

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

BARBARA SKRYCKI,
Appellant

V.

Docket No. D-05-108

TOWN OF BRAINTREE,
Respondent

Appellant's Attorney:

Stephen C. Pfaff, Esq.
Merrick, Louison & Costello, LLP
67 Batterymarch Street
Boston, MA 02110

Respondent's Attorney:

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Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Barbara Skrycki (hereinafter "Appellant"), is appealing an action taken by the Respondent, Town of Braintree (hereinafter "Town") as Appointing Authority, terminating her from her position as a Police Sergeant on March 21, 2005. The appeal was timely filed. A full hearing was held on October 10 – 11, 2005 at the offices of the Civil Service Commission (hereinafter "Commission"). As no written notice was received from either party, the hearing was declared private. A Joint Motion to Sequester Witnesses was allowed at the outset of this

hearing. Five (5) audiotapes were made of the hearing. Proposed Decisions were received from both parties as directed.

FINDINGS OF FACT:

Based upon the documents entered into evidence (Joint Exhibits 1 – 33) and the testimony of the Appellant, Braintree Police Chief Paul H. Frazier, Deputy Chief Russell Jenkins, Officer Brendan McLaughlin, Retired Officer James J. McDonald, Sears Loss Prevention Associate Sean Gallagher and Macy's Security Department Associate Tracy Fox, I make the following findings of fact:

1. The Appellant provided sworn testimony as to the identities of three (3) men appearing as subjects in a video surveillance tape of a transaction at the Braintree Sears Roebuck and Company on September 14, 2003, which was submitted into evidence as Exhibit 18 in this matter. The three (3) men were identified by the Appellant as being Willie Slaughter, Paul McKenzie and Richard Gomes. I take note of the fact that this was the only testimony offered by the Appellant in this case. She declined to testify on her own behalf. (Appellant Testimony, Exhibit 18)
2. The Appellant served as a Civil Service tenured Police Officer for the Marshfield Police Department from 1980 until 1993 when she laterally transferred to the Braintree Police Department (hereinafter "BPD"). Braintree Police Chief Paul H.

- Frazier (hereinafter “Chief Frazier”) recommended and approved the Appellant’s transfer at the time. (Frazier Testimony)
3. The Appellant received a copy of the Rules and Regulations of the BPD on October 25, 1994, which she acknowledged with a signed receipt. (Exhibit 27)
 4. The Appellant was promoted to the rank of Sergeant in September 2002. In her capacity as Sergeant, the Appellant was assigned as the patrol supervisor of the 2:30 p.m. through 10:30 p.m. evening shift. (Frazier Testimony, Jenkins Testimony)
 5. Police Officers below the rank of Sergeant are members of a union called the Braintree Police Patrolmen’s Club (hereinafter “BPPC”). Superior Officers are members of a separate union called the Braintree Police Superior Officers Association (hereinafter “BPSOA”). As a Sergeant, the Appellant belonged to the BPSOA. (Testimony)
 6. On February 29, 2003, the Appellant received the results of her “6 Months Merit Review”, conducted by the BPD as she had become a Sergeant approximately six (6) months previously. The performance evaluation rated the Appellant on twenty-eight (28) items in six (6) separate categories. These categories were titled: Quality of Work, Quantity of Work, Work Habits, Work Attitudes, Relationships with Others, and Supervisor Ability. The Appellant received a rating of “Excellent (above average)” on each and every item in all categories. Her “Overall Employee Evaluation” was also rated as “Excellent (above average)”. In the space provided for the evaluator’s comments relative to the employee’s performance was written, “Under difficult conditions, Sgt. Skrycki

