

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

DANIEL REEVE,
Appellant

v.

D-07-263
D-07-264

MASSACHUSETTS ENVIRONMENTAL
POLICE,
Respondent

Appellant's Attorney:

Rachel E. Muñoz, Esq.
Sandulli Grace, P.C.
One State Street, Suite 200
Boston, MA 02109

Respondent's Attorney:

Frank E. Hartig, Esq.
Department of Conservation and
Recreation
251 Causeway Street
Boston, MA 02114

Commissioner:

Christopher Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Daniel R. Reeve (hereinafter "Reeve" or "Appellant"), is appealing the actions of the Massachusetts Environmental Police Division of Law Enforcement (hereinafter "Division" or "Appointing Authority") suspending him for two (2) days on June 20, 2007 (Docket No. D-07-263) and suspending him for four (4) days on July 17, 2007 (Docket No. D-07-264). The appeals were timely filed. The Civil Service Commission (hereinafter

“Commission”) consolidated the appeals and a full hearing was held on June 2, 2008 at its offices. Two (2) tapes were made of the hearing.

FINDINGS OF FACT:

Forty (40) Exhibits were entered into evidence at the hearing. Based on the documents submitted and the testimony of:

For the Appointing Authority:

- Lieutenant Colonel Roger Arduini, Deputy Director, Massachusetts Environmental Police (hereinafter “Deputy Director Arduini”)
- Major Bruce Bennett, Massachusetts Environmental Police (retired) (hereinafter “Major Bennett”)
- Captain James Hanlon, Director, Massachusetts Environmental Police (hereinafter “Cpt. Hanlon”)

For the Appellant:

- Daniel R. Reeve, Appellant

I make the following findings of fact:

Background

1. The Appellant has been employed with the Division as an Environmental Police Officer I for approximately ten (10) years. (Testimony of Appellant, Exhibits 1 and 2)
2. The Appellant is also a Technical Sergeant in the U.S. Air Force Reserve and has served in the military for eighteen (18) years, ten (10) of which were active duty in the Coast Guard. He has served in Afghanistan for Operating Enduring Freedom and Baghdad, Iraq. (Testimony of Appellant)

3. The general duties and responsibilities of an Environmental Police Officer I include patrolling an assigned area, enforcing all laws, rules and regulations pertaining to the conservation and protection of fish, game and marine natural resources, wetlands and park lands, and the operation of marine and recreational vehicles, inspecting licenses, permits and registrations, catches and equipment, identifying incidents of air and water pollution, and wetland, solid or hazardous waste violations, apprehending violators, and performing related work as assigned. (Exhibit 3)
4. On October 22, 2000, John Pajak (hereinafter "Pajak"), the Appellant's then-supervising Lieutenant, submitted a memorandum to then Director Richard Murray (hereinafter "Director Murray"), requesting that the Appellant be suspended with pay because he unlawfully detained an individual. Pajak stated in the memorandum that he was "extremely uncomfortable in having this officer [the appellant] in my command and further allowing him [the appellant] to deal with the public while being armed." (Exhibit 22)
5. Following this memorandum, the Appellant took a three (3) month leave of absence and participated in counseling for anger management. (Testimony of Cpt. Hanlon)
6. On June 8, 2001, the Appellant initiated a 90 mph pursuit on a Massachusetts public way, while operating a marked pick-up truck assigned to the Appellant by the Division. As a result, the Appellant received a two (2) day suspension without pay for violating Division policy by failing to receive the required approval before activating the pursuit, exceeding the posted speed limit during the unauthorized pursuit, and exceeding the posted speed limit in a four-wheel drive vehicle, which even under an

authorized pursuit is specifically prohibited. The Appellant was also required to undergo an examination of fitness for duty. (Exhibit 21)

