

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

GEORGE SHARPE,
Appellant

v.

D1-06-288

TOWN OF ARLINGTON,
Respondent

Appellant's Attorney:

Jaime DiPaola-Kenny, Esq.
AFSCME Council 93
8 Beacon Street
Boston, MA 02108
(617) 367-6024

Respondent's Attorney:

John F. Maher, Esq.
50 Pleasant Street
Arlington, MA 02476
(781) 641-4889

Commissioner:

Christopher C. Bowman

DECISION

The Appellant, George Sharpe (hereafter "Sharpe" or "Appellant"), pursuant to G.L. c. 31, § 43, filed a timely appeal with the Commission on October 20, 2006 claiming that the Town of Arlington (hereafter "Town" or "Appointing Authority") did not have just cause to terminate him as a junior building custodian on October 16, 2006.

A full hearing was conducted on April 25, 2007 at the offices of the Civil Service Commission. As no written notice was received from either party, the hearing was declared private. All witnesses, with the exception of the Appellant, were sequestered.

Two (2) tapes were made of the hearing

FINDINGS OF FACT:

Sixteen (16) Exhibits were entered into evidence at the hearing. Based on the documents submitted and the testimony of the following witnesses:

For the Appointing Authority:

- Janeil Campbell, Junior Building Custodian;
- Johanne Yablonsky, Senior Building Custodian;
- Patricia Langone, Junior Building Custodian;
- Teresa DeBenedictis; Assistant Director of Public Works;

For the Appellant:

- Sean Patrick, Appellant's Son;
- Appellant George Sharpe;

I make the following findings of fact:

1. The Appellant, George Sharpe, was a tenured civil service employee of the Town of Arlington. He is 67 years old and had been employed by the Town of Arlington for approximately 9 ½ years as a junior custodian prior to being terminated on October 16, 2006. (Testimony of Appellant)

Prior Discipline

2. On July 19, 2001, the Appellant was suspended for three (3) days for a 2-hour unauthorized absence from the work site. (Exhibit 2)
3. The Appellant had been warned on several occasions not to use the school to which he was assigned as a place to sleep overnight. (Exhibits 1, 3, 4, 5 and 6)

Incident that Precipitated the Appellant's Termination

4. On the evening of Tuesday, September 12, 2006, the Appellant was scheduled to work his regular 3:00 P.M. – 12:00 Midnight shift as a junior building custodian at Arlington High School. (Testimony of Appellant)
5. During the above-referenced shift at Arlington High School, Johanne Yablonsky was the acting senior building custodian. She has been employed with the Town for eighteen (18) years. Among the other junior building custodians working that night, in addition to the Appellant, were Patricia Langone and Janeil Campbell. All three of these individuals testified before the Commission. Three other male custodians, including John Gray were on duty that night. John Gray is now deceased. (Testimony of Yablonsky, Langone and Janeil Campbell)
6. Ms. Yablonsky, the acting senior custodian, testified that the Appellant was assigned to cleaning duties on the fifth floor of Arlington High School on September 12th. Ms. Yablonsky did not see the Appellant report to duty at 3:00 P.M. that day, but assumed he reported directly to the fifth floor to begin his duties. (Testimony of Yablonsky)
7. Ms. Yablonsky testified that during the three months prior to the incident in question, she had expressed concern to her supervisor, Paul Comeau, that she found the Appellant regularly sleeping in a chair after he reported for work and that he “didn’t look normal”. According to Ms. Yablonsky, she was told by Mr. Comeau that the Appellant was “under doctor’s care” and that she (Ms. Yablonsky) should assist the Appellant with his duties if necessary. (Testimony of Ms. Yablonsky)
8. Ms. Yablonsky testified that it was her understanding that, on or around the time of the incident, the Appellant had been sleeping overnight in the school building. She

assumed Mr. Comeau was aware of this. (Testimony of Ms. Yablonsky) The Appellant testified that Mr. Comeau was indeed aware that he was sleeping in the school. (Testimony of Appellant)