- has attempted to instill discipline and personal responsibility to her shift.” The evaluation was signed by the “initial evaluator” and Chief Frazier. (Exhibit 19)
7. On or about May 18, 2003, the Appellant filed a written, official complaint with then-Deputy Chief James Sullivan relative to an incident of personal harassment toward her at the police station that she believed created a hostile work environment for her. As part of the written complaint, the Appellant requested that a full investigation of the charge be conducted by the Chief. (Exhibit 20)
 8. Chief Frazier credibly testified that, to his knowledge, the Appellant was not the first female officer in the BPD to file a harassment/hostile work environment charge against the Town. Two (2) other female officers did so in 2001 which meant that the Appellant’s complaint resulted in three (3) out of eight (8) female officers on the BPD filing similar charges of a hostile work environment in a two (2) year timeframe. The Chief further testified that the other two (2) harassment suits were for gender discrimination and “have gone nowhere.” (Frazier Testimony)
 9. The Appellant advised the Chief in her complaint that the two (2) main agents whose actions gave rise to the alleged hostile work environment were Sergeant Donald Maglio and Officer Richard Jordan. (Exhibit 20)
 10. On or about May 19, 2003, the Chief ordered Sergeant Maglio to report to the police station at 1:00 p.m. on May 23, 2003 “to allow Lieutenants Jenkins and MacAleese to conduct an interview into the allegation” that he had “made inappropriate comments regarding her (the Appellant), thereby creating a hostile

work environment.” Sergeant Maglio signed for receipt of the written order on May 21, 2003. (Exhibit 32)

11. The Chief testified that Sergeant Maglio did not wish to participate in the investigation and, in fact, retired abruptly from the BPD. On the same day as the incident involving the Appellant occurred, Officer Jordan went home sick with blood pressure and heart problems. He remained out of work on “injury status” and the Chief testified that Officer Jordan could not participate in an interview relative to the Appellant’s allegations due to his medical condition. (Frazier Testimony)
12. On June 20, 2003, the Appellant filed a written complaint with the Chief taking issue with his failure to conduct an investigation of her allegations by that time. (Exhibit 21)
13. On June 30, 2003, the Chief issued a memorandum to Officer Jordan to “identify an appropriate time when investigators can conduct an interview with you regarding this matter.” Officer Jordan signed for receipt of this memorandum on the same day it was issued. (Exhibit 33)
14. The Chief testified that Officer Jordan, subsequent to receiving the memorandum, also retired. The Chief stated that, at that point, he dropped pursuit of the Appellant’s claim because he determined that the matter had become moot, as the two (2) alleged agents of hostility towards the Appellant were no longer employed by the BPD. No evidence was submitted by the parties to indicate that the investigation ever proceeded any further from that point in time into the Appellant’s claim of a hostile work environment. (Frazier Testimony)

15. On December 1, 2004, a meeting was held among Chief Frazier, Deputy Chief Kevin McHugh, Deputy Chief Russell W. Jenkins and “8 – 9 patrolmen” who worked the evening shift under the supervision of the Appellant. Also in attendance was Attorney David Hinds, as a representative of the BPSOA, who was invited to the meeting by Chief Frazier. The Appellant was not invited and was not in attendance. Although the Appointing Authority asserts in its Post-Hearing Brief that Attorney Hinds was representing the Appellant at this meeting, I find nothing in the record that either supports or refutes that assertion. Therefore, I find only that he was in attendance. (Exhibit 3)
16. Chief Frazier testified that the BPPC President, Officer William Finn, had come to him to complain about the supervision of officers by the Appellant and alleged that the Appellant had engaged in violence in the workplace. Officer Finn, as Union President, threatened to take action on the charge. I find that there was no proof of this allegation and no further testimony was offered regarding this charge. The Chief suggested a meeting in order to allow each officer on the evening shift to air concerns about working conditions on the shift, specifically their supervision by the Appellant. Officer Finn requested such a meeting which was held on December 1, as referenced above. (Frazier Testimony, Exhibit 3)
17. The December 1, 2004 meeting revealed a number of complaints and accusations by the officers against the Appellant of which the BPD management had been unaware. (Frazier Testimony; Jenkins Testimony)
18. At the conclusion of the December 1, 2004 meeting, the Chief instructed Deputy Chief Jenkins to further investigate the more serious allegations. Thereafter, the

findings of Deputy Chief Jenkins were submitted to the Chief by a report dated January 10, 2005. (Jenkins Testimony, Exhibit 3)

19. The January 10, 2005 report identified four (4) serious allegations of misconduct by the Appellant, of which three (3) were presented to the Town to determine if disciplinary action was warranted. (Exhibit 3)

