

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

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

OFFICER A,  
*Appellant*

v.

D1-21-XXX<sup>1</sup>

TOWN OF RANDOLPH,  
*Respondent*

Appearance for Appellant:

Keith J. Nicholson, Esq.  
Law Offices of Keith J. Nicholson  
Marina Bay  
308 Victory Road, Fl. 3  
Quincy, MA 02171

Appearance for Respondent:

Leo J. Peloquin, Esq.  
Norris, Murray & Peloquin, LLC  
315 Norwood Park South  
Norwood, MA 02062

Commissioner:

Paul M. Stein

Summary of Decision

The Commission upheld the termination of a municipal police officer whose pattern of on-duty and off-duty misconduct, resulting from his alcohol abuse and a failure to avail himself of the numerous opportunities afforded to him to seek treatment, provided just cause to discharge him.

**DECISION**

On June 23, 2021, the Appellant, pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission) contesting the decision of the Town of Randolph

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<sup>1</sup> This appeal triggered a review by the Commission to determine whether additional steps should be taken to avoid an unwarranted invasion of the Appellant's privacy. After careful review, the Commission opted to use a pseudonym for the Appellant as the appropriate balance of the Appellant's privacy interests and the Commission's statutory obligation to provide the public with a transparent record of its deliberative process and interpretation of civil service law.

(Town) to terminate him from his position of Patrol Officer in the Randolph Police Department (RPD).<sup>2</sup> The Commission held a remote pre-hearing via Webex videoconference on July 13, 2021. A full hearing was scheduled for September 14, 2021, but the Appellant failed to appear. Thereafter, the Town filed a Motion to Dismiss and a remote show cause hearing was held via Webex videoconference on November 1, 2021, at which time the Town's Motion to Dismiss was denied. The Commission allowed the Appellant's appeal to move forward, and five days of hearings were held on February 25, 2022, March 25, 2022, June 7, 2022, July 11, 2022, and July 29, 2022, by remote Webex videoconference, which were audio and video recorded.<sup>3</sup> Following the close of the hearing, both parties submitted proposed decisions on or about December 12, 2022. For the reasons stated below, the Appellant's appeal is denied.

### **FINDINGS OF FACT**

The Parties entered 45 joint exhibits (*Jt. Ex.* 1-45) and the Respondent entered seven exhibits (*Resp. Ex.* 1-7) into evidence at the hearing. Based on the documents submitted and the testimony of the following witnesses:

*For the Town of Randolph:*

- Lieutenant Jeffrey Chaplin, RPD
- Commander John Hamelburg, RPD
- Chief William Pace, RPD
- Lieutenant Melissa Greener, RPD
- Lieutenant Christine Morse, RPD
- Officer Vradly Duperval, RPD

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<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

<sup>3</sup> A link to the audio / video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

- Officer Scott Sherman, RPD

*For the Appellant:*

- Officer A, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. The Appellant, Officer A, began his law enforcement career in 2012 as a Seasonal/Special Police Officer in another Massachusetts town. He thereafter became a Randolph Police Officer in late 2014 and provided the Town of Randolph with letters of reference prior to his hiring. *(Testimony of Appellant; Stipulated Facts; Jt. Ex. 26, 27, 28, 29, 38)*

2. The Appellant completed his probationary period with the RPD in September 2016. *(Testimony of Appellant; Stipulated Fact; Jt. Ex. 38)*

3. As an employee of the RPD, the Appellant was required to comply with the RPD's Rules and Regulations, Policies and Procedures and the Town of Randolph Employee Handbook at all times. *(Stipulated Fact; Jt. Ex. 3, 4, 6)*

4. Section 7 of the RPD Rules and Regulations, relative to reporting for duty and duty status, states as follows:

Reporting for Duty - All employees shall report for duty promptly at the time and place required by their assignment or as otherwise directed by the Chief of Police or the commanding officer. They shall be properly uniformed and suitably equipped, ready to immediately assume their duties. While on duty they shall avoid any activities not directly related to their police responsibilities and shall not absent themselves from duty without leave. Officers unable to report for duty because of sickness or injury shall notify, or cause to be notified, the on duty shift supervisor prior to their next tour of duty, except in cases of emergency.

Duty Status - Officers may be called for duty at all times (whether during assigned hours or while off-duty) for the preservation of the public peace and the protection of life and property, and shall be prepared to take all reasonable police action to accomplish this purpose. Off-duty employees shall not consume alcoholic beverages while carrying an

issued firearm, nor shall they carry an issued firearm while under the influence of alcohol or prescription medication that may create impairment. (*Jt. Ex. 3*)

5. Section 11 of the RPD Rules and Regulations, entitled Fitness for Duty, states as follows relative to off-duty alcohol usage:

Off-Duty Use of Alcohol - Employees, off duty, shall not consume alcoholic beverages to the extent that they are unfit to report for their next regularly scheduled tour of duty or report for duty with alcohol (sic) beverage on their breath. Employees shall not wear any identifying part of their uniform while off-duty and consuming alcohol in any place accessible to the public. (*Jt. Ex. 3*)

6. An officer who fails to report for a scheduled shift without calling is a “no call/no show.”

A no call/no show adversely affects RPD operations. It can be time consuming and difficult to fill an open shift without any notice. If it cannot be filled, the shift runs with less than the appropriate staffing. An officer who is late for a shift will miss the roll call, which is a time when all officers are briefed about the happenings during the prior shift, to include information on suspects being sought and orders in place for the shift. (*Testimony of Hamelburg and Pace*)

#### 2017 Misconduct

7. Within a year of completing his RPD probationary period, the Appellant failed to report for duty on time on several occasions in the fall of 2017. He worked the midnight to 8:00 AM shift and was expected to report for roll call by 11:45 PM. On these occasions, he informed his supervisors that he was “running late” or “sick.” (*Testimony of Chaplin; Jt. Ex. 34*)

8. As a result of the repeated tardiness, Lieutenant Jeffrey Chaplin counselled the Appellant on the importance and obligation he had to be on time for his scheduled shift. He was not disciplined for this misconduct, rather he was counselled and assigned to desk duty for several shifts. (*Testimony of Chaplin; Jt. Ex. 34*)

9. On or about December 24, 2017, the Appellant was scheduled to work a midnight to 8:00 AM shift. He was a no call/no show for this shift. Lieutenant Chaplin devoted a considerable

amount of his duty time calling other commanding officers and ordering them to try to determine the Appellant's whereabouts. Lieutenant Chaplin left a voicemail for him as well. (*Stipulated Fact; Testimony of Chaplin; Jt. Ex. 38*)