9. Ms. Yablonsky testified that the custodians took their customary dinner break sometime between 7:00 and 8:00 P.M. on September 12th. At some point during this dinner break, Junior Custodian Campbell questioned the whereabouts of the Appellant, who was not present at dinner break that night. (Testimony of Yablonsky)
10. Ms. Yablonsky interrupted her dinner break sometime between 7:30 and 7:45 P.M. on September 12th and went up to the fifth floor of the school to look for the Appellant. Upon arriving on the fifth floor, she noticed that half of the Appellant's cleaning duties had been completed and that the faculty bathroom door was locked. She knocked on the faculty bathroom door and heard the Appellant say, "I'm O.K." Ms. Yablonsky assumed that the Appellant was resting; returned to dinner break and informed Junior Custodian Campbell that the Appellant was O.K. (Testimony of Yablonsky)
11. According to Ms. Yablonsky, another custodian, John Gray, had left the building during the 7:00 – 8:00 P.M. dinner break. Ms. Yablonsky noticed that an individual was standing behind John Gray as he punched back in from dinner break. Again according to Ms. Yablonsky, Mr. Gray stated, "Johanne, George's son is here to see George." (Testimony of Yablonsky)
12. There is no dispute that the Appellant's son, Sean Patrick, came to visit his father at Arlington High School sometime on the night of September 12, 2006. Mr. Patrick, age 23, testified before the Commission. (Testimony of Patrick)

13. It was clear to this Commissioner that Sean Patrick is a dedicated son who has taken on much of the care-taking responsibility for his father. His unconditional love for his father, however, appeared to color key aspects of his testimony regarding events that occurred on the night in question. Commenting on whether he would lie to protect his father, Mr. Patrick stated, “under oath? I don’t think so”. During key parts of his testimony, Mr. Patrick’s face often turned red and he would fidget with his goatee. (Testimony, Demeanor of Sean Patrick)
14. Sean Patrick recalls arriving at Arlington High School on the night in question at approximately 8:30 P.M. According to Mr. Patrick, he came to the school that night to deliver the prescription drug Humira to his father, which he had been storing in his home refrigerator. Again according to Mr. Patrick, the Humira was being stored at his home as his father did not have a refrigerator where he was staying at the time. (Testimony of Sean Patrick)
15. According to the Appellant, he had been prescribed Humira to treat his rheumatoid arthritis. (Testimony of Appellant)
16. Exhibit 16 is a copy of the Appellant’s prescription for Humira. Under “common uses”, the drug is described as “an immune response modifier used to treat rheumatoid arthritis in certain patients.” Under the instructions section, the prescription reads in part, “This medicine is sometimes used at home as an injection.” Under “Possible Side Effects”, the prescription states in part, “side effects that may occur while taking this medicine include redness, itching, pain, swelling, and minor bleeding or bruising at the injection site; headache or nausea.” (Exhibit 16)

17. According to Ms. Yablonsky, she walked Sean Patrick up to the fifth floor of the high school so he could meet with his father. Ms. Yablonsky, when asked if Sean Patrick was carrying a bag or anything, answered, “no; I don’t think so”. (Testimony of Yablonsky)
18. Upon arriving on the fifth floor of the high school with the Appellant’s son, Ms. Yablonsky again knocked on the door of the faculty bathroom and the Appellant came out of the bathroom. Asked by this Commissioner to describe the appearance of the Appellant at this point, Ms. Yablonsky stated, “he looked very tired; sleeping; resting”. Yablonsky then left the fifth floor, with the Appellant and his son remaining on the fifth floor. (Testimony of Yablonsky)
19. Sean Patrick testified that he then gave his father, the Appellant, the Humira, along with a syringe to inject the medicine with. According to Mr. Patrick, he had previously attended an information session regarding how to administer the drug through injection. (Testimony of Sean Patrick)
20. Asked during direct testimony if he saw his father take the Humira on the night of September 12th, Mr. Patrick hesitated and then stated, “yes, I believe so.” (Testimony of Sean Patrick)
21. Mr. Patrick then testified that, in an effort to assist his father, he went and swept some of the classrooms on the fifth floor of the building for approximately half an hour on the night in question. (Testimony of Sean Patrick)
22. After sweeping the classrooms, Mr. Patrick testified that he went to see where his father was. Mr. Patrick then stated, “he (his father) brought me down to the third floor where there is a teachers’ lounge.” Again according to Mr. Patrick, it was at

