

The Commonwealth of Massachusetts

Decision mailed: 10/2/09
Civil Service Commission

JB

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

THOMAS PENNOR,
Appellant

v.

CITY OF BROCKTON,
Respondent

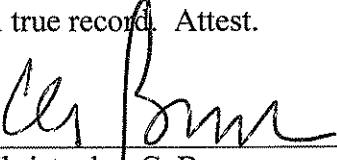
Case No.: D1-08-77

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on October 1, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated August 17, 2009. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on October 1, 2009.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a 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 shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice to:
Anthony Pini
James D'Ambrose, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
98 NORTH WASHINGTON STREET, 4TH FLOOR
Boston, MA 02114

Tel: 617-727-7060
Fax: 617-727-7248

August 17, 2009

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Thomas Pennor v. City of Brockton
DALA Docket No. CS-08-388

RECEIVED
2009 AUG 18 A 10:08
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Acting Chief Administrative Magistrate

RCH/das

Enclosure

cc: Anthony Pini
James J. D'Ambrose, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Thomas Pennor,
Appellant

Docket No. D1-08-77
DALA No. CS-08-388

v.

City of Brockton,
Appointing Authority

RECEIVED
2009 AUG 18 A 10:08
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Appearance for Appellant:

Anthony Pini
Laborers Union
7 Laborers Way
Hopkinton, MA 01748

Appearance for Appointing
Authority:

James J. D'Ambrose, Esq.
City Solicitor
City of Brockton
45 School Street
Brockton, MA 02301

Administrative Magistrate:

Joan Freiman Fink, Esq.

RECOMMENDED DECISION

Pursuant to G.L. c. 31 §43, the Appellant, Thomas Pennor, is appealing the March 20, 2008 decision of the Appointing Authority, the City of Brockton, discharging him from his position as a Water/Sewer Maintenance Worker with the City of Brockton Department of Public Works (DPW) (Exhibit 7). The Appellant filed a timely appeal of this decision with the Civil Service Commission (Exhibit 8).

A hearing in this matter was held on June 18, 2008 at the offices of the Division of Administrative Law Appeals, 98 N. Washington Street, Boston, MA. As no written request was received from either party, the hearing was declared to be private. Various documents were entered into evidence at the hearing (Exhibits 1-8). One cassette tape recording was made of the hearing.

The following employees of the City of Brockton DPW testified on behalf of the Appointing Authority: Patrick Joseph Hill, Water Construction Foreman and Union Official, William Lauzon, Sr., Working Foreman/Craftsman, and Michael Thoreson, Commissioner of the Brockton DPW. The Appellant testified in his own behalf.

The record in this case was left open until July 18, 2008 for the filing of written closing memoranda.

The Appointing Authority maintains that just cause exists to terminate the Appellant from his employment as a Water/Sewer Maintenance Worker based on his behavior while at work on February 14, 2008 as well as his prior disciplinary record with the DPW. Specifically, the Appointing Authority alleges that on February 14, 2008, the Appellant was disrespectful and rude to his supervisors and co-workers and verbally abused them. In addition, the Appellant threatened his supervisor.

FINDINGS OF FACT

Based on the documents entered into evidence (Exhibits 1 - 8) and the testimony of Patrick Joseph Hill, William Lauzon, Sr., Michael Thoreson, and Thomas Pennor, I make the following findings of fact:

1. The Appellant, Thomas Pennor, commenced employment as a Water/ Sewer Maintenance Worker with the City of Brockton DPW on September 29, 2003 (testimony of the Appellant).
2. His duties involved performing sewer repair work. His general supervisor was Larry Rowley, who served as Superintendent of Utilities for the Brockton DPW (testimony of the Appellant).
3. On November 29, 2004, the Appellant was suspended for two days for insubordination for impersonating the Commissioner on the telephone and for his misuse of City time, equipment and supplies (Exhibit 6, testimony of Commissioner Thoreson).
4. In or about 2006, the Appellant was placed on sick leave probation on two occasions as a result of undocumented and inordinate use of sick leave (Exhibit 1).
5. On January 19, 2007, the Appellant was verbally reprimanded for sleeping in a City truck during work hours (Exhibit 10).
6. On May 7, 2007, the Appellant received a written reprimand for misuse of sick time (Exhibit 1).
7. On February 13, 2008, the Appellant attended a meeting with his immediate supervisor, Bernie Hunnewell, and Patrick Hill, a water construction foreman and business manager of the Laborer's Union. During the course of this meeting, the Appellant expressed anger at Mr. Hunnewell concerning his having been docked one day's pay without proper notification approximately a year ago (testimony of Patrick Hill).