10. Shortly before the December 24, 2017 shift ended on Christmas morning, at 7:35 AM—just twenty-five minutes before the shift ended—one of the RPD officers was finally able to reach the Appellant and told him to contact Lieutenant Chaplin. The Appellant contacted Lieutenant Chaplin and stated he had not been feeling well and thought about calling in sick, but took some Nyquil and did not wake up.<sup>4</sup> (*Stipulated Fact; Testimony of Chaplin; Jt. Ex. 38*)

11. Lieutenant Chaplin told the Appellant that he would record the Appellant's absence as paid sick leave and speak with the Appellant during his shift the following night. The Appellant reported for his shift on December 25 and the Lieutenant advised him that he would be documenting the incident so as to properly inform Chief Pace of it. (*Stipulated Fact; Testimony of Chaplin; Jt. Ex. 34, 38*)

12. As a result of the Appellant failing to report for duty, the RPD was forced to hold over another officer through the evening of Christmas Eve into Christmas morning. (*Testimony of Chaplin; Jt. Ex. 34*)

13. Following this Christmas Eve no call/no show, Lieutenant Chaplin contacted Commander John Hamelburg to inform him that the Appellant had been coming in late to work repeatedly that fall, culminating in the December 24 no call/no show. This was the first time Commander Hamelburg became aware of an issue with the Appellant. (*Testimony of Hamelburg*)

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<sup>4</sup> Lieutenant Chaplin had his suspicions about the Appellant blaming his no call/no show on Nyquil; he did not believe that Nyquil could “knock you out that severely.” He “wasn't quite sure what was going on” but he “knew something else was going on.” (*Testimony of Chaplin*)

14. Commander Hamelburg advised Chief William Pace of the issues with the Appellant.

*(Testimony of Pace)*

2018 Misconduct, Discipline, Administrative Leave (2), and Fitness for Duty Evaluation

15. On or about April 26, 2018, four months after the Christmas Eve no call/no show, the Appellant was a no call/no show for a daytime detail assignment. When the RPD eventually reached him, the Appellant said he overslept. *(Stipulated Fact; Jt. Ex. 38)*

16. That same day, April 26, the Appellant called in sick for his regularly scheduled 4:00 PM to midnight shift. *(Stipulated Fact; Jt. Ex. 38)*

17. On April 27, 2018, the next day, the Appellant was a no call/no show for his regularly scheduled 4:00 PM to midnight shift. Lieutenant Melissa Greener, the Appellant's supervisor, eventually reached him by telephone. He told her that he had forgotten to call in sick. *(Stipulated Fact; Jt. Ex. 10, 38)*

18. Lieutenant Greener believed that the Appellant was intoxicated during their phone conversation on April 27, 2018. The Appellant used inappropriate words, laughed and giggled, slurred his words, and did not make any sense. *(Testimony of Greener)*

19. After speaking to the Appellant, Lieutenant Greener sent Sergeant Michael O'Neill and Officer Steven Elman to the Appellant's residence to do a wellness check. The Appellant did not initially respond to them knocking on his door. He finally answered his telephone at 4:57 PM, more than an hour after roll call. Soon thereafter, he allowed the officers to enter his home. Upon entering, the officers noticed several empty bottles of alcohol. While at the Appellant's home, the officers had trouble comprehending the Appellant's words, he gave extended blank stares, and was jumbled in the way he spoke. The Appellant denied any problem, however. The

officers insisted that the Appellant go to the hospital for a wellness check and the Appellant agreed to go voluntarily. (*Stipulated Fact; Jt. Ex. 10, 38*)

20. The Appellant stipulates that the reports of both Sergeant O'Neill and Officer Elman relative to this wellness check are substantially accurate. (*Stipulated Fact; Jt. Ex. 10, 38*)

21. While at the hospital that day, the Appellant repeatedly denied any issue with alcohol. Officer Elman, a union shop steward, sat with the Appellant for over two hours, trying to talk to him and offer support and advice on how to get help for alcohol abuse. Eventually, the Appellant insisted on leaving the hospital at around 9:00 PM but the staff would only allow him to leave with a sober person, as hospital staff believed the Appellant was still under the influence of alcohol. Officer Elman drove him home and was concerned with certain comments the Appellant was making about himself. Officer Elman feared the Appellant may harm himself. (*Jt. Ex. 10*)

22. Later that evening at 10:25 PM, Sergeant O'Neill stopped at the Appellant's home to check on him and to notify him that he was being placed on Administrative Leave for two days; however, the Appellant was not home. Soon thereafter, the Appellant arrived back at the residence as the driver of a vehicle. It was at that time the Sergeant told him of his Administrative Leave.<sup>5</sup> The Appellant asked the Sergeant about the status of his firearms, which was concerning to the Sergeant. Ultimately, the Sergeant told the Appellant not to drive a vehicle again that evening. The Appellant was left in the care of his mother. (*Jt. Ex. 10*)

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<sup>5</sup> As part of his Administrative Leave in April 2018, the Appellant was ordered to refrain from the use of alcohol, to contact the Boston Police Stress Unit for counseling, and to see his primary care physician and be cleared by that doctor before he could return to work. (*Testimony of Hamelburg*). The Appellant provided the Department with a note from his doctor, dated May 2, 2018, stating that the Appellant was in good physical health and could return to work. (*Stipulated Fact; Jt. Ex. 10, 38*)

23. The RPD considered the Appellant's April 26/27 no call/no show and resulting wellness check and hospital visit to be a "major incident." Due to the degree of his intoxication, witnessed by the officers, the RPD figured the Appellant was dealing with a much bigger problem that required the attention of Commander Hamelburg and Chief Pace. *(Testimony of Pace)*

24. On April 30, 2018, Commander John Hamelburg and Chief William Pace met with the Appellant to address his April 26 and April 27, 2018 no call/no shows. They counseled him that his alcohol abuse was adversely affecting his job performance and told him to utilize the resources they provided to him to get the help he needed. The Chief did not take any further action against the Appellant in the hope that he would respond to their advice. *(Stipulated Fact)*

25. During their meeting, the Appellant admitted to having a drinking problem, but stated that he was more of a binge drinker who did not drink every day, but when he did, he could not stop. The Chief told him he had to get the issue under control or it was going to affect his career and his whole life. During this formal counseling session, the Chief recommended a book about alcoholism, an online support group, a program at McLean Hospital, and the Boston Police Stress Unit as avenues for help. The Chief assured the Appellant that the RPD would be there to help and that he could go to the Chief at any time, even giving him his personal cell number. *(Testimony of Pace)*

26. The Chief did not think formal discipline was appropriate at that time, since the Appellant had admitted to a drinking problem and the Chief felt it better to try to help him by letting it play out and see how committed he was to getting treatment. *(Testimony of Pace)*

27. The Appellant submitted a statement, dated May 20, 2021, that he did not report to work on April 26 and April 27, 2018, because he was intoxicated. *(Stipulated Fact; Jt. Ex. 1, 38)*