this point, when he either saw, or was brought by, his father to the third floor, that he saw his father inject the Umira. He quickly recanted this testimony, however, and stated, “I’m not sure when I saw him take it”. Asked if he remembered *where* he saw his father take the Humira, Mr. Patrick hesitated and then stated, “I believe it was in the teachers lounge, but it could have been in the room upstairs after I did the work. I’m sorry.” Asked if he saw his father bleeding at any point, Mr. Patrick stated, “not that I saw.” (Testimony of Appellant)

23. According to Mr. Patrick, he then stayed in the third floor teachers’ lounge with his father for approximately thirty minutes. Again according to Mr. Patrick, his father never mentioned using cocaine and never referenced any phrase such as “booting drugs” during this thirty-minute period. Mr. Patrick testified that, after thirty minutes with his father, he asked his father to walk him downstairs to the exit to ensure that he didn’t set off any alarms. According to Mr. Patrick, his father was “not feeling well at all; he actually asked me if I could get (Ms. Yablonsky) for him. At that point, I didn’t want to get lost myself, so I disregarded what he asked me to do and I just found myself out somehow and just left...at approximately 9:50 P.M.” (Testimony of Sean Patrick)

24. Mr. Patrick testified that when he left the school shortly before 10:00 P.M. on the night in question, his father was drinking a 2-liter bottle of Coca Cola directly out of the bottle. (Testimony of Sean Patrick)

25. Asked during direct testimony about whether his father drinks alcohol, Mr. Patrick testified that “he (his father) doesn’t drink”. (Testimony of Sean Patrick)

26. As referenced above, Janeil Campbell was a junior building custodian that was also working the 3:00 P.M. – 12:00 Midnight at the Arlington High School on the night of September 12, 2006. She testified before the Commission. (Testimony of Ms. Campbell)
27. Like Ms. Yablonsky, Ms. Campbell testified that the dinner break is between 7:00 and 8:00 P.M.; the custodians typically meet in “the pit” between the first and second floor for the dinner break; and, on September 12, 2006, the Appellant was not present for the dinner break causing her to inquire about his whereabouts. (Testimony of Ms. Campbell)
28. According to Ms. Campbell, she first saw the Appellant that night at the end of her dinner break (which ends at 8:00 P.M.), when she saw him outside of the building near the loading dock. (Testimony of Ms. Campbell)
29. Ms. Campbell testified that upon seeing the Appellant at the loading dock (at approximately 8:00 P.M.) she called to him at which time the Appellant told her he “had done something really bad” and then he walked back into the building. (Testimony of Ms. Campbell)
30. Ms. Campbell testified that the next time she saw the Appellant on the night in question was between 10:00 and 10:15 P.M. when she saw him “sitting outside the pit in a chair.” Asked during direct testimony what she observed about Mr. Sharpe’s condition when she saw him between 10:00 and 10:15 P.M that night., Ms. Campbell stated, “he was very pale, diaphoretic, blood on his right hand, he seemed to be very anxious.” Asked if the Appellant said anything to her, Ms. Campbell stated, “no; he didn’t”. Ms. Campbell then testified that, upon questioning the Appellant, he stated

to her that “he was sick...he said I got sick...then he stated that he had done a sixteenth of coke and that he had gotten sick on the second floor of the teachers’ lounge”. (Testimony of Ms. Campbell)