7. On August 27, 2001, the Appellant went to the Museum of Science after work with his daughter. The Appellant had changed into civilian clothing before going to the museum, but carried with him his Division issued firearm open to plain view on his waist belt. For violating the Division's policy to conceal firearms from plain view¹, the Appellant was given a Letter of Reprimand dated February 6, 2002, which was placed in his personnel file. (Exhibit 18)
8. On June 25, 2003, an elderly private citizen filed a complaint against the Appellant for being overly aggressive when citing him for littering on June 14, 2003. After the incident, the Appellant took out an application for a criminal complaint against the elderly private citizen for a second charge of littering. (Testimony of Cpt. Hanlon, Exhibit 17)
9. On July 4, 2003, the Appellant used a baton to subdue an individual in a canoe while attempting an arrest. The individual's children, ranging in age from four (4) through twelve (12), were also in the canoe when the arrest occurred. (Testimony of Cpt. Hanlon, Exhibit 17)
10. On July 25, 2003, Cpt. Hanlon sent a letter to Director Murray in reference to the June 25, 2003 and July 4, 2003 incidents, stating that the Appellant seems to confront "the general public in a manner that escalates minor situations into major ones." Cpt. Hanlon recommended that the Appellant be placed on administrative leave due to his

¹ Division Policy/Procedure OPS-019, Section 8.0.1. states:

Except on a firing range for the purpose of instruction or within the confines of one's home or office; an Environmental Police Officer while carrying a firearm will have it concealed from view by means of a coat, jacket, sweater or some article of clothing.
(Exhibit 18)

past history involving anger management, and that he undergo a psychological evaluation. (Exhibit 17)

11. On August 1, 2003, Director Murray, taking Cpt. Hanlon's advice, sent the Appellant a letter directing him to report for another fitness to perform duty evaluation. During the evaluation, the Appellant was relieved of his normal duties, and instead assigned to the Supply Section in Grafton, under the direction of then In-Land Chief Arduini, now Deputy Director. There was also an Internal Affairs Investigation. (Exhibits 14 and 16)
12. The Supply Section was responsible for the maintenance and delivery of supplies and inventory. As a supply officer, the Appellant's duties included uniform categorizing and distribution, ordering of equipment, general maintenance of grounds, grass cutting, and building maintenance. (Testimony of Deputy Director Arduini)
13. The Appellant's Supply Section assignment lasted approximately one (1) year. He performed his job duties adequately and did not register any complaints or file any grievances related to his duties. (Testimony of Deputy Director Arduini)
14. On or about November 3, 2003, the Appellant received a letter from Director Murray informing him that:
 - a. He could return to full duties and transfer to another geographical location.
 - b. During that period of time, he would be required to attend specific training designed to address the "probability of interpersonal problems" identified during his evaluation.²

² The evaluation refers to the fitness to perform duty evaluation which the Appellant was directed to endure on August 1, 2003.

Director Murray also stated that “there is a history of ‘escalation’ in your [the appellant’s] job performance, and you [the appellant] need[s] to recognize this fact and work effectively to correct it.” (Exhibit 15)

15. The decision to transfer the Appellant was made collectively after the Division reviewed the Appellant’s evaluation report and met with the Appellant and his union representatives on several occasions. (Exhibit 15)
16. In a letter dated January 20, 2004, Director Murray reported the details from the Internal Affairs investigation. The investigation revealed that the Appellant had been overzealous in the June 14, 2003 littering incident. The investigation also found that the Appellant’s actions were within Division policies and procedures during the July 4, 2003 canoe incident. (Exhibit 14)
17. Sometime in 2004, the Appellant was assigned to the Hingham Region to resume the usual duties of an Environmental Police Officer I. (Testimony of Deputy Director Arduini)
18. On October 3, 2006, the Appellant failed to appear at Hingham District Court to testify on one of his citations. The Division issued the Appellant a Letter of Reprimand. (Exhibits 8 and 13)
19. In October of 2006, the Appellant was involved in a physical encounter with an inebriated individual at the Lake Cochituate State Park. The Appellant arrested the individual for assault and for failure to leave the park at closing time. That individual threatened the Appellant’s life at a subsequent court proceeding. (Testimony of Cpt. Hanlon)