28. A few months later, on July 5, 2018, the RPD warned the Appellant that he had used excessive amounts of sick leave during the prior fiscal year and that he would face discipline, up to and including dismissal, if it continued. The Appellant admits that some of the sick time he used was a result of alcohol consumption. (*Stipulated Fact; Jt. Ex. 35, 38; Testimony of Appellant*)

29. In August 2018, the Appellant unknowingly used sick leave that he had not accrued.<sup>6</sup> Chief Pace assigned him desk duty for several weeks as a result. At the conclusion of desk duty, the Chief met with the Appellant and advised him that he had a promising future with the RPD if he would just dedicate himself and his skills to the job, including coming to work when he was scheduled to be there. (*Stipulated Fact; Jt. Ex. 35, 38*)

30. On or about August 30, 2018, the Appellant was a no call/no show for his regularly scheduled 4:00 PM to midnight shift. The RPD sent Sergeant O'Neill and Sergeant Jason Fisher to his residence to do a wellness check, the second time that year. Upon observing the Appellant, both Sergeants believed that he was intoxicated and drove him to the hospital to be evaluated. (*Stipulated Fact; Jt. Ex. 35, 38*) Lieutenant Melissa Greener was also present at the Appellant's home that evening.<sup>7</sup> (*Testimony of Greener; Jt. Ex. 35*)

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<sup>6</sup> By August 2018, the Appellant did not have one day of sick leave left to use. An officer accrues fifteen sick days per fiscal year, and the Appellant was hired in late 2014. (*Testimony of Pace*)

<sup>7</sup> Lieutenant Greener observed the Appellant for over an hour and concluded that he was extremely intoxicated. He was confused, his speech was slurred, and he was slow with his movements. He repeatedly stated that he did not have to work that evening. All guns were seized from his residence upon his transport to the hospital. The Appellant admitted to the Lieutenant that he had been drinking that day. Both Lieutenant Greener and Sergeant O'Neill, who had been to the prior wellbeing check in April 2018, were very concerned for the Appellant's health and general wellbeing due to his alcohol abuse and questioned his fitness for duty. (*Jt. Ex. 35*)

31. By letter dated August 31, 2018, Chief Pace notified the Appellant that he was placed on administrative leave for his no call/no show the day before. Attached to the letter was a list of resources for the Appellant to access alcohol abuse treatment. The letter indicated that this leave was due to concerns about the Appellant's health and that there was the possibility of future progressive discipline, up to and including termination, for the August 30, 2018 no call/no show. The letter informed the Appellant that his License to Carry Firearms ("LTC") was suspended while on leave and that the Chief was arranging for a fitness for duty evaluation that the Appellant must undergo prior to returning to work. (*Testimony of Pace; Jt. Ex. 35*)

32. After attempts by Commander Hamelburg and others to serve the Appellant with documentation related to the fitness for duty evaluation on September 2, 2018, the Appellant acknowledged receipt of an email notifying him of the fitness for duty evaluation that had been scheduled. (*Testimony of Hamelburg; Jt. Ex. 35*)

33. On September 11, 2018, the Appellant met with Dr. James Beck for his fitness for duty evaluation, which is a psychiatric evaluation. The Appellant denied that he had an alcohol abuse problem when speaking with Dr. Beck. (*Stipulated Fact; Jt. Ex. 38*)

34. Dr. Beck's report found that the Appellant was cooperative during their thirty-minute interview, but "his insight into his drinking is questionable. . . . [I]t was possible he does have some awareness that he has an alcohol problem but chose not to share it because he does not want anything on the record that he has a problem." Dr. Beck noted that "this is a straightforward case of a man with a serious alcohol problem . . . who has apparently not yet acknowledged to himself or anyone else he has an alcohol problem." (*Jt. Ex. 7*)

35. Dr. Beck reported that, based on his clinical interview, he could not proceed to make any further assessment whether or not the Appellant was unfit for duty. He recommended that, "from

a practical administrative point of view, you should hold this man accountable to the usual policies and procedures of your RPD.” (*Jt. Ex. 7*)

36. After reading Dr. Beck’s report, Chief Pace decided that he had no other alternative but to go the disciplinary route at that point for the Appellant’s misconduct. (*Testimony of Pace*)

37. The Appellant received a three-day suspension for his August 2018 no call/no show. He did not grieve or appeal the discipline. (*Stipulated Fact; Jt.Ex.35, 38; Testimony of Pace*)

38. Additionally, the Appellant was also suspended for an additional two days without pay for avoiding the RPD’s efforts to serve upon him the documents relative to the fitness for duty evaluation by Dr. Beck. He did not grieve or appeal this discipline. (*Stipulated Fact; Jt. Ex. 35, 38; Testimony of Pace*)

39. Following completion of his suspension, the Chief restored the Appellant’s License to Carry and allowed him to return to work. (*Testimony of Appellant*)

2019 Misconduct; Fitness for Duty Evaluation; Discipline

40. On March 12, 2019, the Appellant was sent for a second fitness for duty evaluation within six months of Dr. Beck’s evaluation to be conducted by Dr. Mark Shaeffer. The catalyst for the Chief ordering the Appellant to undergo a second evaluation was another failure to report for duty and an incident on February 3, 2019. (*Stipulated Fact; Jt. Ex. 8, 38*)

41. The February 3, 2019 incident involved the Appellant’s delayed police response to assist an elderly man who had been beaten and robbed. A RPD internal affairs investigation determined that the Appellant’s response to the incident was deficient. As a result, the Chief suspended the Appellant for five days without pay and assigned him to desk/dispatch duty for a year, with the assignment subject to review in September 2019. The Appellant did not challenge this discipline. (*Stipulated Fact; Jt. Ex. 36, 38*)

42. Dr. Shaeffer's report, dated March 18, 2019, found that the Appellant did not have any psychiatric condition that prevented him from performing the duties of a police officer. He noted that the Appellant had "made it clear he did not believe he had a problem with alcohol," but stated that the fact that the Appellant was sent for two fitness for duty examinations within a six month period meant "generally, there is a problem and a significant one." Dr. Shaeffer recommended that the RPD monitor the Appellant's performance for six months and be clear as to the consequences should the Appellant fail to carry out his duties. (*Stipulated Fact; Jt. Ex. 8, 38*)

43. On March 17, 2019, the Appellant was involved in another incident at work into which internal affairs conducted an investigation. On this occasion, the Appellant failed to dispatch complete information to RPD officers responding to a call that a mentally ill person was yelling racial slurs at two children. Following the internal affairs investigation, the Chief suspended the Appellant for one day without pay. (*Stipulated Fact; Jt. Ex. 36, 38*)