8. The Appellant told Mr. Hunnewell that he (Pennor) was “pissed off” at the situation. When Mr. Hill asked the Appellant to come into his office to discuss the matter, Mr. Pennor refused, stating that “this is bullshit. I am too upset to talk” (testimony of Patrick Hill).
9. The next day, February 14, 2008, the Appellant approached Mr. Hill at a job site located on Edinboro Avenue, a residential area of Brockton (testimony of Patrick Hill).
10. The Appellant’s job assignment that day was to assist in the repair of a broken sewer pipe (testimony of Patrick Hill).
11. The Appellant then started to complain about being disciplined for abuse of sick time in May of 2007 and handed Mr. Hill a grievance form (testimony of Patrick Hill).
12. Mr. Hill told the Appellant that it was not appropriate for him (Pennor) to confront him (Hill) during work hours to discuss a grievance and further that the grievance was not timely filed (testimony of Patrick Hill).
13. The Appellant left the area and then returned approximately twenty minutes later and again approached Mr. Hill concerning the grievance. Mr. Hill replied “what do you want me to do with the grievance? It is untimely” (testimony of Patrick Hill).
14. The Appellant replied “that’s fucking bullshit. I know how you work things. You’re up in the bald head fuck’s office all the time.” The Appellant was referring to Superintendent Larry Rowley, who is bald (testimony of Patrick Hill, testimony of the Appellant).

15. The Appellant and Mr. Hill then engaged in a heated argument that lasted approximately ten to fifteen minutes. Both men spoke in extremely loud voices. This argument was witnessed by several co-workers at the job site including Mr. William Lauzon, a working foreman/craftsman (testimony of Patrick Hill and William Lauzon, testimony of the Appellant).
16. During the course of the argument, the Appellant became aggressive and placed himself face to face with Mr. Hill. Although Mr. Hill was very frightened that the Appellant would attack him, the Appellant did not physically assault his co-worker (testimony of Patrick Hill, testimony of the Appellant).
17. When the argument was over, the Appellant turned to Mr. Covino, who was operating a backhoe, and stated that he (Pennor) was going to write a letter to the "bald headed fuck's wife that he (Superintendent Rowley) was sleeping with his secretary" (testimony of William Lauzon).
18. The Appellant then left the job site without performing any work on the broken sewer pipe. Two other employees, Mr. Derouen and Mr. Lauzon, who were on the job site that day completed Mr. Pennor's assigned duties (testimony of William Lauzon).
19. Mr. Hill informed Superintendent Rowley of the incident and Rowley in turn informed Commissioner Michael Thoreson of the events that transpired on February 14, 2008 (testimony of Commissioner Thoreson).
20. Commissioner Thoreson then conducted an investigation of the incident including an interview with all the participants and witnesses (testimony of Commissioner Thoreson).

21. On March 7, 2008, the Appellant was notified that a hearing would be held on March 14, 2008 to determine whether he should be discharged from his position as a Water/Sewer Maintenance Worker with the City of Brockton DPW (Exhibit 1).
22. A hearing pursuant to G.L. c. 31 §41 was held on March 14, 2008 and on March 20, 2008, the Appointing Authority sent the Appellant notification that he was terminated from his position effectively immediately (Exhibits 6 & 7).
23. On April 3, 2008, the Appellant filed a timely appeal of this decision with the Civil Service Commission (Exhibit 8).