20. Thereafter, the Town served the Appellant with a notice of hearing dated January 31, 2005 to address contemplated disciplinary action regarding three (3) alleged incidents: (a) on September 14, 2003, the Appellant ordered the arrest of two individuals at Sears Roebuck & Co. at the South Shore Plaza on a theory of joint venture, without probable cause, and made false statements to substantiate the arrests (“Sears incident”); (b) on July 4, 2003, the Appellant ordered the arrest of a man for breaking and entering a motor vehicle and stealing a set of keys, although there had been no report of a vehicle being broken into in that area. The Appellant also ordered the same man arrested, without probable cause, at the Shaw’s Plaza for trespassing at Michael’s Arts and Crafts store across the street (“Michael’s incident”); and (c) Appellant altered an officer’s report regarding a breaking and entering at 83 Herbert Road, Braintree, MA¹. (Exhibit 2)

The Michael’s Incident

21. On July 4, 2003, the manager of Michael’s Arts & Crafts store (which is located on Pearl Street) called the BPD to report an unwanted person on the premises who

¹ The third charge (altering an officer’s report regarding the 83 Herbert Road incident) was withdrawn at the request of the Chief prior to the conclusion of the Town’s hearing.

- was behaving suspiciously and had been escorted from the store. (Exhibits 13, 15 and 24).
22. Shortly after receiving this call, Officer MacDonald stopped a man (later identified as Wayne Straw) who matched the description of the suspect from Michael's. However, Mr. Straw was stopped by Officer MacDonald in a Shaw's Supermarket lot across the street, not on the Michael's property itself. (MacDonald Testimony)
23. While questioning Mr. Straw, Officer Solimini of the BPD radioed that an unidentified man at a nearby McDonald's Restaurant (located on yet a third parcel on Pearl Street), reported that someone had broken into his car and "grabbed something." (Exhibit 15)
24. Officer Solimini and the Appellant arrived at Shaw's where Officer MacDonald was still questioning Mr. Straw. (MacDonald Testimony, Exhibit 15)
25. The only items Mr. Straw had in his possession was a bag containing two new, unopened disposable cameras which appeared to be from a drugstore located outside of Braintree. (MacDonald Testimony)
26. When the Appellant instructed Officer MacDonald to arrest Mr. Straw for trespassing, Officer MacDonald objected on the grounds that trespassing must be observed by the arresting officer in order for there to be a right of arrest, and in this case, Mr. Straw was no longer on the Michael's premises. (Id.)
27. The Appellant, nevertheless, insisted and Mr. Straw was handcuffed, placed in a cruiser and taken to Michael's where employees identified him as the man who had been reported to the BPD. (Id.)

28. The Appellant then directed Officer MacDonald to take Mr. Straw to the police station and directed Officer Solimini to return to the McDonald's Restaurant to look for the unidentified man who had reported the breaking and entering of his vehicle. The unidentified man was never located by Officer Solimini. (MacDonald Testimony; Exhibit 15)
29. When Officer MacDonald brought Mr. Straw to the police station for booking, Officer Curtin of the BPD, who was working at the communications desk, questioned Mr. Straw's arrest for trespassing to his superior officer, then-Lieutenant (now Deputy Chief) McHugh. Mr. Straw was not questioned regarding the breaking and entering of a motor vehicle. (MacDonald Testimony; Exhibit 3)
30. Although Mr. Straw was never formally booked and no arrest report was generated, by handcuffing Mr. Straw, placing him in a police cruiser and taking him to the station, Mr. Straw's liberty was sufficiently restricted to have legally amounted to an arrest. (MacDonald Testimony; Jenkins Testimony; Frazier Testimony)
31. During the BPD's internal investigation of this matter, the Appellant claimed that the incident began when officers were dispatched to McDonald's following a breaking and entering complaint, which was then followed by another motor vehicle breaking and entering complaint from Shaw's. (Jenkins Testimony; Exhibit 3)