44. On December 18, 2019, Lieutenant Chaplin met with the Appellant to discuss issues about the Appellant's use of sick time, believing this could be an indicator of additional issues affecting an officer. He reminded the Appellant that the RPD had alcohol abuse resources available if the absences were attributed to something other than the Appellant simply being sick. The Appellant denied to the Lieutenant that there was anything else. The Lieutenant reported this conversation to the Chief. (*Testimony of Chaplin; Jt. Ex. 11*)

45. The next day, December 19, 2019, the Appellant went to the Quincy District Court to serve as a police witness. He was dismissed by the Assistant District Attorney and went home since he believed that he was no longer needed. Thereafter, the Appellant's supervisor, Lieutenant Melissa Greener, contacted him via telephone to let him know that he needed to

return to the courthouse. Lieutenant Greener ordered him to return at least three times. He repeatedly refused the lieutenant's order. (*Testimony of Greener; Jt. Ex. 12*)

46. Lieutenant Greener noted that the Appellant's demeanor was very disrespectful and "seemed off." She had spoken to the Appellant many times in the past (both when he was sober and intoxicated) and he was always respectful and courteous. When she asked the Appellant if he had been drinking since his speech was mumbled, he kept repeating that he had been dismissed, and, as she stated, "he was a different [person] tha[n] I'd ever spoken to." (*Testimony of Greener; Jt. Ex. 12*)

47. Concerned that the Appellant was under the influence and should not drive, Lieutenant Greener eventually gave up and told the Appellant she would send another officer to the courthouse. She informed Commanders Marag and Hamelburg, wrote a report, and referred the matter to the RPD peer support unit. As Lieutenant Greener testified, "The first time a Lieutenant tells you to do something, you should do it. [The order] wasn't illegal or unlawful." (*Testimony of Greener; Jt. Ex. 12*)

#### 2020 Misconduct and Discipline

48. On or about May 29, 2020, the Appellant was a no call/no show for his 4:00 PM to midnight shift. The RPD sent an officer to the Appellant's residence because they were unable to reach him by telephone. The Appellant told the officers that he thought he had called in sick, which the Appellant eventually personally told Lieutenant Chaplin. The Lieutenant issued the Appellant a warning. Lieutenant Chaplin also referred the incident to Commander Hamelburg's attention. (*Stipulated Fact; Jt. Ex. 13, 38; Testimony of Chapin; Jt. Ex. 13*)

49. The Appellant admits that he did not report for work on May 29, 2020, because he was intoxicated. (*Stipulated Fact; Jt. Ex. 23, 38; Testimony of Appellant*)

50. On or about May 31, 2020, just two days later, the Appellant was a no call/no show for his 4:00 PM to midnight shift. The Appellant admits that he did not report for work that day because he was intoxicated. (*Stipulated Fact; Jt. Ex. 14, 23, 38; Testimony of Appellant*)

51. After Chief Pace was notified that the Appellant was a no call/no show on both May 29 and May 31, 2020 (and also called in sick for other shifts before and after those dates), the Chief texted the Appellant and then visited him twice on June 2, 2020 to try to help him. The Chief saw this as an opportunity to counsel the Appellant and hoped he would get treatment. (*Testimony of Pace*)

52. On June 2, 2020, the Chief visited with the Appellant at his home for approximately four hours. It was clear to the Chief that the Appellant was intoxicated at the time. The Chief discussed all of the available resources that could help the Appellant with his alcohol problem, reiterating what they had discussed in the past. The Appellant made assurances to the Chief that he would go to the Boston Police Stress Unit. The Chief also had a discussion with the Appellant's father, insisting that the Appellant had a real problem. (*Testimony of Pace*)

53. The Chief did not discipline the Appellant for the two no call/no shows at that time, as he was hoping the Appellant would proactively seek treatment. The Appellant was allowed to return to work for his next scheduled shift. (*Testimony of Pace*)

54. The Chief followed up on his June 2, 2020 visit with text messages of encouragement and support to the Appellant on multiple occasions, including June 5, June 12, and June 20, 2020. (*Jt. Ex. 45*)

July 16 and 17, 2020 – No Call/No Show and August 6, 2020 Incident (Subject of this Appeal)

55. On or about July 16, 2020, the Appellant was a no call/no show for his 4:00 PM to midnight shift. (*Testimony of Chapin; Jt. Ex. 16*)

56. After the RPD unsuccessfully attempted to reach the Appellant by telephone, Sergeant Douglas Moran went to the Appellant's residence after roll call. Although the Appellant's vehicle was there, the Appellant's father insisted that he was not home and had left with his girlfriend hours earlier and said that he did not know where he was. Sergeant Moran referred this matter to internal affairs. *(Stipulated Fact; Jt. Ex. 15, 38)*

57. The Appellant admitted during his Town dismissal hearing on May 20, 2021 that he did not report to work on July 16, 2020 because he was intoxicated. *(Stipulated Fact; Jt. Ex. 1; 38)*

58. On or about July 17, 2020, the next day, the Appellant was a no call/no show for his 4:00 PM to midnight shift. Officers went to the Appellant's home to check on him and spoke with his mother, who told them that the Appellant was home but was asleep and unavailable to speak with them. Lieutenant Chaplin asked his mother to request that the Appellant reach out to Commander Hamelburg as soon as possible. Lieutenant Chaplin filed a report with internal affairs. *(Stipulated Fact; Jt. Ex. 16, 38)*

59. After learning of the Appellant's July 16, 2020 no call/no show, Chief Pace wrote a letter to the Appellant, dated July 17, 2020, which informed him that due to this no call/no show, he would be placed on administrative leave. The letter also stated that the RPD would be conducting a termination investigation, and that the Appellant was required to turn in his RPD firearm and police identification during this Administrative Leave. *(Stipulated Fact; Jt. Ex. 17, 38)*

60. On or about July 17, 2020, Commander Hamelburg attempted to serve the administrative leave notice upon the Appellant by serving it in-hand at his home. When he arrived on that date, the Appellant's mother indicated that he was sleeping. Later that day, he was able to reach the Appellant by telephone and let him know that he needed to meet with him to serve the notice

upon him. During their conversation, it was clear to the Commander that the Appellant was under the influence of alcohol. (*Stipulated Fact; Jt. Ex. 18, 38*)

61. On July 18, 2020, Commander Hamelburg was finally able to meet with the Appellant in person at his home and successfully confiscated the Appellant's RPD firearm, his personal firearms, his police identification, and his license to carry firearms. During their conversation, the Commander asked if he was seeking any treatment for his issues and the Appellant stated that he was speaking with officers at the Boston Police Stress Unit.<sup>8</sup> (*Stipulated Fact; Jt. Ex. 18, 38*)

62. The Appellant admitted that he did not report to work on July 17, 2020 because he was intoxicated. (*Stipulated Fact; Jt. Ex. 23, 38*)

