**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

**PATRICK C. STEINKAMP,**
*Appellant*

*v.*

**D1-23-172**

**TOWN OF NORTH ATTLEBOROUGH**,
*Respondent*

Appearance for Appellant:

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Boston MA 02110

Appearance for Respondent:

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Commissioner:

Paul M. Stein

Summary of Decision

The Commission reduced to a suspension the discipline of a firefighter terminated for coming to work under the influence of alcohol, based on evidence of disparate treatment and the failure of the Appointing Authority to consider the compelling evidence of the Appellant's pre-termination rehabilitation.

**DECISION**

On September 8, 2023, the Appellant, Patrick C. Steinkamp, appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 43, contesting the decision of the Town of North Attleborough (North Attleborough) to discharge him from his position as Firefighter/Paramedic with the North Attleborough Fire Department (NAFD).[1] The Commission held a remote pre-hearing (Webex) on October 17, 2023. I conducted a full hearing on February

[1] The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

9, 2024 at the University of Massachusetts School of Law at Dartmouth and on February 15, 2024 at the offices of Respondent's counsel in Westwood MA. The full hearings were digitally recorded.[2] The hearings were declared private since neither party requested a public hearing. On February 22, 2024, the Respondent filed a Motion to Reopen the Record, which the Appellant opposed. On March 3, 2024, with one limited exception, I denied the Motion to Reopen the Record.[3] Each party submitted a proposed decision on February 5, 2024. For the reason stated below, the Appellant's appeal is allowed in part.

**FINDINGS OF FACT**

The Commission received into evidence 45 exhibits at the hearing (*Jt.Exhs.*1-*18; App.Exhs.1 through 13; Resp.Exhs.1 through 3*). Based on the documents submitted and the testimony of the following witnesses:

*Called by Town of North Attleborough:*

- Christopher Coleman, NAFD Fire Chief
- Michael Bristol, NAFD Fire Captain
- Justin Picchi, NAFD Fire Lieutenant
- Richard E. Burns, NAFD Firefighter/Paramedic

*Called by the Appellant:*

- Patrick Steinkamp, Appellant
- Employee B[4]

[2] Copies of the digital recording were provided to the parties. By agreement of the parties, the recording was transcribed into a written record, a copy of which has been provided to the Commission. The parties have stipulated that the written transcripts shall become the official record of the hearing. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to use the official written transcripts to the extent that the plaintiff challenges the decision as unsupported by substantial evidence, arbitrary and capricious, or an abuse of discretion.

[3] I allowed the Respondent's motion to reopen to admit a proposed Exhibit A attached to the motion (a draft agreement), for a limited purpose and subject to certain conditions to be stipulated by the parties. As the parties did not provide the required information and stipulation, the Respondent's Exhibit A is not admitted in evidence and marked for identification only.

[4] Employee B's name has been redacted for confidentiality purposes.

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

Background

1. The Appellant, Patrick C. Steinkamp, was appointed to the position of Firefighter/Paramedic with the NAFD in February 2017. He served in that position until his termination in September 2023. (*Jt.Exhs.17&18*)

2. During his tenure with the NAFD, the Appellant earned the respect of his peers and superiors who called him a "good employee" and "one of the best." In 2021, the Appellant was named the NAFD Paramedic of the Year. (*Tr.I:31-32 [Burns]; Tr.I:51-52 [Picchi]; Tr.I:87-89 [Bristol]; Tr.I:183-184 [Coleman]; Tr.II:9 [Appellant]*)

3. In July 2021, the Appellant was returning from an emergency medical call when the ambulance he was operating collided with another vehicle that had run through a red light traveling at a high rate of speed. The Appellant suffered a severe concussion. He remained out-of-work on medical leave for eight months while being treated with medication and therapy for PTSD and other medical issues attributed to the accident. He continues "to this day" to suffer from the consequences of the accident. (*Tr.II:9-11 [Appellant]*)

4. The Appellant's prior discipline included: (1) a written reprimand for two incidents in January 2023 involving inattention to detail, once forgetting to replace the narcotics key on a rescue vehicle after his shift and once using the wrong procedure to call-in sick; (2) a second written reprimand for calling in sick too late; and (3) a one-day suspension for a third failure to call in sick. (*Jt.Exhs.5 through 7; Tr.I:129-132,137 [Coleman]; Tr.II:46-49 [Appellant]*)

