)

113. On May 4, 2015, Trooper Navas filed an appeal with the Civil Service Commission.
(Stipulated Fact)

Applicable Department of State Police Rules and Regulations

Article 5.1 Violation of Rules

Members shall not commit, nor cause to be committed, any act(s) or omit any act(s) which constitute(s) a violation of any MSP Rule, Regulation, Policy, Procedure, Order or Directive.

Article 5.2 Unbecoming Conduct

Members shall conduct themselves at all times in such a manner as to reflect most favorably upon themselves and the MSP. Conduct unbecoming shall include that which brings to MSP into disrepute or reflects discredit upon the person as a member of MSP or that which impairs the operation, efficiency or effectiveness of the MSP of the member of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members.

Article 5.6 Neglect of Duty

Members shall not engage in any activities or conduct any personal business or affairs which would cause them to neglect or be inattentive to duty.

Article 5.15.1 Abuse of Position

Members shall not use their official position, official identifications cards or badges:

- (1) for personal gain;
- (2) for obtaining privileges not otherwise available to them unless necessary in the performance of duty;
- (3) for avoiding consequences of illegal acts.

Department of State Police Special Order 07-SO-009 reads, in relevant part:

2. Effective June 5, 2007, all traffic stops, as herein defined shall be documented by entering all the required data for each stop in the PayStation Citation Entry Form.

3. A “traffic stop” under this Special Order means all officer initiated stops of motor vehicles, as defined in section one of Chapter 90 of the General Laws, that constitute a detention under the 4th Amendment or Article XIV of the Massachusetts Declaration of Rights including stops in which only a verbal warning is given.

Applicable Legal Standard

G.L. c. 31, § 43, made applicable to discipline of MSP officers by G.L.c.22C, §13, states:

“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 role of the Commission is to determine whether the Appointing Authority proved, by a preponderance of evidence, just cause for the discipline imposed. G.L. c. 31, § 43. See, e.g., City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923 (1997); School Comm. of Brockton v. Civil Serv. Comm’n, 43 Mass.App.Ct. 486, 488, 684 N.E.2d 620 (1997); Town of Falmouth v. Civil Serv. 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 Serv.

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).

The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Serv. 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' " 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 v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of the "merit principle" of civil service law that discipline must be remedial, not punitive, designed to "correct inadequate performance" and "separating employees whose inadequate performance cannot be corrected." G.L. c. 31, § 1 An action is "justified" if "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 Serv. v. Municipal Ct., 359 Mass. 211, 214 (1971); Cambridge v. Civil Serv. Comm'n, 43 Mass. App Ct. 300, 304, rev.den., 426 Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). An appointing authority's burden of proof is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).

The Commission must take account of all credible evidence in the record, including whatever may fairly detract from the weight of any particular evidence. See, Mass. Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine the credibility of testimony presented to the Commission. E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003). See Embers of Salisbury, Inc. v. 37 Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Ret. 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, decision relying on an assessment of their relative credibility cannot be made by someone not present at the hearing).

The Commission must also take into account the special obligations the law imposes upon police officers, who carry a badge and a gun and all of the authority that accompanies them, and which requires police officers 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. “[P]olice officers voluntarily undertake to adhere to a higher standard of conduct Police 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. . . . they 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

The Respondent has shown by a preponderance of the evidence that it has just cause to discipline Trooper Navas for his actions on November 14, 2011. The level of discipline imposed is consistent with the State Police guidelines, warranted given the severity of the transgression and comparable to discipline given to other Troopers who violated the same rules of conduct. Regardless of what Trooper Navas' motivation was, whether to calm the fears of his wife or to impede the surveillance investigation of his wife, Trooper Navas was on duty and allowed his emotions to override his obligations and duty as a police officer. Trooper Navas, thus, abused his position which is a violation of Article 5.6 of the Rules and Procedures.

Trooper Navas does not dispute that he was on duty when he stopped J.A. on the morning of November 14, 2011. Trooper Navas was alerted to J.A.'s presence in the area by Mrs. Navas and stopped him because he was making Mrs. Navas nervous. Trooper Navas spent almost a half hour attempting to determine why J.A. was in the area which was a half hour in which Trooper Navas was neglecting his duties. Trooper Navas, thus, violated Article 5.6 of the MSP Policies and Procedures, which prohibits Massachusetts State Troopers from engaging in any activities or conducting any personal business or affairs which would cause a Trooper to neglect or be inattentive to duty. Although, Trooper Navas was in an area that was part of his patrol area and J.A.'s untruthfulness did unnecessarily prolong the stop, the prudent course of action for Trooper Navas to take would be to ask for another Trooper to take over the stop or engage the assistance of the nearby Revere police officer. At no time did Trooper Navas ask for assistance from other members of law enforcement during the stop of J.A.. The desk officer at the Revere

Barracks asked Trooper Navas if he wanted another trooper to assist him; Trooper Navas declined. Trooper Navas also waived off a nearby Revere police. Asking for the assistance of another member of law enforcement would have avoided any appearance of impropriety in the form of a Massachusetts State Trooper inserting himself into a police matter that involved an immediate family member.