63. Following an internal investigation by RPD Commander Anthony Marag, the Chief determined that the RPD had done all it could to try to convince the Appellant to address the alcohol abuse that had compromised his performance as a police officer. On or about July 29, 2020, the Appellant was informed in writing that the Chief recommended to the Town Manager Brian Howard, the Appointing Authority, that he discharge the Appellant. (*Testimony of Pace*)

64. The Appellant acknowledged that for a thirty-two-month period, from December 24, 2017 (first no call/no show) through July 17, 2020 (final no call/no show), the RPD had given him multiple opportunities to seek treatment for alcohol abuse. (*Testimony of Appellant*)

65. On August 6, 2020, the Appellant had been on administrative leave for a few weeks. He stayed the night at his girlfriend's apartment the night before, and she left in the morning to go to a hair salon. She told him via a text message that she would be "right back." He inadvertently locked his car keys in her apartment as he left that morning. (*Jt. Ex. 20, 20A, 20B, 44 & 45*)

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<sup>8</sup> The Appellant concedes that Commander Hamelburg's account of the service of administrative leave notice and confiscation of weapons is substantially accurate. (*Stipulated Fact; Jt. Ex. 18, 38*)



66. Although his girlfriend was expected to return home shortly, the Appellant used his shoulder to repeatedly try to break through the locked, outer door to her apartment complex. The Appellant was seen on video surveillance to have successfully broken open the outer door after repeatedly running and ramming his shoulder into it, breaking the door jam. Video surveillance also shows the Appellant then barreling through a second door with his shoulder after repeated attempts to ram the door open. The second door was the door to the girlfriend's actual apartment. The Appellant broke both doors. The Appellant retrieved his car keys, left the building, and drove away.<sup>9</sup> (*Jt. Ex. 20, 20A, 20B, 44; Testimony of Appellant*)

67. After three Brockton Police cruisers arrived at the apartment complex, Brockton Officer Joseph Miranda spoke with the Appellant's girlfriend and the property owner. The girlfriend refused the offer to obtain a restraining order and the property owner declined to press charges, as the girlfriend agreed to pay for the damages.<sup>10</sup> (*Testimony of Miranda; Jt. Ex. 44*)

68. The Appellant did not return to the scene or contact the police although he knew they had been called to investigate the break in. While on scene, Officer Miranda was able to view text messages that the Appellant had sent to his girlfriend following the break in. The language the Appellant used included statements such as "Bye [Redacted],<sup>11</sup> I shouldn't be here" and "I'm gone. Forever gone." (*Testimony of Miranda; Jt. Ex. 44*)

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<sup>9</sup> The Appellant admits that he drank alcohol the night before while inside the apartment. However, he insisted before the Commission that his alcohol consumption the night before did not influence his decision to break through the two doors. He claimed to have made those decisions with a clear head. (*Testimony of Appellant*)

<sup>10</sup> The property manager decided it was best if he obtained a criminal Trespass Notice against the Appellant, following a conversation with Commander Hamelburg. Commander Hamelburg gave the Trespass Notice to the Appellant's Union president and asked that he give it to the Appellant. (*Testimony of Hamelburg*)

<sup>11</sup> The girlfriend's name has been redacted to maintain her privacy.

69. Upon learning from his girlfriend that the Appellant was a Randolph police officer on administrative leave and that he had an alcohol abuse problem, Officer Miranda became concerned for the Appellant's wellbeing and notified the RPD, recommending that they do a wellness check. (*Testimony of Miranda; Jt. Ex. 44*)

70. Commander Hamelburg, Commander Marag, and a sergeant all went to the Appellant's residence on the afternoon of August 6, 2020. Based on the texts the Appellant had sent his girlfriend and the fact that he was clearly intoxicated when they arrived at the Appellant's home, Commander Hamelburg decided that the Appellant's mental health put him at risk of harming himself and that he needed to be hospitalized for his own protection. (*Jt. Ex. 19*)

71. The Appellant resisted being hospitalized, but admits that he was intoxicated when the Commanders were at his home. (*Testimony of Appellant*)

72. Upon learning about the Appellant's conduct on August 6, 2020, Chief Pace immediately suspended the Appellant's License to Carry. The Appellant did not appeal this action. (*Testimony of Pace; Jt. Ex. 39*)

73. While on administrative leave, the Appellant sought treatment on an outpatient basis on or about August 26, 2020. He completed the outpatient program and attended group and individual counselling sessions as part of the program through December 21, 2021. Additionally, the Appellant attended Alcoholic Anonymous meetings from August 2020 through February 2021 at the Boston Police Stress Unit. The Appellant never entered an in-patient residential treatment program. (*Jt. Ex. 42; Testimony of Appellant*)

74. On or about November 13, 2020, while the Appellant was still on administrative leave, Commander Hamelburg and two other RPD officers responded to a call from the Appellant's mother for help with the Appellant. Dispatch noted that the Appellant's mother thought he

needed to go to the hospital but that she wanted a low-key response. When Commander Hamelburg arrived, the Appellant's appearance alone indicated to Commander Hamelburg that the Appellant was intoxicated, based on how the Appellant had appeared both sober and intoxicated over the years in the Commander's presence. (*Testimony of Hamelburg; Resp. Ex. 1*)<sup>12</sup>

75. On that November 13, 2020 visit, the Appellant refused to go to the hospital. Although the Commander concluded that the Appellant was intoxicated, he found that the Appellant was not a danger to himself and could not be forced to go to the hospital without consent. The Commander advised the family how to file an alcohol petition in the Quincy Court to have the Appellant involuntarily hospitalized. The Boston Police Stress Unit also arrived on scene to help the Appellant. (*Testimony of Hamelburg; Resp. Ex. 1*)

76. On April 20, 2021, Town Manager Brian Howard issued a Notice of Dismissal Hearing to the Appellant. (*Stipulated Fact; Jt. Ex. 2, 38*)

77. On April 21, 2021, the Appellant called the RPD Police Station at 3:15 AM. He called and asked to be transferred to Lieutenant Christina Morse, a seventeen-year veteran of the force who had worked with the Appellant in the past one to two times per week. Lieutenant Morse had previously offered to help him if he ever wanted to talk about anything, knowing he was struggling. They spoke for forty-five minutes. (*Testimony of Morse; Resp. Ex. 2*)

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<sup>12</sup> At the appeal hearing before the Commission, the Appellant admits his mother called the Department out of concern for his medical condition but that, contrary to Commander Hamelburg's observation, he "was not drinking . . . not a drop" that day (11/13/20). (*Testimony of Appellant*). The Appellant further claimed that he has not had a single drop of alcohol since the August 6, 2020 incident at his girlfriend's apartment where he broke through two doors; however, medical records show he self-reported that he drank alcohol again during the month of August 2020, after the incident. (*Jt. Ex. 42*)