20. Because of the threat, the Appellant requested a temporary transfer back to the Supply Section in Grafton in order to be closer to his family. (Testimony of Cpt. Hanlon, Testimony of Deputy Director Arduini)
21. On October 29, 2006, Cpt. Hanlon granted the Appellant's transfer request. The Appellant was placed under the supervision of Major Bennett. At the time of the Appellant's reassignment to the Supply Section, Major Bennett was on vacation. Major Bennett's supervisor, Deputy Director Arduini, handled the reassignment duties for the Appellant. (Testimony of Deputy Director Arduini)
22. The Appellant's duties were similar to those he performed in his 2003 posting. His duties included uniform categorizing and distribution, ordering of equipment, and general maintenance of grounds. In addition, he was directed to conduct an inventory of all vessels under the control of the Division. (Testimony of Cpt. Hanlon, Testimony of Deputy Director Arduini, Exhibit 12)

The Two Day Suspension (Docket No. D-07-263)

23. On June 11, 2007 a small load of pea stone (small stone gravel) was delivered at the Westborough Supply Headquarters in the Grafton Supply Section. The pea stone was dumped along the front of the driveway to fill in the ruts on the side of the driveway that had been created from a recent storm. Major Bennett ordered the Appellant to rake the pea stone into the ruts along the driveway, and to complete this task by the end of the week. (Testimony of Major Bennett, Exhibit 10, Photo Exhibits 23 - 27)
24. After the Appellant was given the order to rake the pea stone, he replied "okay." Approximately fifteen (15) minutes later, the Appellant returned to Major Bennett's office and stated that he had consulted with his union. According to the Appellant, the

union had advised him not to move the pea stone since it was not a part of his job description. (Testimony of Appellant, Testimony of Major Bennett)

25. Major Bennett then asked the Appellant if he was refusing to move the pea stone, and the Appellant did not respond. Major Bennett asked the Appellant again if he was refusing to move the pea stone, and the Appellant replied “yes” and left the Major’s office. (Testimony of Major Bennett, Exhibit 10)

26. Major Bennett considered raking the pea stone to be light maintenance within the Appellant’s duties for maintaining grounds at the Supply Section. (Testimony of Major Bennett)

27. The Appellant testified that it was not his intention to be insubordinate, but that he was constantly asked by Major Bennett to perform tasks outside of his job description. (Testimony of Appellant)

28. On June 12, 2007, Major Bennett sent an email to Cpt. Hanlon regarding the June 11, 2007 pea stone event. (Exhibit 10)

29. On June 19, 2007, Cpt. Hanlon issued a two (2) day suspension for the failure to obey an order in regard to the pea stone incident. (Exhibit 8)

30. The Appellant’s failure to obey an order by a supervisor was found to be a violation of Division Rules and Regulations Governing the Conduct and Activities of Officers (Sections 1.5 and 1.30), and Code of Conduct for All Employees (4. General Rules; (C) Conformance to Policies, Procedures and Directives)³. (Exhibits 7, 8, 30 and 31)

³ Rules and Regulations Governing the Conduct and Activities of Officers of the Division of Environmental Law Enforcement:

Section 1.5 states:

It shall be the duty of each Officer of the Division to obey every lawful command or order issued orally or in writing by competent authority which shall mean the Commissioner, the Director, Deputy Director of Enforcement, Chiefs of Enforcement, Deputy Chiefs of Enforcement,

The Four Day Suspension (Docket No. D-07-264)

31. In October 2006, when the Appellant was reassigned to the Supply Section as a result of his requested transfer, he was given the task of conducting a “boat inventory” of all the watercraft under control of the Division. (Testimony of Cpt. Hanlon, Testimony of Deputy Director Arduini, Testimony of Major Bennett)
32. Deputy Director Arduini and the Appellant discussed the boat inventory, which consisted of approximately one hundred vessels ranging from large boats to canoes. The vessels were located in approximately thirty to forty locations throughout the Commonwealth, from Greenfield to the Cape, and at individual officers’ homes. (Testimony of Deputy Director Arduini, Testimony of Major Bennett, Exhibits 28 and 29)
33. Deputy Director Arduini instructed the Appellant to “take his time” because the inventory had to be “done right.” He further ordered the Appellant to document all information relating to the serial numbers, hull identification, and motor serial numbers of each vessel, as well as personally photograph each vessel. (Testimony of Appellant, Testimony of Deputy Director Arduini, Exhibit 9)

