

COMMONWEALTH OF MASSACHUSETTS

Civil Service Commission

Shawn Ryan,
Appellant

v.

D-03-129

Town of Needham,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

John E. Taylor

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, Shawn Ryan, is appealing the decision of the Appointing Authority, Town of Needham, in suspending him without pay from the Needham Police Department for a period of 28 shifts for neglect of Duty, Untruthfulness, and Falsification of Reports, violations of the Needham Police Department Rules and Regulations, Sections 5, 7 and 13. The appeal was timely filed. A full hearing was held on March 2, 2006 at the offices of the Civil Service Commission. Three tapes were made of the hearing. Both parties submitted post-hearing briefs. As no

notice was received from either party, the hearing was declared private. Twenty-four (24) joint exhibits were stipulated to by the parties and entered into the record.

FINDINGS OF FACT

Based upon the stipulated documents entered into evidence (Exhibits 1-24), and the testimony of the Appellant; Kathleen Mullins, Detective, Needham Police Department; Barbara Griffiths, Housekeepers Manager, Sheraton Needham Hotel; Richard Grudinskas, Sergeant Needham Police Department; William G. Slowe, Chief of Police (retired), Needham Police Department; Albert P. Droney, Sergeant (retired), Needham Police Department; John H. Kraemer, Lieutenant Needham Police Department; Karl Harmon, Police Officer Needham Police Department; and Robert Klimas, Trooper Massachusetts State Police, I make the following findings of fact:

1. The Town of Needham is a municipal corporation and the Board of Selectman is the employer and appointing authority. (Exhibit 1)
2. The Appellant was appointed as a permanent, tenured Civil Service Police Officer in the Town of Needham effective March 15, 1999. (Exhibit 1)
3. The Rules and Regulations of the Needham Police Department, effective July 17, 2001 (latest version), sets forth rules of conduct for the Police Department

on matters such as neglect of duty, truthfulness, and falsifying records.

(Exhibit 1)

4. The Policies and Procedures of the Needham Police Department includes sections concerning Duties by Rank and Assignment (Section 2), Breaking and Entering Investigations(Section 3, page 5-1), Evidence Handling, Preservation and Security (Section 3, Page 10-1), Interviewing Witnesses and Victims (Section 3, Page 19-2), and Preliminary Investigations (Section 3, Page 28-1). (Exhibit 1)
5. The Appellant was provided a copy of the Police Department rules and Regulations and policies and procedures and has had the opportunity to read both items. (Exhibit 1)
6. On September 24, 2002, at approximately 8:58 p.m., Barbara Griffiths, Night Manager at the Needham Sheraton Hotel, called the Needham Police Department to report there had been a larceny of laptop computers at the hotel. The call was received and dispatched by Officer Kathleen Mullins to the Appellant. The Appellant was told by Mullins to meet Griffiths at the front desk of the Needham Sheraton. (Testimony, Exhibits 1 & 2)
7. A short time later, at approximately 9:15 p.m., the Appellant came to the desk area of the Needham Police Station and stated that he had called the Sheraton

and they did not know who Barbara Griffiths was. Mullins showed the Appellant her name written down and told him again that she would meet him at the front desk of the Hotel. A few minutes later Mullins went into the rotunda to get booking slips and saw the Appellant on the phone; he was talking to someone about the larceny of the computers. The Appellant later came into the desk area and told Officer Harmon that he was expecting a call back from the Sheraton and that now they believed three computers were stolen. (Testimony, Exhibits 1 & 2)

8. At approximately 9:34 p.m., a domestic disturbance call was received at the police Station. Sergeant Grudinskas was first to arrive on scene. The Appellant and Officer Burke responded to the call. The Appellant was assigned as the arresting officer for this call and ordered to do a report on the incident. Sergeant Grudinskas was unaware of the events at the Sheraton Needham Hotel or the assignment of the call to the Appellant. (Testimony, Exhibits 1 & 3)
9. At the end of the shift, at approximately 12:01 a.m., on September 25, 2002, the Appellant submitted a police report regarding the incident at the Sheraton. Sergeant Grudinskas refused to sign the report due to missing information. Sergeant Grudinskas asked the Appellant about the investigation and whether there was need for a detective or whether fingerprints could be recovered. He

also asked about the physical condition of the rooms.