32. The Appellant told Deputy Chief Jenkins that Mr. Straw was taken into custody as a result of the two breaking and entering reports and a trespassing at Michael's. (Id.)
33. The BPD incident report states that Mr. Straw was brought to the police station "for investigation of [breaking and entering of a] motor vehicle and attempt to sell stolen cameras- cameras were not able to be proven as stolen and victim of B&E m/v was unable to be found-Mr. Straw was sent on his way and brought to a T station to return to Boston." (Exhibit 13)
34. Mr. Straw was not questioned regarding any breaking and entering. Mr. Straw had no items in his possession – no wallet, money or keys - to link him to the items that were purportedly stolen from a vehicle. (MacDonald Testimony; Jenkins Testimony)
35. With no victim of the violated motor vehicle, and no identification of the vehicle or the items taken therefrom, there was no probable cause to arrest Mr. Straw for breaking and entering. In addition, since Mr. Straw was apprehended at Shaw's, there was no right of arrest for trespassing at Michael's. Accordingly, Deputy Chief McHugh ordered Mr. Straw released. (MacDonald Testimony, Jenkins Testimony)
36. As part of the BPD's internal investigation, Deputy Chief Jenkins instructed Sergeant Dowd of the BPD to review the BPD's audiotapes for July 4, 2003. (Exhibit 3)
37. In his report, Deputy Chief Jenkins noted:
- [Sergeant Dowd] states that he "listened to every recorded radio and telephone communication which was either received or generated by or from the BPD between 0522-1505 hours on July 4, 2003. During that

time frame there were no complaints of any [breaking and entering] into any vehicles.”

He qualifies his remarks by stating that the watch commander’s phone is not recorded and any calls received at that phone would not be recorded. However, he further states that if this were the case, the tape would include radio transmissions regarding the missed call. (Exhibit 3)

38. Deputy Chief Jenkins also reviewed the log of all 911 calls received by the BPD on July 4, 2003 and discovered that there was no report of a breaking and entering of a motor vehicle in this vicinity. (Jenkins Testimony; Exhibits 3 and 24)

39. Contrary to the Appellant’s assertion, the BPD audio transmissions from July 4, 2003 reveal that officers were dispatched to Michael’s, not McDonald’s, and that there were no officers dispatched to investigate a breaking and entering into a motor vehicle. (Exhibits 3, 15, 16 and 23)

The Sears Incident

40. On September 14, 2003, the BPD received a call from Sears Loss Prevention agent Sean Gallagher, regarding a fraudulent credit card transaction. (Exhibit 14)

41. Mr. Gallagher had been alerted to the fraudulent transaction by a Sears sales associate and began observing and videotaping the perpetrator via closed captioned video surveillance. (Gallagher testimony; Exhibit 18).

42. A man later identified as Willie Slaughter (hereinafter “Slaughter”) purchased a television and microwave using a Sears instant credit account opened under the name and social security number of Richard Adams of Charlton, Massachusetts. (Gallagher Testimony, Exhibit 8)

43. Gallagher contacted the Sears Credit Department, who confirmed that Mr. Adams' identity had been stolen. (Id.)
44. Slaughter was in Sears with two males, later identified as Paul McKenzie and Richard Gomes (hereinafter "McKenzie and Gomes"). Mr. Gallagher did not focus on the two companions as he was only concerned with the person who purchased and took possession of the merchandise. (Id.)
45. After making the purchases but before taking possession of the merchandise, Slaughter exited the store with McKenzie and Gomes, at which point Mr. Gallagher called the BPD to report the fraudulent credit card purchases. (Id.)
46. Officer Hughes of the BPD responded to the call and waited in the Sears Loss Prevention office for Slaughter to return and pick up the merchandise. After several minutes passed with no sign of Slaughter's return, Officer Hughes left and instructed Mr. Gallagher to contact the BPD when Slaughter returned to the store. (Gallagher Testimony, Exhibit 14).
47. Slaughter returned to the store approximately one hour later, at which point Mr. Gallagher again contacted the BPD. (Gallagher Testimony, Exhibit 25)
48. The Appellant, Officer McLaughlin and Officer McDonough of the BPD responded to the call. (McLaughlin Testimony, Exhibit 14)
49. While Slaughter went into Sears to pick up the merchandise, McKenzie, Gomes and several other individuals waited in two cars parked in the lot outside Sears. (McLaughlin Testimony)
50. The Appellant ordered Officers McLaughlin and McDonough to detain the two carloads of people, while she went into Sears. (Id.)