Supervising Environmental Police Officers III (D), and Senior Environmental Police Officers II (C).
(Exhibit 30, Page 5)

Section 1.30 states:

An officer of the Division may be subject to disciplinary action if he does not perform his assigned duties, acts in a manner that brings discredit to the Division/Department or engages in misconduct or neglect.
(Exhibit 30, Page 10)

Code of Conduct for All Employees in Bargaining Unit Five:

4. General Rules: (C) Conformance to Policies, Procedures and Directives states:

Employees shall comply with all of the policies and operating procedures of the agency/department in which they work. This requirement includes, but is not limited to all agency/departmental policies and procedures. Employees shall respond forthrightly to the work-related directives of their supervisors.
(Exhibit 31, Page 7)

34. Both Mr. Arduini and the Appellant agreed that the Appellant would begin his task by obtaining a master list of all vessels previously created by the master mechanic.
(Testimony of Deputy Director Arduini and Appellant)
35. Deputy Director Arduini testified that he and the Appellant collectively decided that a two (2) month timeframe, until the end of December 2006, was sufficient time to complete the boat inventory. Also according to Mr. Arduini, he notified Major Bennett, upon his return, that a January 1, 2007 deadline had been mutually agreed to between him and the Appellant. (Testimony of Deputy Director Arduini)
36. Major Bennett testified before the Commission that, upon his return from vacation, Mr. Arduini told him that the boat inventory should be completed “as soon as possible, probably by January (2007).” (Testimony of Major Bennett)
37. Major Bennett testified that he asked the Appellant about the project in November and December of 2006 and was assured by the Appellant that the project was “coming along”. (Testimony of Major Bennett)
38. During the 2nd week of January 2007, Deputy Director Arduini inquired with Major Bennett about the project and was told it was not completed. Deputy Director Arduini decided to check back with Major Bennett in “2-3 months”. (Testimony of Deputy Director Arduini)
39. Major Bennett testified that “at some point”, the Appellant informed him that there was a delay in the project because some of the boats to be inventoried were “shrink-wrapped” and that he’d resume the project sometime in the Spring of 2007. According to Major Bennett, he informed Mr. Arduini about this delay at the time.
(Testimony of Major Bennett)

40. Major Bennett testified that in April (2007), he informed the Appellant that he needed to get the project “wrapped up”, to which the Appellant responded that he was “working on it” and showed Major Bennett a booklet that Major Bennett did not review at the time. (Testimony of Major Bennett)
41. Major Bennett testified that “around May 20th (2007)”, he told the Appellant to “wrap up the project” by June 1, 2007. (Testimony of Major Bennett)
42. On June 4, 2007, Major Bennett asked the Appellant to produce the vessel inventory. According to Major Bennett, the Appellant informed him that he had been working on other tasks and that the inventory project was not complete. As a result of failing to meet the June 1, 2007 deadline, Major Bennett issued the Appellant a letter of reprimand and set a new deadline of June 29, 2007 to complete the inventory project. (Testimony of Major Bennett; Exhibit 11)
43. On or about July 5, 2007, in response to a status request from Major Bennett, the Appellant produced a list showing that he had only inventoried approximately 30 out of the approximately 100 vessels included on the mechanic’s list, issued to him in October 2007. (Testimony of Major Bennett)
44. The Appellant testified that he began the inventory immediately in October 2007. He met with Timothy Melchione (hereinafter “Melchione”), the Division mechanic, and obtained a spreadsheet which listed one hundred and two boats in the Division’s inventory. The Appellant used this as a guideline. (Testimony of Appellant, Exhibit 34)