31. Asked by this Commissioner to re-state what the Appellant said to her after stating that he was sick, Ms. Campbell replied, “that he had done a sixteenth of coke”. This Commissioner then asked Ms. Campbell “is that what he said to you; he said those words?” to which she replied, “yes, he did”. This Commissioner then asked Ms. Campbell, “what are the exact words he said?” to which she replied, “he said ‘I did coke’; I said ‘how much?’ and he said ‘a sixteenth’”. (Testimony of Ms. Campbell)
32. Ms. Campbell then testified that she walked the Appellant to the break room; sat him down on a chair; pulled a barrel over; and questioned him further after seeing blood on the Appellant’s fingers. Ms. Campbell then testified that the Appellant, responding to her inquiry about the blood, told her he had “booted” the cocaine. Asked if she understood what that term meant, Ms. Campbell testified she understood that term to mean that the Appellant had used a needle to “shoot” the sixteenth of cocaine and at no time that night did the Appellant mention that he had an adverse reaction to prescription drugs. (Testimony of Ms. Campbell)
33. Ms. Campbell testified that she asked the Appellant what he had done with the syringe and that the Appellant told her that he “got rid of it”. (Testimony of Ms. Campbell)
34. Given the importance of Ms. Campbell’s testimony to the outcome of this appeal, I asked her to recount the events of that night at least three times, including her recollection of the statements made by the Appellant. She was unwavering in her

testimony and consistently stated that Mr. Sharpe acknowledged using cocaine on the night of September 12, 2006. Moreover, I find that her expression of concern and affection for the Appellant on display during her testimony before the Commission was sincere, thus eliminating the likelihood of ulterior motives for her testimony against the Appellant. I find her testimony to be credible. (Testimony, demeanor of Ms. Campbell)

35. Ms. Campbell testified that she then brought the Appellant up to the teachers' lounge on the third floor of the building at which time she observed urine on the floor. After helping the Appellant sit on a couch in the teachers' lounge, Ms. Campbell walked out of the room and saw Ms. Yablonsky, the senior custodian. According to Ms. Campbell, she told Ms. Yablonsky that "we need to call 911". (Testimony of Ms. Campbell)

36. Ms. Yablonsky confirmed that Ms. Campbell came out of the teachers' lounge and informed her that they needed to call 911 for the Appellant. (Just prior to this, Ms. Yablonsky had observed vomit and urine on the floor outside the teachers' lounge.) When Ms. Yablonsky asked Ms. Campbell why they needed to call 911, Ms. Campbell stated to her, "George booted...he put the needle in his arm." (Testimony of Ms. Yablonsky)

37. Ms. Yablonsky, wanting to follow the proper chain-of-command, testified that she had Ms. Campbell, who she believed to also work for a lab technician, call her supervisor, Paul Comeau, before calling 911. (Testimony of Ms. Yablonsky)

38. According to Ms. Yablonsky, Ms. Campbell was told by Mr. Comeau to go ahead and call 911 or, in the alternative, drive the Appellant to the hospital if he was able to

walk. Ms. Yablonsky then testified that she “didn’t want to make a big thing out of this” and did not call 911 and/or bring the Appellant to the hospital. Ms. Yablonsky then told Ms. Campbell to inform the Appellant that he needed to “leave the building”. Ms. Yablonsky then saw the Appellant leave the building at approximately 11:00 P.M. (Testimony of Ms. Yablonsky)

39. Other than those employees required to hold a Commercial Drivers License, the Town has no drug testing policy for non-public safety employees and the Appellant was never asked to submit to drug testing at the time of the incident. (Testimony of DeBenedictis)

40. Mr. Comeau subsequently received a written warning for “failing to discharge his duties as the supervisor of custodians” on the night in question. (Testimony of Ms. DeBenedictis)

41. As referenced above, Patricia Langone was another junior custodian on duty on the 3:00 P.M. – 12:00 Midnight shift on September 12, 2006. Ms. Langone testified before the Commission that she saw the Appellant arrive for work at approximately 2:50 P.M. on the day in question. The next time she saw the Appellant was at approximately 10:15 P.M. sitting in a chair in the “pit”. According to Ms. Langone, the Appellant had “blood and vomit all around his mouth and there was blood dripping on his hand; he was ashen; no color whatsoever”. Again according to Ms. Langone, she asked the Appellant if he was having a stroke, to which he replied, “I did coke; I did something bad” and asked her for water. At this point, Ms. Langone went and got Ms. Campbell. (Testimony of Ms. Langone)