5. The NAFD is supervised by the Fire Chief, Christopher Coleman, who manages all aspects of the Department. *(Tr.I:106-107 [Chief Coleman]*)

6. The North Attleborough Town Manager, Michael Borg, is the Appointing Authority for the NAFD. TM Borg is responsible for hiring and firing of NAFD personnel as well as for imposing discipline upon NAFD employees, although, as to discipline, TM Borg typically defers to the recommendations of Chief Coleman. *(Tr.I:137 [Coleman]*)

The June 10, 2023 Incident

7. The Appellant had agreed to a "swap" to cover another firefighter's tour on Ladder 1, Station 3, from 6 pm on June 10, 2023 through 8:00 am on June 11, 2023. He was assigned to the "back step", i.e., not as the apparatus operator. (*Jt.Exhs.2 & 18; Tr.II:39-40 [Appellant]*)

8. During the morning of June 10, 2023, beginning at 7:00 am and continuing into the late morning, the Appellant attended a parade and, thereafter, attended a party, during which time he consumed alcohol. He took his last alcoholic drink somewhere before or just after noontime. When he arrived home he "passed out" for several hours and then awoke and reported for duty on time. (*Jt.Exhs.2; Resp.Exh.1; Tr.II:11-12, 36-39, 77-79 [Appellant]*)

9. In addition to the Appellant, the shift was staffed by Firefighter/Paramedic Richard Burns (FF Burns), assigned as the apparatus driver, and the apparatus commander, Lieutenant Justin Picchi. (*Resp.Exhs.1 & 3; Tr.I:21-25 [Burns]; Tr.I:45-46, 77-78 [Picchi]; Tr.II:40 [Appellant]*)

10. After the usual check-in procedures were completed, the Appellant took it upon himself to set up an obstacle course in the parking lot outside the fire station.[5] He then went into the station where he found FF Burns and Lt. Picchi. The Appellant proposed that they join in a competition

[5] It is unusual for a firefighter to set up an obstacle course on his own. Typically, it is a shift commander who would set it up as part of a mandated training exercise. (*Tr.I:47 [Picchi]*)

to complete the obstacle course, Neither FF Burns nor Lt. Picchi agreed but they followed the Appellant to the parking lot and he, alone, proceeded to attempt to run through the obstacle course. (*Jt.Exh.2; Resp.Exhs.1 & 3; Tr.I:25-26 [Burns]; Tr.I:46-47 [Picchi] Tr.II:13, 39 [Appellant]*)

11. As the Appellant began the obstacle course, FF Burns and Lt. Picchi noticed that something was "off" about the Appellant. They both observed that he seemed unsteady on his feet and struggled through the obstacle course. FF Burns concluded that "FF Steinkamp wasn't himself." He reported his concern to Lt. Picchi. (*Resp.Exhs.1 & 3 Tr.I:25-27 [Burns]; Tr.I:45-48 [Picchi]*)

12. Lt. Picchi was also surprised at the Appellant's strange behavior, which he called "off" and "not consistent with Firefighter Steinkamp." (*Resp.Exh.1; Tr.I:47-49 [Picchi]*)

13. After FF Burns and Lt. Picchi declined the Appellant's entreaty to run the obstacle course, the three men reentered the fire station. Lt. Picchi detected an odor of alcohol on the Appellant's breath and asked the Appellant to come outside again so that they could speak privately. He asked the Appellant if he was OK to which the Appellant replied: "I have a lot going on, where do I begin?" Lt. Picchi asked the Appellant if he had been drinking and the Appellant admitted that he had some drinks before his shift, but "would never show up for work unfit for duty." (*Resp.Exh.1; Tr.I:48-49, 53 [Picchi]; Tr.II:12-15 [Appellant]*)[6]

14. Lt. Picchi told the Appellant that the shift commander, Captain Bristol at NAFD Headquarters, needed to be informed. The Appellant admitted that "I need help" but he asked Lt. Picchi to give him a "pass", hold off calling the captain, and let him sleep it off. Lt. Picchi told the Appellant that, in the Appellant's current emotional state, he could endanger his life as well as