45. According to the Appellant, he had difficulty completing the inventory project because of the above-referenced shrink-wrap issue and the fact that many of the vessels were stored at individual employees' homes. (Testimony of Appellant)
46. Major Bennett testified that a maximum of 50 of the vessels were shrink-wrapped. (Testimony of Major Bennett)
47. The Appellant testified that between October 2006 and June 2007, he was working on several other tasks related to winterizing a building, moving supplies, uniform distribution and purchasing jackets and hats for cadets at the Boston Police Academy. (Testimony of Appellant)
48. Asked if he provided Major Bennett with updates regarding the inventory project, the Appellant answered with a non-responsive "I was always available". (Testimony of Appellant)
49. The Appellant acknowledged that sometime in May 2007, he was ordered, in writing, to have the inventory project completed by June 1, 2007 and that a new date of June 29, 2007 was established when he missed that deadline. (Testimony of Appellant)
50. The Appellant did not dispute that only 30 of the approximately vessels had been inventoried by June 29, 2007. (Testimony of Appellant)
51. At the hearing, the Appellant offered the disciplinary actions taken against a Lieutenant (hereinafter "the Lieutenant") as evidence that disparate treatment exists within the Division. The Appellant testified that lesser discipline was meted out to the lieutenant. (Testimony of Appellant)
52. The discipline against the lieutenant is as follows:

- a. On or about November 29, 2002, Cpt. Hanlon gave the lieutenant a verbal reprimand for failing to obtain permission before taking personal time, per Division requirements. The lieutenant had attended a hockey game instead of working his scheduled shift. (Exhibit 36)
- b. Cpt. Hanlon testified that he had elected to give the lieutenant “some slack” on the requirement to obtain permission, and that decision had been upheld by Director Murray. (Testimony of Cpt. Hanlon, Exhibit 36)
- c. On July 12, 2004, the lieutenant received a letter of reprimand for attending the hockey game, and was also ordered to make up four and one-half (4 1/2) hours with no additional compensation for failing to work a complete Homeland Security detail on November 17, 2002. (Exhibit 36)
- d. On August 22, 2006, a meeting was held regarding an investigation into whether the lieutenant had actually worked a private detail on July 30, 2006 for the Holyoke Water and Sewer Commission. At the meeting, the lieutenant yelled at Deputy Director Arduini, “[y]ou have your rats doing your dirty work!” (Testimony of Cpt. Hanlon, Exhibit 37)
- e. On August 24, 2006, the lieutenant received a letter of reprimand for his outburst at the August 22, 2006 meeting. (Exhibit 37) The lieutenant was found to have violated Division Rules and Regulations Governing the Conduct and Activities of Officers, which states:
 - 1.8 All Officers of the Division, in their official contact with each other or with the public shall conform to the rules of common courtesy.
 - 1.21 An Officer shall not publicly speak disrespectfully, criticize or ridicule any official action of any Officer of the Division or employee of the Department.

(Exhibit 30, Page 5)

The lieutenant was also found to have violated Division Code of Conduct for All Employees in Bargaining Unit 5: 4. General Rules; (6) D Conduct, Attitude and Demeanor, which states:

Employees are expected to conduct themselves in their official relations with the public and with their fellow employees in a manner which will enhance public respect for, and confidence in, the employee and in the Commonwealth as a whole.

(Exhibit 31, Page 7)

- f. On September 27, 2006, the lieutenant received a letter of reprimand for failing to contact the Communications Center while allegedly working a private detail for the Holyoke Water and Sewer Commission on July 30, 2006.

(Exhibits 30 and 38)

- g. On October 20, 2006, the lieutenant received another letter of reprimand for being arrested by the Northampton Police Department on April 22, 2006 for drunk and disorderly conduct. (Testimony of Cpt. Hanlon, Exhibit 39)

53. Cpt. Hanlon testified that sometime in 2006, all Division officers of the rank of Sergeant and higher attended training on progressive discipline by the Environmental Police's Human Resources Division. (Testimony of Cpt. Hanlon)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civ. Serv. Comm'n, 43 Mass. App. Ct. 300, 304 (1997). *See* Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civ. Serv. Comm'n, 38 Mass. App. Ct. 473, 477 (1995); Police Dep't of

Boston v. Collins, 48 Mass. App. Ct. 411 (2000); Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is “justified” when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” *Id.* at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); *See also* Commissioners of Civ. Serv. v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). 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.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Comm. of Brockton v. Civ. Serv. Comm’n, 43 Mass. App. Ct. 486, 488 (1997). In reviewing an appeal under G.L. c.31 §43, if the 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. Falmouth v. Civ. Serv. Comm’n, 61 Mass. App. Ct. 796, 800 (2004).