78. During that early morning April 21, 2021 phone call, Lieutenant Morse formed the opinion that the Appellant had been drinking based on the inflection of his voice and his slow words, noting that this was not how he normally spoke. She noted that he continuously repeated himself, as if he had never heard her answers. She testified that, “he was definitely calling me at 3:15 AM for a reason.” (*Testimony of Morse; Resp. Ex. 2*)

79. On or about May 20, 2021, the Town Dismissal Hearing took place. The Appellant was represented by counsel, testified on his behalf, and had the opportunity to present evidence and cross-examine witnesses. (*Stipulated Fact; Jt. Ex. 1, 38*)

80. On or about June 17, 2021, Town Manager Howard issued a decision discharging the Appellant from his position as a RPD Police Officer, effective June 25, 2021. (*Stipulated Fact; Jt. Ex. 1, 38*)

81. In his written decision, Town Manager Howard found that the Appellant had an egregious and ongoing pattern of absences without notice, including ten different instances where the Appellant did not appear for work as ordered or expected. Town Manager Howard found that these instances did not reflect one difficult period, but took place over an extended period of time and had an adverse impact on RPD operations. The Town Manager also found that the Appellant repeatedly violated RPD policies, procedures, rules and regulations by failing to appear for work, often without notice and often as a result of intoxication by alcohol. Town Manager Howard concluded that termination was warranted, as the Appellant’s behavior significantly affected RPD operations and the Appellant had faced progressive discipline but failed to remedy his behavior. (*Jt. Ex. 1*)

82. Additionally, the Town Manager found that the breaking and entering incident that took place in Brockton on August 6, 2020, while the Appellant was on Administrative Leave, was a

serious incident that raised significant concerns. He found that the Appellant's behavior amounted to conduct unbecoming a Randolph Police Officer and brought discredit to the RPD. Viewed in conjunction with the Appellant's repeated failures to appear for his shift without notice and ongoing progressive discipline, the Town Manager concluded that this incident also provided just cause for termination. Town Manager Howard noted that, although criminal charges were not pressed, the breaking and entering also amounted to a violation of law. (*Jt. Ex. 1*)

83. Finally, the Town Manager found that two additional on-duty incidents showed a pattern of behavior involving poor judgment and violation of the policies, procedures, rules and regulations of the RPD and the Town: (1) a February 2019 failure to respond to the scene of an elderly man who was injured and robbed; and (2) a March 2019 dispatching failure regarding a man who was yelling racial slurs. (*Jt. Ex. 1*)

84. The Town Manager concluded that the Appellant's conduct amounted "to a variety of violations including insubordination, conduct unbecoming a police officer, conduct unbecoming a municipal employee, violation of attendance policies, absence without notice, abuse of alcohol, and engaging in violent conduct while off duty . . . ." Collectively, this conduct amounted "to just cause for termination of [the Appellant's] employment." (*Jt. Ex. 1*)

85. On or about June 23, 2021, the Appellant filed a timely appeal of the Town's decision to discharge him with the Civil Service Commission. (*Stipulated Fact*)

*First Day of Commission Appeal Hearing – September 14, 2021*

86. On September 14, 2021, the Appellant failed to appear for the scheduled first day of a remote hearing before the Commission. He contacted neither his attorney nor the Commission to

inform them that he would not be present for the hearing. (*Testimony of Appellant*)<sup>13</sup>

87. The next day, September 15, 2021, the Randolph Fire Department was dispatched to the Appellant's residence. RPD Officer Duperval, a friend and colleague of the Appellant, was dispatched to his residence as well, arriving at approximately 9:30 AM. The Appellant appeared to have a large, open cut on the side of his head and was transported to the hospital. (*Testimony of Duperval; Resp. Ex. 4*)

88. Officer Duperval spoke to the Appellant and noted that the Appellant's speech was incoherent, although he did not notice the smell of alcohol. Knowing the Appellant's history, seeing the Appellant's head injury, and based on the discussion with family members, Officer Duperval concluded that the Appellant had been drinking. (*Testimony of Duperval; Resp. Ex. 4*)

89. Randolph filed a Motion to Dismiss which was ultimately denied by the Commission. The Appellant was given a chance to appear for another hearing date by the Commission and he appeared remotely at all five future hearing dates. (*Administrative Record*)<sup>14</sup>

### **APPLICABLE CIVIL SERVICE LAW**

A tenured civil service employee may be discharged for "just cause" after due notice and hearing upon written decision "which shall state fully and specifically the reasons therefore." G.L. c. 31, § 41. An employee aggrieved by the decision may appeal to the Commission. G.L. c.

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<sup>13</sup> A wellness check performed by three RPD officers found the Appellant at home highly intoxicated. Over his objection, he was transported to a hospital where he was sedated out of concern for his own safety. (*Testimony of Sherman; Resp. Ex. 3*). Before the Commission, the Appellant testified that he did not appear for the September 14, 2021 hearing because he had been drinking and was not fit to attend the remote hearing. (*Testimony of Appellant*)

<sup>14</sup> The Appellant's ex-girlfriend was present to testify at the first day of the appeal hearing, September 14, 2021. However, since the Appellant did not appear for the hearing, no testimony was taken. She refused to appear to testify at any further hearing, even with a Court-issued subpoena. The Appellant admits that he called his girlfriend on September 13, 2021, the day before she was set to testify. (*Administrative Record*)

31, § 43. Under section 43, the appointing authority carries the burden to prove to the Commission by a “preponderance of the evidence” that there was “just cause” for the action taken. *Id.* See, e.g., Falmouth v. Civ. 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).

In performing its § 43 review, however, the commission hears evidence and finds facts anew. Examining an earlier but substantially similar version of the same statute, the court in Sullivan v. Municipal Ct. of the Roxbury Dist., 322 Mass. 566, 572, 78 N.E.2d 618 (1948), said: “We interpret this as providing for a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer.”

Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

The Commission determines just cause for discipline by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” School Comm. v. Civ. 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). It is also a basic tenet of merit principles, which govern civil service law, that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “[only] separating employees whose inadequate performance cannot be corrected.” G.L. c. 31, § 1.

The Commission must take account of all credible evidence in the entire administrative record, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law, including whatever would fairly detract from the weight of any particular supporting evidence. See Comm’rs of Civ. Serv. v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).; Massachusetts 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 credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the

[commission] upon which a court conducting judicial review treads with great reluctance.” Leominster v. Stratton, 58 Mass. App. Ct. at 729. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997).