51. The Appellant apprehended Slaughter and took him into the Sears Loss Prevention office for questioning. The only people present in the Sears office were the Appellant, Mr. Gallagher, Slaughter and, occasionally, another Sears Loss Prevention agent, Shannon McGillowey. Once in the office, Mr. Gallagher questioned Slaughter. The Appellant did not actively participate in the conversation. The names of McKenzie and Gomes did not come up in the course of this conversation. (Gallagher Testimony, Exhibit 3)
52. While the Appellant was in Sears, Officers McLaughlin and McDonough ran warrant checks on McKenzie, Gomes and the other people waiting in the Sears parking lot, all of which came back negative. Officer McLaughlin also questioned both Gomes and McKenzie regarding the fraudulent credit card purchases. Gomes and McKenzie admitted they had been in Sears with Slaughter, but denied any wrongdoing or knowledge that Slaughter had attempted to make a purchase with a fraudulent credit card. Both also revealed that they had criminal records and wanted to stay out of trouble. (McLaughlin Testimony)
53. The Appellant exited Sears with Slaughter under arrest and ordered Officer McLaughlin to place Gomes and McKenzie under arrest. When Officer McLaughlin questioned the basis for arresting Gomes and McKenzie, the Appellant stated that Mr. Gallagher had told her that the two men had acted in “joint venture” with Slaughter. (McLaughlin Testimony, Exhibit 5).
54. Officer McLaughlin testified that joint venture involves people working together to carry out some illegal activity, and he questioned how Gomes and McKenzie, located outside in the parking lot, could have conspired with Slaughter, who was

- inside Sears, to fraudulently purchase merchandise. Nonetheless, Officer McLaughlin followed the direct order of his supervisor (the Appellant) and arrested Gomes and McKenzie. (Id.)
55. Mr. Gallagher testified that he did not recall using the term “joint venture” in his conversation with the Appellant. (Gallagher testimony).
56. In fact, Mr. Gallagher’s incident report specifically stated that “Slaughter was with two other black males that we did not identify.” (Exhibit 8)
57. During the subsequent internal investigation of the incident by the BPD, the Appellant submitted a memorandum in which she stated that she based probable cause for the arrests of the three men on her own observations, information provided by Mr. Gallagher and her conversation with Slaughter. In her memorandum², the Appellant wrote:
- “Gallagher told me that he observed two joint venture suspects working together with Slaughter picking up, carrying, selecting and bringing merchandise to the cash register...Slaughter himself admitted to me his culpability and told me that these two males were with him and part of his scheme.”
- (Exhibit 5)
58. Gallagher denied making any such statement to Appellant. He was not interested in pressing charges against McKenzie and Gomes because, as far as Sears was concerned, they were simply with Slaughter. (Gallagher Testimony, Exhibit 3)
59. Additionally, the Sears video does not reveal McKenzie and Gomes selecting and bringing merchandise to the cash register. (Exhibit 18)

² In her memorandum, the Appellant did not accept responsibility for her actions. Instead, she placed blame in all other directions, accusing her fellow members of the BPD of being involved in a conspiracy to discredit her and to negatively affect her employment. (Exhibit 5)

60. Further, Shannon McGillowey told Deputy Chief Jenkins that Gomes and McKenzie did not select or sign for merchandise, did not reenter the store when Slaughter returned to pick up the merchandise and that she “didn’t understand why they were even pulled into [the arrests].” (Jenkins Testimony, Exhibit 3)
61. During the BPD’s internal investigation, Slaughter recalled being questioned by Mr. Gallagher, but not the Appellant (which is consistent with Mr. Gallagher’s account). Slaughter also stated that when he was questioned by Mr. Gallagher, he did not implicate his companions (Gomes and McKenzie) in any way. (Exhibit 3)
62. While Officers McLaughlin and McDonough detained the individuals in the parking lot, they detected an odor of marijuana coming from one of the cars, searched the vehicle and discovered merchandise from Macy’s. (McLaughlin Testimony)
63. Upon advising the Appellant of what they found, the Appellant called Macy’s Loss Prevention Department and told Officer McLaughlin that she had spoken with Loss Prevention Agent Tracy Fox. (McLaughlin Testimony; Fox Testimony).
64. Immediately after making this phone call, the Appellant told Officer McLaughlin that Fox claimed “these same three black males” had been in Macy’s earlier and had acted in joint venture to fraudulently purchase merchandise using Mr. Adams’ identity. (McLaughlin Testimony; Exhibit 6)
65. However, Ms. Fox testified that while she received a phone call from the Appellant (who gave her an account number to search for possible credit card fraud), she did not tell the Appellant that “these same three black males” had been