The Appointing Authority’s burden of proof is one of a preponderance of the evidence which is established “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). The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the Commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the Commission to have existed when the

appointing authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See also* Commissioners of Civ. Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

D-07-263 (2-day suspension)

The Appointing Authority has established by a preponderance of the evidence that there was just cause to suspend the Appellant for two (2) days for insubordination when he failed to comply with an order by his superior officer. Disobeying an order is in violation of the Division's Rules and Regulations as well as the Division's Code of Conduct for all Employees, and a disciplinary action to prevent such a violation is reasonably justifiable. Instead of following the order to spread pea stone, the Appellant insisted the order was outside his duties as an Environmental Police Officer I, and then refused to comply with the order. The Appellant had every right to grieve the order given to him through the methods afforded to him at the Division. The Appellant testified that his union representative advised him not to obey the order, yet this does not conform to the reasonable policy of obey first, grieve later. (See Ouillet v. City of Cambridge, 19 MCSR 299, 303 (2006).

The Appellant testified that he should not have been required to perform maintenance work while wearing his full uniform. The Appellant argues that his job description does not state that an Environmental Police Officer I should perform "light maintenance." However, the job description does state that a duty of an Environmental Police Officer I is to perform "other related work as required." More importantly, when the Division granted the Appellant's request to be transferred to a different location, some of the duties required of the Appellant also shifted. The Appellant was re-assigned to a position

with the Supply Section, and although he remained an Environmental Police Officer I, the duties given to him conformed to what needed to be done at the Supply Section. When he was assigned to the Supply Section in 2003, the Appellant was also required to maintain the grounds, which included tasks such as cutting grass. Although he was never required to move pea stone, this duty is similar to other maintenance duties which the Appellant had performed in the past at the Supply Section.

The 2-day suspension is consistent with the principles of progressive discipline. The Appellant has been disciplined on numerous occasions in the past, which has reflected poorly on the Appellant's ability to perform his duties. Moreover, having found that there was reasonable justification for some disciplinary action in this case, the Commission can not properly undertake to do fine adjustments in suspensions of five days or fewer without unduly encroaching on the discretion of the Appointing Authority. See Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000) at n. 7.

D-07-264 (4-day Suspension)

After a careful review of the testimony and evidence regarding the 4-day suspension, however, I do not believe the Appointing Authority had reasonable justification to impose this discipline.

It is undisputed that the Appellant, upon being transferred to the Supply Section in Grafton in October 2006, was assigned the task of completing a state-wide inventory of vessels under the control of the Massachusetts Environmental Police. That task was assigned to him by Lieutenant Colonel Roger Arduini, in the absence of Major Bruce Bennett, who was out on vacation.

After listening to the testimony of all of the relevant witnesses (Arduini, Bennett and the Appellant), I was unable to determine what sense of “urgency” was conveyed to the Appellant in regard to completing the inventory in question. While I do not doubt that Deputy Director Arduini initially established an informal deadline of January 2007 for the Appellant to complete the project, there is no dispute that this deadline was extended. Further, upon extending the informal deadline sometime in January 2007, the Appointing Authority initially failed to establish a set date upon which the inventory should be completed.

The testimony of Deputy Director Arduini and Major Bennett (the Appellant’s direct supervisory) reveals that the two men had a somewhat different impression regarding just how time-sensitive this project was. For example, Major Bennett testified that he understood, and apparently acquiesced to, the Appellant suspending his work on the project because many of the vessels were shrink-wrapped. According to Major Bennett, he (the Appellant) said sometime in the Spring that he (the Appellant) would “get back at it” when the shrink-wrapping was removed from the vessels.