The Commission has also consistently held police to a high standard of conduct even in the absence of indictable conduct or a criminal conviction. For example, in Zorzi v. Town of Norwood, 29 MCSR 189 (2016), the Commission noted:

“An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion.” McIsaac v. Civil Service Comm’n, 38 Mass. App. Ct. 473, 475 (1995) (negligent off-duty handling of firearm). “When it comes to police officers, the law teaches that there is a special ‘trust reposed in [a police officer] by reason of his employment . . . . 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 are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” Police Comm’r v. Civ. Serv. Comm’n, 22 Mass. App. Ct. 364, 371, *rev. den.*, 398 Mass. 1103 (1986).

The Commission consistently sustains discipline imposed upon a public safety officer who engages in off-duty misconduct, even when the conduct did not result in criminal or civil penalties. See, e.g., Archer v. Town of Norton, CSC No. D1-22-025, 36 MCSR \_\_\_\_ (2023); Luis v. Town of Dartmouth, 34 MCSR 335 (2021); Gould v. Town of North Attleborough, 31 MCSR 186 (2018); Torres v. City of Chicopee, 30 MCSR 467 (2017); Lavery v. Town of North Attleborough, 30 MCSR 373 (2017); Robichau v. Town of Middleboro, 24 MCSR 352 (2011).

Section 43 of G.L. c. 31 also vests the Commission with the authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated “considerable discretion” in this regard, albeit “not without bounds” so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. See, e.g., Police



Comm'r v. Civ. Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; Falmouth v. Civ. Serv/ Comm'n, 61 Mass. App. Ct. 796, 800 (2004); Faria v. Third Bristol Div., 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). However, the Supreme Judicial Court has added that, in the absence of “political considerations, favoritism, or bias,” the same 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, 447 Mass. at 824.

### **ANALYSIS**

The Town has shown, by a preponderance of the evidence, that the Appellant engaged in an escalating pattern of misconduct in violation of numerous RPD Rules that demonstrated he was unfit to serve in the position of an RPD police officer. This began in the fall of 2017, barely a year after the Appellant gained tenure, and continued over a four-year period from 2017 to 2021. Specifically, the Town proved that the Appellant repeatedly failed to report for duty, including multiple instances where he was a no call/no show, and that he engaged in other misconduct, culminating in the breaking and entering of a private apartment while on administrative leave on August 6, 2021 (an act that the Appellant conceded on cross-examination could be considered a criminal offense). In addition, a preponderance of the evidence established that, for at least three years prior to his termination, the Appellant’s misconduct was attributed to his “habitually using intoxicating liquors to excess,” a disqualifying condition for employment in any civil service position and an additional specific violation of RPD Rules. See Feehan v. Chief Eng’r of Fire Dep’t of Taunton, 264 Mass. 178, 180 (1928).

The credible evidence of the pattern of Appellant’s uncorrected, problematic behavior during the four years preceding his termination includes the following documented facts:

- Two instances of tardiness;
- Eight instances of “no call/no show”;
- Four instances of other on-duty and off-duty misconduct;
- Seven occasions on which RPD officers observed the Appellant to be intoxicated;
- Seven instances where the Appellant admitted to off-duty “binge drinking” and/or attributed his misconduct to alcohol abuse; and
- Seven instances of misbehavior where the Appellant denied any alcohol abuse and/or attributed the conduct to other causes.

Although the RPD chose not to discipline the Appellant for all of his infractions, his disciplinary history is nevertheless extensive.

- 2017 - Counseled for tardiness/assigned to desk duty
- 2018 – Administrative leave conditioned on doctor’s note that he was fit for duty
- 2018 – Counseled on alcohol abuse
- 2018 – Warning about excessive use of sick leave
- 2018 – Sent for Fitness for Duty examination
- 2018 – Three-day suspension
- 2019 – Second Fitness for Duty examination
- 2019 – Failure to respond to call for service resulting in 5-day suspension/desk duty
- 2019 – Failure to respond to call for service resulting in one-day suspension
- 2020 – Counseled on alcohol abuse/attended out-patient treatment
- 2020 – Administrative leave following breaking and entering incident

Counsel for the Appellant argued that because the Appellant took significant steps to address his alcohol problem prior to his June 25, 2021 termination, particularly in the weeks that followed the August 6, 2020 breaking and entering, the Appellant should retain his job as a police officer, as he has the “right attitude” and has attained the “necessary skills to manage his alcoholism.” The Appellant’s counsel also argued that the Appellant now has the tools to maintain sobriety and quickly pick himself up after relapse. As proof of this ability to manage his alcoholism, the Appellant testified that he had not had a “drop” of alcohol since the breaking and entering on August 6, 2020, up to and until the night before the first day of the Commission hearing on September 14, 2021. Unfortunately, a preponderance of the evidence fails to support

this argument. In particular, I do not credit the Appellant’s testimony that hasn’t had a “drop of alcohol” since August 6, 2020.

The Appellant’s own medical records indicate that he reported to his counselor that he drank alcohol later that month in August 2020 after the breaking and entering. Commander Hamelburg credibly testified to being in the Appellant’s presence while the Appellant was clearly intoxicated on November 13, 2020, three months after the breaking and entering incident. The Appellant’s mother called for emergency services for the Appellant that day, and the Commander advised the Appellant’s mother and brother how to file an alcohol petition with the court to have the Appellant involuntarily hospitalized, given the Appellant’s intoxication that day.

Additional proof, by a preponderance of the evidence, that the Appellant was drinking on a date after August 6, 2020 (and after his out-patient treatment concluded) came from Lieutenant Christine Morse’s credible testimony regarding the Appellant’s April 2021 phone to her at the station one morning at 3:15 AM. Lieutenant Morse, like many other members of the RPD, lent the Appellant a compassionate ear and offered to help him should he ever need it. When she spoke with him that morning, she noticed that he was speaking in a manner he did not usually speak—slowly, with a different inflection in his voice, and continuously repeating himself as if he had not heard her answers. Lieutenant Morse concluded that the Appellant had been drinking and I credit her testimony.<sup>15</sup>

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<sup>15</sup> Lastly, the Appellant was a no call/no show for his September 14, 2021 hearing before this Commission. The Appellant was also under the influence of alcohol with a large head wound the day after the September 14, 2021 Commission hearing, which required him to go to the hospital. Granted, the hearing was an event that took place after the Appellant was terminated in June 2021. However, the Appellant set forth a defense that he had the skills and tools needed to

The reality of the situation is that the Appellant had a consistent history of not showing up for his regular shift and not informing the RPD that he would not be there (from 2017 through July 2020). Each no call/no show sent the RPD into the familiar routine of spending significant time trying to track the Appellant down, being unable to get in contact with him, and sending RPD officers who should be on the roads patrolling the Town to the Appellant's home to make sure he was safe. The Appellant failed to take necessary steps to remedy the situation, his issues persisted, he repeatedly failed to report for duty, and his work as a police officer suffered. He made some poor judgment calls in February and again in March 2019 while on-duty, for which he was punished. The Chief and the command staff gave the Appellant multiple warnings about tardiness and excessive use of sick time. They also counseled the Appellant on the importance of showing up to work reliably and on time, gave the Appellant desk duty, and progressively disciplined him for his misconduct. Despite this, the Appellant's problematic behavior persisted and he continued to not show up for work, leaving the RPD to scramble to fill shifts without notice. The RPD acted reasonably in its decision to terminate the Appellant's employment due to this pattern of behavior. Furthermore, the RPD was reasonable to conclude that the Appellant's misconduct while on administrative leave—namely, breaking and entering his girlfriend's apartment—provided additional corroborating grounds for his termination.