The Respondent has shown by a preponderance of the evidence that Trooper Navas violated Article 5.1 of the Rules and Procedures of Conduct and Procedural Order when he failed to enter the traffic stop of J.A. into the PayStation System. PayStation logs do not show Trooper Navas making any entries on November 14, 2011. Trooper Navas knew perfectly well what J.A. was doing in the area. I do not find credible Trooper Navas' explanation that he stopped J.A. in good faith for suspicious activity nor do I find that categorizing the stop in such a fashion excused reporting it under M.G.L. c. 90 and MSP Special Order 07-SO-099 and entering it into PayStation as credible.

The Appellant argued that the MSP did not proffer the MSP Policy and Procedure Order 10-SM-06 referenced in the charges sustained against Trooper Navas. Reviewing the evidence, I find that Det. Lt. Zipper referenced Special Order No. 07-SO-009 when recommending charges against Trooper Navas for failure to enter traffic stops into the PayStation database. (Exhibit 11) The discrepancy is not material, as it is clear from reading Det. Lt. Zipper's report, the Trial Board Findings and Colonel's Alben's recommendations for disciplinary action that Trooper Navas violated the MSP Policy that MSP construed to require such traffic stops to be entered into the PayStation Database.

The Respondent has shown by a preponderance of the evidence that Trooper Navas violated Article 5.15.1 Abuse of Position when he stopped J.A. Trooper Navas used State Police

resources to determine who J.A. was and the authority of his uniform/position when he confronted J.A. There is no doubt that if Trooper Navas were off duty, in plain clothes, and approached J.A. (or E.V. for that matter), the conversation would have been different. The private investigators would not have felt pressured to answer Trooper Navas' questions and would have felt free to leave. "Personal Gain" is not limited to monetary gain in Article 5.15.1 and in this case the personal gain Trooper Navas received was the cessation of surveillance of Mrs. Navas in regards to her workers' compensation claim.

Finally, the Respondent has shown by a preponderance of the evidence that Trooper Navas violated Article 5.2 of the Rules and Procedures of the State Police by engaging in conduct unbecoming a Member of the MSP. I find J.A. credible in his account of what happened during the November 14, 2011 traffic stop. J.A. has provided a consistent account of the events of November 14, 2011 in his interviews with Sgt. Ross, Det. Lt. Zipper and testifying before the Commission. Trooper Navas admitted to V.R. that he snapped when he stopped J.A..

I do not find the testimony of Mrs. Navas credible regarding what happened when she dropped her child off at school on November 14, 2011. Mrs. Navas averred before the Commission that the surveillance vehicles were following closely behind her and she was afraid for herself and her child. The video surveillance shows the child pausing and talking to another child on the curb before going into the school. Although the focus of the video was Mrs. Navas and her actions, there was no gold car (one of the surveillance vehicles) following her or pulling up behind her at the curb on the video. The crossing guard is clearly visible standing in front of Mrs. Navas' car for several seconds and Mrs. Navas did not attempt to get the guard's attention. If Mrs. Navas were as afraid or concerned for her child's safety as she claimed, she could have reached out to the crossing guard for assistance.

Disparate Treatment

The Appellant was not subject to disparate treatment when he was disciplined. The Appointing Authority was able to show, through personnel records of other troopers being disciplined, that Trooper Navas' discipline was comparable to other officers. A violation of Article 5.2 results in a minimum thirty (30) day forfeiture of accrued time and this is the amount of discipline several other troopers received.

The Respondent took the additional step of conducting two investigations of Trooper Navas' violations. I find nothing inappropriate in this action. The Respondent followed the guidelines for personnel investigations as outlines in the MSP Rules and Regulations. The Commanding Officer had the discretion to review Sgt. Ross' report, accept or reject the finding and request an additional investigation if he felt it was necessary. Det. Lt. Zipper's investigation looked at issues not covered by the first investigation and Trooper Navas was given an opportunity to explain his actions on November 14, 2011 in the course of both investigations.

For these reasons Appellant's appeal, Case No. D-15-82 is hereby *denied*.

Civil Service Commission

/s/ Paul M. Stein
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on April 28, 2016

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. 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:

Margaret A. Rubino, Esq. (for Appellant)

Suzanne T. Caravaggio, Esq. (for Respondent)