- in Macy's earlier that day, nor did she have any knowledge of any report of three black males purchasing merchandise with a fraudulent credit card at the time of Appellant's phone call. (Fox Testimony)
66. Ms. Fox also testified that she had no way of verifying if fraudulent purchases had been made at Macy's until at least two (2) hours after she spoke with the Appellant, when the Macy's computer system would be backed up and the account number could be researched. Ms. Fox also testified that she only confirmed the fraudulent credit card use in a phone call to the Appellant several hours later. (Fox Testimony, Exhibit 3).
67. Slaughter, McKenzie and Gomes were arrested, and Officer McLaughlin prepared the incident report, relying upon the information provided to him by the Appellant. (McLaughlin Testimony; Exhibit 6)
68. Officer McLaughlin testified that he never spoke directly with Mr. Gallagher or Ms. Fox, so that the statements attributed to them in his report were based on information provided to him by the Appellant. (McLaughlin Testimony, Gallagher Testimony, Fox Testimony)
69. Subsequently, Slaughter, Gomes and McKenzie were charged with various counts of larceny and conspiracy. (Exhibits 12, 11 and 12)
70. All charges against McKenzie were later dismissed at the request of the Commonwealth. The conspiracy (joint venture) charges against Slaughter and Gomes were also dismissed at the request of the Commonwealth. (Exhibits 10, 11 and 12)

71. After proper notice was issued to the Appellant on January 31, 2005, a hearing in accordance with G.L. c. 31, § 41 was conducted by the Town on February 8, 15 and March 22, 2005. Based on the evidence presented at the hearing, the Town determined that the Appellant violated multiple Braintree Police Department Rules and Regulations (hereafter “BPD Rules”) with respect to the Sears and Michael’s incidents. (Exhibit 1)

72. BPD Rule 5.2 provides, in pertinent part:

Rule 5.2 - Incompetence

No officer shall fail to maintain sufficient competency to perform his duty and to assume the responsibilities of his position. Incompetence may be demonstrated by, but is not limited to, the following:

- a. a lack of knowledge of the application of laws required to be enforced;
- b. an unwillingness or inability to perform assigned tasks;
- c. the failure to conform to work standards established for the officer’s rank, grade or position; and
- d. repeated poor evaluations or repeated infractions of the rules and regulations.

(Exhibit 17)

73. BPD Rule 6.9 provides, in pertinent part:

Rule 6.9 – Truthfulness

Officers shall speak the truth at all times. In cases in which an officer is not allowed by the regulations of the department to divulge facts within his knowledge, he will decline to speak on the subject.

(Exhibit 17)

74. BPD Rule 4.2(B) provides, in pertinent part:

Rule 4.2(B) – Conduct Unbecoming An Officer

Officers shall not commit any specific act or acts of immoral, improper, unlawful, disorderly or intemperate conduct whether on or off duty, which reflects discredit or reflects unfavorably upon the officer himself, upon his fellow officers or upon the Department...

Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to continue as a member of the Department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the Department or its members

(Exhibit 17)

75. By letter dated March 25, 2005, the Town discharged the Appellant based on her violations of BPD Rules 4.2(B); 5.2 and 6.9. (Exhibit 1)

76. This appeal ensued.

77. I find the testimony of Braintree Police Chief Paul H. Frazier, Deputy Chief Russell Jenkins, Officer Brendan McLaughlin, Retired Officer James J. McDonald, Sears Loss Prevention Associate Sean Gallagher and Macy's Security

Department Associate Tracy Fox to be highly credible. All of these witnesses were composed and presented information in a clear and concise manner. Their testimony was in no way discredited upon cross-examination. Their testimony carried the type of detail and clarity that were indicia of accuracy and reliability. Both Gallagher and Fox displayed a command of their respective duties and the rules and laws that regulate those duties.

78. As indicated above, the Appellant provided sworn testimony only as to the identities of three (3) men appearing as subjects in a video surveillance tape (Exhibit 18). As this was the only testimony offered by the Appellant in this case (who declined to testify on her own behalf) I make no finding as to her credibility.
79. The credible documentary and testimonial evidence supports the finding that during the Sears incident, the Appellant violated BDP Rule 5.2 (Competence) and BPD Rule 6.9 (Truthfulness) when she knowingly ordered the arrest of two individuals without probable cause and attributed false statements to Slaughter and the loss prevention agents at both Sears and Macy's in order to substantiate her claims. These actions reflected a lack of competence in understanding or a blatant disregard for what is required to affect an arrest. (Exhibit 1)
80. The credible documentary and testimonial evidence supports the finding that Appellant violated BPD Rule 5.2 (Competence) during the Michael's incident, when she inappropriately ordered the arrest of Mr. Straw for trespassing (a non-arrestable offense since the trespass was not observed) as well as for breaking and entering a motor vehicle (despite the lack of probable cause).