(Testimony, Exhibits 1 & 3)

10. Officer Ryan answered the questions posed to him by Sergeant Grudinskas, but did not tell the Sergeant that he had not responded to the crime scene, nor did he inform Sergeant Grudinskas that his responses to the questions were the result of a phone conversation between himself and Ms. Griffiths.

Sergeant Grudinskas eventually signed the report. (Testimony & Exhibit 1)

11. The Appellant orally reported to Sergeant Grudinskas in person that there was no forced entry, and later, in a revised written report that there was no evidence of forced entry. (Exhibit 1)

12. Lieutenant Kraemer was the Senior Officer in charge on duty on September 24, 2002. Sergeant Grudinskas was the patrol supervisor.

(Testimony & Exhibit 1)

13. On September 25, 2002, upon arriving at the Police Station, Sergeant Grudinskas was told by Sergeant Christopher Baker that there were multiple breaks at the Sheraton Needham on September 24, and/or September 25 and that the Appellant had not responded. (Testimony & Exhibit 3)

14. On September 24/25, 2002, between approximately 9:00 p.m. to 1:00 a.m., three photographs of the Sheraton were taken by Barbara Griffiths, (Night Housekeepers Manager, Sheraton Needham) which showed that rooms that had either been entered, had damage, or had pry marks on the locks and door jambs. On September 25, 2002, Detective O'Brien visited the scene at the

Sheraton Needham and observed that 22 more rooms had damage, or pry marks to the locks and door jambs.(Testimony & Exhibit 6)

15. The Appellant testified that he was the primary officer on three calls simultaneously, and that he did not respond to the Sheraton Needham because he was too busy. (Testimony & Exhibit 1)

16. The Appellant left his shift without responding to the Sheraton, telling the manager (Barbara Griffiths) at the Sheraton that he would not be responding. He did not notify his superior officer that he did not respond to a crime scene nor did he seek guidance from his superior officer with respect to the prioritization of his workload. (Testimony & Exhibit)

17. The Appellant was suspended for twelve (12) days without pay in December, 1999 for Conduct Unbecoming a Police Officer. That suspension stemmed from an incident in which the Appellant was charged with operating a motor vehicle negligently and Operating a motor vehicle under the influence. (Exhibit 1)

18. The Appellant was suspended for one day without pay in November, 2001 for insubordination. (Exhibit 1)

19. A review of the Appellant's personnel file shows three (3) performance reviews. The Appellant was given a written reprimand dated November 1, 2000 for excessive sick leave. A notation was made in the Appellants 2001

review about two (2) incidents involving superior officers where the Appellant was described as “argumentative.” (Exhibit 1).

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.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983). McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000). City of 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.” City of Cambridge at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The proper inquiry for determining if an action was justified is, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the

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). This burden must be met by a preponderance of the evidence. M.G.L. c. 31, §43.

It is the conclusion of this Commission that the Respondent has satisfied its burden of proving reasonable justification for suspending the Appellant for twenty- eight shifts with out pay. Specifically, the evidence proffered by the Department is sufficiently reliable to warrant a reasonable mind to find that the Appellant is guilty of the misconduct for which he was penalized.

It is the function of the agency hearing the matter to determine what degree of credibility should be attached to a witness’ testimony. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978). Doherty v. Retirement Board of Medicine, 425 Mass. 130, 141 (1997). The hearing officer must provide an analysis as to how credibility is proportioned amongst witnesses. Herridge v. Board of Registration in Medicine, 420 Mass. 154, 165 (1995). The Commission assigns little credibility to the Appellant’s testimony of the incidents in question. He was evasive in his answers and implied that his sergeant was the one at fault. The Appellant testified that he told Sergeant Grudinkas (patrol supervisor) that he did not go to the Sheraton Hotel on the night of the incident but took the information about the missing lap-tops over the phone. Sergeant Grudinkas (a credible witness) testified that the Appellant never told him that he did not go to hotel and, in fact, implied that he had gone to the Sheraton Hotel. Sergeant Grudinkas did not know about the call from the Sheraton Hotel when he