It wasn’t until April 2007 that Major Bennett began to express any urgency to the Appellant about bringing closure to the project. Even then, however, no clear benchmarks or deadlines were established beyond an admonishment to “get this wrapped up”. Further, when the Appellant, in April 2007, showed him a book he had been keeping regarding the inventory, Major Bennett didn’t even conduct a cursory review of the book.

Finally, on May 20, 2007, Major Bennett established his first firm deadline for completing the inventory of approximately 100 vessels located in 30-40 locations: June

1, 2007. When Major Bennett determined that the inventory was not completed by the Appellant on June 1, 2007, he issued the Appellant a written warning and established a new deadline of June 29, 2007.

Based on my review of the testimony and the exhibits entered into evidence, it appears that as of June 1, 2007, the Appellant had inventoried 20-25 of the approximately 100 vessels and then inventoried approximately 12 -13 more vessels between June 1, 2007 and June 29, 2007.

For the purposes of determining whether there was reasonable justification for imposing the 4-day suspension for not completing the 100-vessel inventory in a timely manner, I have limited my review to the time period May 20, 2007 – July 16, 2007 – for two reasons. First, it is clear that the Appointing Authority granted an extension in the Spring of 2007 with no defined deadline for completion at the time. Rather, it was not until May 20, 2007 that the Appellant was given a firm deadline for completion – initially June 1, 2007 and then June 29, 2007. Second, this timeframe is consistent with the July 17, 2007 letter regarding the 4-day suspension which states in relevant part, “You failed to follow a written order given to you on June 7, 2007 by Major Bruce Bennett. On that day Major Bennett directed you in writing to compete the boat inventory by June 29, 2007. As of July 16, 2007 the inventory is still not complete.” (emphasis added) (Exhibit 6)

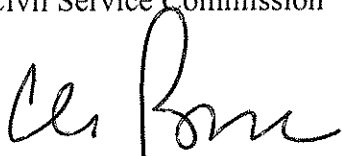
It is undisputed that the vessels in questions were located in 30-40 different locations, including the residences of MEP employees, for which there was no readily available central list to determine the residential locations. Further, it is undisputed that the Appellant had at least some other job duties and responsibilities during the time period in

question. Finally, it is undisputed that the Appellant, as of July 16, 2007, had indeed complied with the order by beginning the inventory project and inventorying approximately 1/3 of the vessels in questions. For all of these reasons, I am unable to conclude that the Appellant's actions represented insubordination, the grounds for the 4-day suspension. As such, the Appointing Authority did not have reasonable justification for issuing the 4-day suspension.

The Appellant should not view this outcome as a vindication or a license to disobey his supervisors in the future. The Appellant, who deserves gratitude and admiration for his years of active military duty, has inexplicably chosen a troubled path as an employee with the Massachusetts Environmental Police. Through his prior misconduct, he has shown insubordination that has resulted in a well-documented record of progressive discipline, which would justify more severe discipline should he engage in such insubordination in the future.

The Appellant's appeal under Docket No. D-07-264 is hereby *allowed*; the 4-day suspension is reversed and the Appellant should be reimbursed for any loss of any pay or benefits associated with this 4-day suspension.

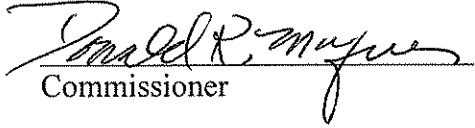
Civil Service Commission

A handwritten signature in black ink, appearing to read 'Chris Bowman', is written over a horizontal line.

Christopher C. Bowman
Commissioner

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein, and Taylor, Commissioners – YES; Marquis, Commissioner - No⁴) on September 18, 2008.

A true record. Attest:


Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. 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:

Rachel E. Muñoz, Esq. (for Appellant)
Francis E. Hartig, Esq. (for Appointing Authority)

⁴ Commissioner Marquis voted note as he believes the Appellant's appeal under Docket No. D-07-264 should be denied and dismissed.