[6] The Appellant admitted at the Commission hearing that he made a "serious mistake" coming to work under the influence of alcohol. "What I did was wrong. . . . I was inebriated and . . . . the fact that I was under the influence affected my sound decision making." *(Jt.Exh.18; Tr.II:13-14, 39-41[Appellant])*

the safety of others and stated that calling the captain was how to "get the ball rolling" and get the help he needed. (*Tr.I:49-49, 53-54 [Picchi]; Tr.I:80-81 [Bristol]; Tr.II:12-15, 41-42 [Appellant]*)[7]

15. When Capt. Bristol received Lt. Picchi's call, he immediately called NAFD dispatch and ordered Ladder 1 taken out of service and contacted NAFD Fire Chief Coleman. They both immediately proceeded to Station 3. (*Jt.Exh.18; Resp.Exh.2; Tr.I:80-85 [Bristol]; Tr.I:108-109 [Colman]; Tr.II:151-16*)

16. Upon arrival, Capt. Bristol found the Appellant outside the back of the fire station. The Appellant appeared emotionally upset and, again, said he needed help. Capt. Bristol was supportive and said "[t]his happens all the time, more than [you know]" and "we would assist [the Appellant] to get the help he needed." (*Resp.Exh.2;Tr.I:85,96-97[Bristol];Tr.II:14-16 [Appellant]*)

17. Chief Coleman arrived at Station 3 a few minutes later. Capt. Bristol briefed him on the situation. The Appellant told Chief Coleman that he "could not cope anymore" and needed help with a drinking problem. He elaborated on the personal issues he was dealing with. Chief Coleman transported the Appellant to the hospital to be evaluated. He remained with the Appellant until the evaluation was completed. The treating physician advised that the Appellant should not operate a motor vehicle. Chief Coleman drove the Appellant home around 11:30 pm. (*Jt.Exhs.2 & 18; Resp.Exh.2; Tr.I:109-112, 138 [Coleman]; Tr.II:16-19, 40-43 [Appellant]*) [8]

[7] Upon reflection, the Appellant regretted the statements he made to Lt. Picchi as being unjustified and called Lt. Picchi to apologize for his behavior toward him that night ("effing him", as Lt. Picchi described, about not giving him a pass). (*Jt.Exh.18; Tr:I:49, 53, 62 [Picchi] Tr.II:13-14, 39-41[Appellant])*

[8] The Appellant "discussed [his] mental health in depth" with the medical providers, issues that were not related to the drinking incident and, on advice of counsel, he declined to sign a release for the complete hospital records to the NAFD. The blood alcohol level test administered to the Appellant at the hospital was introduced in evidence and the parties stipulated that it was consistent with alcohol impairment. (*Jt.Exhs.3 & 18; Tr.I:113[Coleman]; Tr.II:17-19 [Appellant]*)

18. While waiting for the Appellant at the hospital, Chief Coleman reached out to the local union president who put him in contact with a representative of a facility that specializes in treating firefighters and first responders. He was informed that no beds were immediately available at that facility or at another hospital that he contacted, but he was able to arrange an intake phone call for the following Monday, June 12, 2023. (*Jt.Exh.2;Tr.111-112 [Coleman];Tr.II:19 [Appellant]*)

19. Upon arrival at the Appellant's residence, Chief Coleman informed the Appellant that "this happens in the fire service frequently and "it was [my] job as fire chief to provide assistance when needed". Chief Coleman promised that the Appellant would be provided "all EAP assistance available" but the Appellant needed to make the June 12, 2023 intake call and follow through or Chief Coleman would recommend his termination from the NAFD. He ordered the Appellant to contact him the following morning (June 11, 2023). He also said that other "consequences for his actions will occur." (*Jt.Exh.2; Tr.I:109-112, 138 [Coleman]; Tr.II:16-17 [Appellant]*)

20. As ordered, the Appellant followed up with Chief Coleman on Sunday June 11, 2023 and completed the intake call on June 12, 2023 that Chief Coleman had arranged. The Appellant was admitted as an inpatient at the next available date on June 26, 2023. He completed treatment on June 30, 2023. (*Jt.Exhs.10 & 18; Tr.II:18-19, 43,74-75 [Appellant]; Tr.I:144-152 [Coleman]*)