assigned the Appellant as arresting officer in a domestic incident. The Appellant never told the sergeant that he had been assigned to the incidents at the Sheraton Hotel. By his own testimony, the Appellant admitted that he did not go to the Sheraton Hotel on the night of September 24, 2002. The Appellant was not truthful when he submitted a report indicating that there was no forced entry at the Sheraton Hotel when it was later shown that there were at least twenty-two (22) rooms at the hotel that had damage or pry marks to the locks and doors and by making this same statement, that there was no forced entry at the Sheraton Hotel, to Sergeant Grudinskas. When asked if there was a misunderstanding regarding what the Appellant told Sergeant Grudinskas about the incidents at the Sheraton Hotel, the sergeant testified that he was misled. On September 24/25, 2002 between approximately 9:00 p.m. to 1:00 a.m., three (3) photographs of the Sheraton were taken by Barbara Griffiths (Housekeepers Manager) which showed rooms that had either been entered, had damage or pry marks on the locks or door jambs. On September 25, 2002, Detective O' Brien visited the hotel and observed that 22 more rooms had damage or pry marks to the locks and door jambs. Barbara Griffiths (Housekeepers Manager, Sheraton Hotel) testified that she called the Needham Police on the night of September 24, 2002 to report computer thefts from two different rooms at the hotel. The Appellant called her from the police station and took information regarding the thefts but never went to the hotel to investigate the crimes. Ms. Griffiths stated that she had occasion to call the Needham Police Department in the past and the response was usually good, meaning that a police officer came to the hotel but on this occasion, the response was poor as no one came to the hotel on the night of September 24, 2002. Ms. Griffiths was competent, consistent and a creditable witness. Kathleen Mullins

(Detective, Needham Police Department) was on desk duty at the police station on the night of September 24, 2002. She stated that it was a very busy night with a lot of calls. Detective Mullins testified that she received a call at 8:58 P.M. from the Sheraton Hotel regarding two laptop computers that had been stolen. She told the hotel that she would dispatch an officer. The detective gave the call to the Appellant. The Sheraton Hotel is approximately three (3) miles from the Needham Police Station. The Appellant never told the detective that he would not be able to respond to the call at the Sheraton Hotel.

Detective Mullins testimony excluded the type of detail and clarity that was indicia of accuracy and reliability. William G. Slowe (Chief of Police, retired, Needham Police Department) testified that he became aware two (2) days after the incident at the Sheraton Hotel that the call was not answered by the Appellant. The chief testified that in forty-one (41) years of service to the Needham Police Department, he could not recall a time when a police officer failed to respond to a felony. He stated that there was no excuse in not responding to the hotel. Chief Slowe's demeanor was responsive, unhesitant and appropriate. He was a creditable witness.

The testimony of the Appellant, Shawn P. Ryan was vague and exhibited a suspect recall of the underlying events and his testimony was contradicted, in critical points, by other reliable, credible witnesses.

For all of the above stated reasons, it is found that the Department has shown by a preponderance of the reliable and credible evidence in the record that it had just cause to suspend the Appellant for a period of 28 shifts without pay for neglect of Duty,

Untruthfulness, and Falsification of Reports and violations of the Needham Police Department Rules and Regulations, Sections 5, 7, and 13. Therefore this appeal, (Case No. D-03-129) is *dismissed*.

Civil Service Commission

John E. Taylor
Commissioner

By vote of the Civil Service Commission (Goldblatt; Chairman, Taylor, Guerin and Marquis; Commissioners [Bowman – Absent]) on February 1, 2007.

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. A motion for reconsideration shall be deemed a motion for rehearing in accordance with MGL ch. 30A sec. 14(1) for the purpose of tolling the time of appeal. Pursuant to MGL ch. 31 sec. 44, any party aggrieved by a final decision or order of the Commonwealth may initiate proceedings for judicial review under MGL ch. 30A sec. 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:

David F. Grunbaum, Esq.
Robert J. Powers, Esq.