42. Ms. Langone is a credible witness. She provided straightforward answers to questions posed to her and did not seek to overreach in her responses. Specifically, I find her testimony regarding the Appellant's admission to her of him using cocaine that night to be credible. (Testimony of Ms. Lagone)
43. The Appellant testified on his own behalf before the Commission. While he did not dispute being ill on the night of September 12, 2006, he adamantly denied using cocaine on the night in question and/or telling any of his co-workers that he had used cocaine. Further, the Appellant testified that he has not used illicit drugs in approximately two years. (Testimony of Appellant)
44. The Appellant has been receiving treatment from the Veterans Administration, including the use of methadone. He has been attending group counseling sessions for years. As a condition of receiving methadone, the Appellant testified that he must undergo random drug testing and attend one-on-one counseling sessions. (Testimony of Appellant)
45. The Appellant testified that as part of the above-referenced treatment at the Veterans Administration, he has a drug counselor named Steven Press. Again according to the Appellant, he had been undergoing random drug testing at least once every two or three weeks. The Appellant testified that he asked his drug counselor, Steven Press, to provide him with a status update regarding his drug testing, after the incident on September 12, 2006. (Testimony of Appellant)
46. Exhibit 17 is a typed communication from Steven Press dated September 28, 2006, 16 days after the incident at Arlington High School. According to the Appellant, Steven Press has been his drug counselor for approximately five years. The communication

from Steven Press states in relevant part, “Objective: Mr. George Sharpe is a long term patient at the Drug Dependence Treatment Center that is operated by the Veterans Administration. Mr. Sharpe receives 60mg of methadone daily. He leaves a urine (sic) whenever requested to do so. He also attends group therapy weekly. He comes in for dispensing once a week (Monday).” The communication from Steven Press goes on to state in relevant part, “Assessment: Patient stable. Urine samples indicate that Mr. Sharpe has not used illicit drugs for well over two years. He attends his group therapy on a regular basis. He is considered to be in good status at this facility.” (Exhibit 17 and Testimony of Appellant) According to counsel for the Appellant, she was unsuccessful in her effort to get Mr. Press to testify voluntarily before the Commission and no subpoena was issued to compel his appearance. According to counsel for the Appointing Authority, this same exhibit was entered into evidence as part of the prior disciplinary hearing conducted by the Town of Arlington. I give no weight to Exhibit 17 for the following reasons: it is not clear from the exhibit when the last random drug test was administered to the Appellant in relation to September 12, 2006; it is not clear what information this counselor, who is not a physician, relied upon to make his conclusions; and the counselor can not be questioned and cross-examined on these key issues as he was not issued a subpoena to appear before the Commission. In fact, the counselor who authored the document did not return phone calls from the Appellant’s counsel when she sought to have him voluntarily testify before Commission.

47. In regard to the night of September 12, 2006, the Appellant testified that he injected himself with the prescribed drug Humira, referenced above, into his arm, in order to

treat rheumatoid arthritis. Again according to the Appellant he “hit a vein” while attempting the injection and his arm started bleeding; he proceeded to pull the needle out and injected it some place else and felt a burning sensation in his arm. (Testimony of Appellant)

48. According to the Appellant, shortly after he injected the Humira into his arm, he started feeling some “flashes” and “just didn’t feel good”. Again according to the Appellant, he decided to go downstairs to see fellow junior custodian Janeil Campbell. While trying to find Ms. Campbell, the Appellant testified that he went into the teachers’ lounge and was unable to make it to the toilet before urinating. In addition to urinating, the Appellant testified that he vomited and began to have “heat flashes.” Again according to the Appellant, he began drinking large amounts of Coca Cola in response to the hot flashes. The Appellant testified that he believes the Coca Cola actually made him “even sicker”. (Testimony of Appellant)