There is considerable precedent in civil service law and related judicial precedent to support a decision by an appointing authority to discharge an employee who has been “habitually using intoxicating liquor to excess” in violation of G.L. c. 31, § 50. See, e.g., Alves v. Fall River School Comm., 22 MCSR 4 (2009) (addressing history of untreated alcohol related

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effectively perform his police duties, whereas his actions on September 14, 2021 materially undercut that defense.

absences); Smith v. Boston Police Dep't, 17 MCSR 31 (2004) (finding that “egregious attendance” due to alcoholism justified termination for “substantial misconduct,” noting applicability of §50); Crimlisk v. Waltham School Dep't, 10 MCSR 141 (1997) (affirming discharge of school custodian with a long history of alcoholism accompanied by tardiness and absenteeism); Bamberry v. Stoneham, 10 MCSR 11 (1996) (affirming discharge of firefighter who refused to enroll in alcohol treatment program and had engaged in numerous incidents of abusive alcohol-induced behavior). See also Town of Plymouth v. Civ. Serv. Comm'n, 426 Mass. 1, 6-7 (1997) (comparing termination for alcoholism under c. 31, § 50 with c. 41, § 101A termination for smoking by public safety personnel). See generally Mammone v. President and Fellows of Harvard College, 446 Mass. 657 (2006) (distinguishing lawful termination for egregious alcoholism-related misconduct as opposed to discriminatory termination for the handicap of alcoholism itself); Rios-Jimenez v. Principi, 520 F.3d 31 (1st Cir. 2008) (dismissing discrimination claim by employee with emotional disorder unable to comply with attendance and time-keeping requirements because “an employee who does not come to work cannot perform the essential functions of any job”); Ward v. Mass. Health Research Institute, Inc., 209 F.3d 29 (1st Cir. 2000) (distinguishing termination “because of tardiness” from termination “because of disability”); Lemere v. Burnley, 683 F.Supp. 275 (D.D.C. 1988) (affirming discharge of federal employee for pattern of unscheduled absences over two-year period).

I commend the Chief and his staff for trying to help the Appellant. He repeatedly gave the Appellant lists of resources available to help him, including in-patient programs, a self-help book, the Boston Police Stress Unit, the Chief’s personal cell phone number, words of encouragement, and countless hours of RPD officers tracking the Appellant down and checking

on his wellbeing at home, at the hospital, and otherwise. Commander Hamelburg estimates that he spent more than one hundred hours with the Appellant during his times of need. The Chief always tried to give the Appellant hope that his future could be brighter, including sending a text on April 30, 2018 stating, “Good luck. You can do this.” Many of the no call/no shows, despite their impact on RPD staffing, went graciously unpunished, even as late as May 2020, due to the Chief’s hope that the Appellant could successfully get help for his alcohol abuse problem.<sup>16</sup>

I also have deep respect for the Appellant’s desire to overcome the obstacles that faced him. The toll that stress takes on far too many of our public safety personnel is well-documented. Hopefully, the Appellant will reach the point where his struggle with sobriety no longer interferes with his ability to live a productive life. Unfortunately, despite all of the remedial efforts and support provided to him, the Appellant was unable to show the RPD that he could be counted on to perform the duties expected of him as a police officer at the time he was terminated.

Finally, it bears notice that the challenges facing law enforcement agencies to find and retain qualified personnel are greater than ever. Although the Commission is obliged to deny the Appellant relief in this appeal because civil service law incorporates a strong public policy that prohibits employment of persons who abuse alcohol, basic merit principles are also imbedded

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<sup>16</sup> I find it troubling that, without a definitive conclusion from Dr. Beck or Dr. Schaeffer that the Appellant had an alcohol dependency which prevented him from performing the essential duties of a police officer, Commander Hamelburg was constrained to keep an officer on the force whom he, and many others on his command staff, based on their training and experience, had good reason to believe was unable to meet the standards expected of an RPD police officer. Although these decisions may be influenced by factors beyond the purview of the Commission, such as collective bargaining obligations, an argument fairly can be made that, as far as civil service law is concerned, the conclusion that an employee must be discharged for “habitually using intoxicating liquors to excess” does not require an expert medical opinion. See generally Feehan v. Chief Eng’r of Fire Dep’t of Taunton, 264 Mass. 178, 180 (1928).

with the concept that deficient performance can be changed through progressive discipline and corrective action. As stated in Town of Plymouth v. Civ. Serv. Comm'n, 426 Mass. 1, 7 (1997):

*“While the legislative history is sparse, [G.L. c. 31] §50 was likely enacted because serious abuse of alcohol presumptively has a negative effect on job performance. Allowing an employee to be reinstated after completion of an alcohol rehabilitation program and demonstration of satisfactory job performance is consistent with ameliorating deficient job performance.” (emphasis added)*

Thus, should the Appellant demonstrate to the RPD’s satisfaction that he has overcome the obstacles that produced this truly tragic result, and if the opportunity presents itself in the future, the option for reinstatement (pursuant to G.L. c. 31, § 46) is worthy of consideration.

In sum, the citizens of Randolph rightfully rely on their officers to be sober, dedicated to their duty, and ready to respond to citizens in need at a moment’s notice. The Town Manager was reasonable to conclude that the RPD had exhausted all reasonable alternatives and that the Appellant’s conduct “amounts, collectively, to a variety of violations including insubordination, conduct unbecoming a police officer, conduct unbecoming a municipal employee, violation of attendance policies, absence without notice, abuse of alcohol, and engaging in violent conduct while off duty... [and] collectively these violations amount to just cause for termination of [the Appellant’s] employment.” Given that my findings do not differ substantially from those of the Town, and in the absence of political considerations, favoritism, or bias, I decline to modify the administered discipline.

## **CONCLUSION**

For all of the above reasons, the termination appeal of Officer A, Docket No. D1-21-XXX is hereby **denied**.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on February 23, 2023.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of 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:  
Keith J. Nicholson, Esq. (for Appellant)  
Leo J. Peloquin, Esq. (for Respondent)