CONCLUSION AND RECOMMENDATION

After reviewing all the testimony and evidence in this case, I conclude that the Appointing Authority has demonstrated by a preponderance of the evidence that just cause exists to terminate the Appellant from his position as Water/Sewer Maintenance Worker with the City of Brockton DPW. The Civil Service 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.” *Murray v. Second Dist. Ct. of E. Middlesex*, 389 Mass. 508, 514 (1983); *School Committee of Brockton v. Civil Service Commission*, 43 Mass. App. Ct. 486, 488 (1997). In reviewing an appeal brought pursuant to G.L. c. 31 §43, if the Civil Service Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission shall affirm the action of

the Appointing Authority. *Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004).

The basis of my conclusion rests with my finding that the testimony of Patrick Hill, Water Construction Foreman, William Lauzon, Working Foreman/Craftsman, and Michael Thoreson, Commissioner of the Brockton DPW was extremely credible. See *Connor v. Connor*, 77 A.2d 697 (Pa. 1951) where the court held that the "opportunity to observe demeanor and appearance of witnesses in many instances becomes the very touchstone of credibility." See also *School Committee of Wellesley v. Labor Relations Commission*, 376 Mass. 112, 120 (1978); *New England Canteen Service, Inc. v. Ashley*, 372 Mass. 671 (1977).

Mr. Hill gave compelling testimony to the effect that on February 14, 2008, the Appellant, without warning or provocation, engaged him (Hill) in a heated argument during the course of which the Appellant accused Mr. Hill of always being upstairs in the "bald headed fuck's office," referring to the Superintendent of Utilities, Larry Rowley. In addition, the Appellant further threatened to send a letter to Mr. Rowley's wife stating that her husband was having an affair with his secretary. The Appellant acted in a hostile and aggressive manner to Mr. Hill, placing the latter in fear of a physical assault. The whole incident was witnessed by Mr. William Lauzon, a co-worker, who fully corroborated Mr. Hill's version of the events that transpired.

The Appellant acknowledged that on the day in question, during an argument with Mr. Hill, he (Pennor) referred to Superintendent Rowley as a "bald-headed fuck." He further acknowledged that he threatened to write to Superintendent Rowley's wife alleging that the Superintendent was sleeping with his secretary. As an explanation for his conduct, the Appellant offered that he felt that Superintendent Rowley was "always

after him” especially with respect to his sick leave usage and that Mr. Hill, as his union representative, did not help him (Pennor) when he was being picked on by his supervisor.

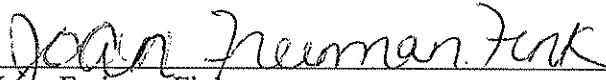
I do not find the Appellant’s explanation to be persuasive or convincing, especially in light of the fact that no evidence was presented to demonstrate that at any time, either Mr. Hill or Superintendent Rowley had treated the Appellant unfairly. Moreover, even assuming that the Appellant had some legitimate issues concerning his sick leave allowance, nonetheless, his conduct towards his co-worker and supervisor on February 14, 2008, was totally unwarranted and unjustified.

In conclusion, the Appointing Authority has demonstrated by a preponderance of the evidence that on February 14, 2008, the Appellant was disrespectful, rude, and verbally abusive to his co-workers. In addition, he made threatening comments concerning Superintendent Rowley.

In determining the appropriateness of the discipline to be imposed, I reviewed the Appellant’s prior disciplinary record which included a two day suspension for impersonation of the Commissioner and misuse of City property issued in 2004, two separate instances of sick leave probation imposed in 2006, and a verbal warning and a written warning, both issued in 2007. I also considered the fact that the Appellant, by his own admission, during the heated argument with his co-worker on February 14, 2008, referred to Superintendent Rowley as a “bald-headed fuck” and also threatened to write to the Superintendent’s wife claiming that her husband was having an affair with his secretary. After due deliberation, I conclude that based on the facts and circumstances of this case, the Appointing Authority was fully justified in terminating the Appellant from his position with the City of Brockton DPW.

Accordingly, I recommend that the Civil Service Commission affirm the action of the Appointing Authority discharging the Appellant from his position as a Water/Sewer Maintenance Worker with the City of Brockton DPW.

DIVISION OF ADMINISTRATIVE LAW APPEALS


Joan Freiman Fink
Administrative Magistrate

Dated:

AUG 17 2009