49. The Appellant also testified that he had just eaten a re-heated spaghetti dinner that had been in the refrigerator for a couple days. (Testimony of Appellant)

50. The Appellant eventually made it “downstairs” where he saw fellow custodian Janeil Campbell. According to the Appellant, he told Ms. Campbell, “Someone has to help me; I’m really sick. I took some medication.” The Appellant testified that, although he wanted to sit and rest, he was eventually told by Ms. Campbell and other custodians that he needed to leave the building, per the instructions of Paul Comeau, at which time he left the building. (Testimony of Appellant)

51. Asked during direct testimony if he ever told Ms. Campbell that he “booted” a “sixteenth” of cocaine on the night in question, the Appellant stated, “no, no,

definitely not; but I did mention I was drinking Coke; I drank a lot of Coca Cola... Why am I going to tell someone I was doing cocaine? That's the most ridiculous thing. In a school?" Asked during direct testimony if he used cocaine that night, the Appellant stated, "no, no, of course not" and insisted that the only drug he injected into himself on the night of September 12, 2006 was the prescribed drug Humira. Further, the Appellant testified that even during the period of his life when he used illicit drugs, he never took them via an injection. (Testimony of Appellant)

52. Asked during cross examination what made him ill on the night of September 12, 2006, the Appellant stated that he is unsure as he is not a physician, but speculated that he could have had an adverse reaction to the Humira and/or the Humira combined with the large amounts of Coca Cola he was drinking or the ingestion of the re-heated spaghetti dinner. (Testimony of Appellant)

53. The Appellant testified that he thinks he returned to work the next night and worked a few more days at Arlington High School before anyone brought up the incident of September 12, 2006 with him. (Testimony of Appellant)

54. Asked during direct testimony why Ms. Campbell would state that the Appellant told her he "booted a sixteenth of cocaine", the Appellant described Ms. Campbell as an "alpha female" who resented him for how he "ran the shift" at one point when he was "second in command". The Appellant stated, "I think she's angry at me; its all part of it; (she says) 'I love George'...I think its 'I hate George' in a lot of ways." (Testimony of Appellant)

55. In regard to fellow custodian Patricia Langone, the Appellant testified that she is known to tell “tall tales” and was part of an overall effort of certain female custodians “gunning for guys in the place”. (Testimony of Appellant)
56. Teresa DeBenedictis is the Assistant Director of Public Works. From December 2, 2006 until mid-April 2007, Ms. DeBenedictis was the Acting Director. She testified before the Commission. (Testimony of DeBenedictis)
57. A few days after September 12, 2006, Ms. DeBenedictis, then serving as the Assistant DPW Director, met with Mark Miano, Superintendent of Building Maintenance and Custodians, and then-DPW Director John Sanchez, per the request of Mr. Miano. According to Ms. DeBenedictis, Mr. Miano described the incident involving the Appellant that occurred on September 12, 2006, as conveyed to him by the three female custodians, whose testimony is referenced above. (Testimony of DeBenedictis)
58. On September 20, 2006, Ms. DeBenedictis was asked by Mr. Miano to come to the high school and take photographs of the contents of the Appellant’s locker. The photographs were entered as Exhibit 11. (Exhibit 11)
59. I give no weight to the photographs entered as Exhibit 11 for three reasons. First, Ms. DeBenedictis had no first-hand knowledge that the objects she took photographs of were from the Appellant’s locker. At the time she arrived at the high school to take the pictures, the objects were not in the Appellant’s locker. Rather, the objects in question were spread on a table, with the representation from Mr. Miano (to Ms. DeBenedictis) that he, and possibly another unnamed person had previously taken the contents from the Appellant’s locker, put them in a box, and then subsequently put

them on a table for the purpose of taking photographs. The Appellant was not present when the objects were purportedly taken from his locker and was not present when the photographs were taken. Mr. Miano was not called as a witness before the Commission, nor was the unnamed person. Second, Ms. DeBenedictis had no information, directly, or indirectly, regarding whether or not the locker was locked during the eight days between September 12, 2006 (the incident in question) and September 20, 2006 (the day she took the photographs). Third, none of the contents found were tested to determine whether or not they were an illegal substance or a residue of an illegal substance. (Testimony of Ms. DeBenedictis; Exhibit 11)