81. The credible documentary and testimonial evidence supports the finding that Appellant violated BPD Rule 4.2B (Conduct Unbecoming An Officer) in both the Sears and Michael's incidents. The Appellant, by: (a) arresting individuals without probable cause; (b) making false statements in an attempt to substantiate her actions; and (c) ordering the arrest of an individual for an unsubstantiated offense or for an offense that does not warrant arrest, brought discredit upon herself, her fellow officers and the entire Braintree Police Department.

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. G.L. c. 31, §43.

In order to carry out the legislative purpose of the civil service laws in this case, the appropriate inquiry for the commission is “whether the employee has been guilty of substantial misconduct which affects the public interest by impairing the efficiency of the public service.” Murray v. Justices of Second District Court of Eastern Middlesex, 389 Mass. 508, 514 (1983). Substantial misconduct by police officers adversely affects the public interest, perhaps more so than many other civil service positions. In a free society the public must have confidence in their police officers because of the vast power they can dispatch. “Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986). “Police officers must comport themselves in accordance with the laws they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel.” Id. Because of the nature of a police officer’s position and the risk of abuse of power, police officers are held to a high standard of conduct.

It is the conclusion of this Commission that the Respondent has satisfied its burden of proving reasonable justification, by a preponderance of the evidence, for terminating the Appellant from the Braintree Police Department. 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 she 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).

As indicated above, the Appellant provided sworn testimony only as to the identities of three (3) men appearing as subjects in a video surveillance tape (Exhibit 18). As this was the only testimony offered by the Appellant in this case (who declined to testify on her own behalf) I can make no finding as to her credibility.

The credible documentary and testimonial evidence supports the finding that during the Sears incident, the Appellant violated BDP Rule 5.2 (Competence) and BPD Rule 6.9 (Truthfulness) when she knowingly ordered the arrest of two individuals without probable cause and attributed false statements to Slaughter and the loss prevention agents

at both Sears and Macy's, in order to substantiate her claim of just cause. These actions reflected a lack of competence in understanding or a blatant disregard for what is required to affect an arrest.

The credible documentary and testimonial evidence supports the finding that Appellant violated BPD Rule 5.2 (Competence) during the Michael's incident, when she inappropriately ordered the arrest of Mr. Straw for trespassing (a non-arrestable offense since the trespass was not observed by a police officer) as well as for breaking and entering a motor vehicle (despite the lack of probable cause).

The credible documentary and testimonial evidence also supports the finding that Appellant violated BPD Rule 4.2B (Conduct Unbecoming An Officer) in both the Sears and Michael's incidents. Appellant, by: (a) arresting individuals without probable cause; (b) making false statements in an attempt to substantiate her actions; and (c) ordering the arrest of an individual for an unsubstantiated offense or for an offense that does not warrant arrest, brought discredit upon herself, her fellow officers and the entire Braintree Police Department.

Notably, at no time did the Appellant accept responsibility for her actions. Instead, she continually placed blame in all other directions, accusing her fellow members of the BPD of being involved in a conspiracy to discredit her and negatively affect her employment. (Exhibit 5) Significantly, notwithstanding her insistence that she was a

victim of a conspiracy to ruin her career, the Appellant elected not to testify on her own behalf.

Based on the Appellant's silence, and the uncontroverted testimony of the Respondent's witnesses, the Commission finds that the Appellant's actions demonstrated a blatant disregard for, or ignorance of, the law. The Appellant's actions tarnished her own reputation, reflected negatively upon the Braintree Police Department, deprived individuals of their civil liberties and may have exposed the Town of Braintree to liability.

For all of the above stated reasons, it is found that the Town of Braintree has conclusively established by a preponderance of the reliable and credible evidence in the record that it had just cause to terminate the Appellant for her misconduct. Therefore the appeal on Docket No. D-05-108 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairman; Bowman, Guerin and Marquis, Commissioners) [Taylor, Commissioner absent] on February 8, 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:

Carolyn M. Murray, Esq.
Stephen C. Pfaff, Esq.