60. After a hearing by the Appointing Authority on September 27, 2006 and October 10, 2006, the Appellant was terminated from his position as a junior custodian on October 16, 2006. All three of the custodians that testified before the Commission testified at the Appointing Authority hearing. Although not explicitly stated in the hearing officer's findings and conclusion, it appears that the City's hearing officer deemed the City's witnesses to be credible and the Appellant not to be credible. Further, although not explicitly stated in the same findings and conclusion, it appears that the City's hearing officer concluded that the Appellant had used cocaine on the night in question. The hearing officer concluded that the Appellant should be terminated. (Exhibits 8 and 9)

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). See 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.” Id. 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 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). The Appointing Authority’s burden of proof is one of a preponderance of the evidence which is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.” Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). 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. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

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* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

George Sharpe is a likeable and amusingly charming 67-year old male who acknowledges that he has faced challenges with drug addiction, including the use of illegal drugs, in the past. This Commissioner was not surprised to see the sincere display of sympathy and concern for the Appellant by those witnesses called by the Appointing Authority to testify against him. In his own unique way, the Appellant has engendered goodwill from his now-former co-workers that continues to this day.

Unfortunately for the Appellant, who was just six months shy of qualifying for retirement benefits at the time of the incident in question, the Town of Arlington has proven through a preponderance of the evidence that they had just cause to terminate his employment as a junior custodian. Specifically, two credible witnesses, with nothing but goodwill for the Appellant, credibly testified that Mr. Sharpe, after falling ill on the night of September 12, 2006, explicitly stated to them that he had used cocaine on the night in question. Based on the strength and veracity of their testimony, the Town has sustained their burden of proof in the instant appeal.

In regard to the testimony of Sean Patrick, who testified on behalf of his father, I was unable to reconcile key aspects of his testimony before the Commission. His recollection of events regarding the night in question was, at best, hazy, and his answers appeared couched toward providing an alternate explanation regarding what transpired at Arlington High School on September 12, 2006. For example, he testified before the Commission that he attended a doctor's appointment with his father to learn about injecting the Humira and further testified that the primary purpose for going to the high school that night was to bring his father his prescription of Humira. Yet, Mr. Patrick was unable to state with certainty whether he even saw his father take Humira that night. The most plausible explanation of what occurred that night is that Sean Patrick, who has served as a de-facto caretaker for his father, left Arlington High School that night, without calling for medical assistance, after becoming exasperated upon learning that his father had fallen down on his road to recovery and used cocaine. Had his father truly had an adverse reaction to Humira or some other medical issue unrelated to the use of illegal drugs, this Commissioner has no doubt that Sean Patrick would have sought medical assistance directly or asked one of the custodians on duty that night to call for help.

Similarly, I don't find the testimony of the Appellant, who testified on his own behalf, to be credible. His testimony was greatly diminished by his statements in which he concluded that the Town's witnesses were effectively conspiring against him, and presumably, fabricating their testimony to oust him from his position. There was no evidence presented to substantiate this assertion by the Appellant and, as referenced above, I have reached the opposite conclusion regarding their testimony.

The Town of Arlington has proven through a preponderance of the evidence that they had just cause to terminate George Sharpe's employment as a junior custodian and there is no evidence of inappropriate motivations or objectives that would warrant the Commission overturning their decision. Therefore, the Appellant's appeal under Docket No. D1-06-288 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Commissioner

By a 4-0 vote of the Civil Service Commission (Henderson, Chairman; Bowman, Guerin, Taylor, Commissioners [Marquis – not participating]) on June 21, 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. 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:

John F. Maher, Esq. (for Appointing Authority)

Jaime DiPaola-Kenny, Esq. (for Appellant)