The Appellant's Termination

21. On June 11, 2023, Chief Coleman informed TM Borg about the June 10, 2023 incident and forwarded a written report to TM Borg for approval on or about Monday June 12, 2023. The report concluded:

> Firefighter Patrick Steinkamp was visibly emotionally upset due to ongoing personal issues and he admitted to drinking alcoholic beverages prior to arrival at work. Firefighter Steinkamp . . . needs help and is asking for help. We provided immediate assistance and transport to a medical facility to start the process for Patrick. However, Firefighter Steinkamp's actions and decision to drink alcoholic beverages prior to reporting to work

cannot be overlooked as they are egregious. . . . The following disciplinary actions are imposed: Firefighter Steinkamp shall complete an intake with [rehab facility].

1. Firefighter Steinkamp shall complete the recommended program by [rehab facility] and provide documentation as to the completion.
2. Firefighter Steinkamp will be subject to random alcohol testing at the discretion of the Chief of Department or his designee.
3. Firefighter Steinkamp shall be docked 14 hours of pay as [to] the night of the incident [per policy when firefighter does not work a "payback swap" as agreed].
4. Firefighter Steinkamp shall sign and agree to a Last Chance Agreement.
5. Firefighter Steinkamp shall be charged two vacation days to be consistent with the Collective Bargaining Agreement Section 4 which states [when] a firefighter calls in sick on a shift, which he has agreed to substitute for another firefighter, the firefighter calling in sick will be charged two (2) tours of vacation.

6[sic]. Failure to agree to and or successfully complete will result in an immediate termination recommendation to the Town Manager.

(*Jt.Exh.2; Tr.I:113-117,144-152 [Coleman]*)

22. As the Appointing Authority, TM Borg makes all final decisions related to appointments, promotions and discipline greater than a five-day suspension. When it comes to the NAFD and discipline, TM Borg generally defers to Chief Coleman and, specifically, delegated to Chief Coleman the authority to issue verbal warnings and written reprimands and other minor discipline at the "shift level." (*Tr.I:112-114, 123, 130-135 [Coleman]*)

23. TM Borg rejected the discipline proposed by Chief Coleman in his report. Instead, he directed Chief Coleman to tell the Appellant that he must resign his employment or he would be terminated. (*Tr.I:135-136; 152 [Coleman]*)

24. On June 15, 2023, Chief Coleman called the Appellant to a meeting. Deputy Fire Chief Chabot and Assistant Fire Chief McKinnon also attended. Chief Coleman conveyed the choice that TM Borg had directed him to convey to the Appellant, i.e., to resign (which Chief Coleman said would be best for him and his career) or be terminated. He was given 24 hours to make a decision. (*Tr.I:152 [Coleman]; Tr.II:16-17, 21-36, 43-44 [Appellant]*)

25. The Appellant was very much surprised. Based on what Chief Coleman, Capt. Bishop and Lt. Picchi had told him, the Appellant expected to be given the opportunity for rehabilitation and

thought the NAFD would give him the support he needed to overcome his struggles. (*Tr.II:16-17, 21-36 [Appellant]*)

26. On June 16, 2023, the Appellant told Chief Coleman that he was "leaning toward resignation" but needed more time to make that decision. TM Borg took that response as a resignation which he immediately "accepted". Thereafter, the Appellant engaged legal counsel (not the counsel who represented the Appellant in this appeal) and, eventually, the alleged resignation was nullified. (*Tr.II:26-29 [Appellant]; Tr.I:152 [Coleman]*)

27. During June and July 2023, the Appellant's counsel attempted without success to negotiate an agreement by which the Appellant, who had been on unpaid leave, would return to duty with the NAFD. (*Jt.Exh.18;Tr.II:27,43-46, 63-64 [Appellant]*)[9]

28. By letter dated July 25, 2023, TM Borg issued the Appellant a Notice of Intent to Discharge him from employment with the NAFD based on his conduct on June 10, 2023. (*Jt.Exh.8*)

29. On August 28, 2023, TM Borg conducted a hearing at which the Appellant appeared and testified. (*Jt.Exh.9*)

30. By letter dated September 8, 2023, TM Borg informed the Appellant that he found just cause to terminate him as an NAFD Firefighter/Paramedic for violation of NAFD Rules and Regulations, including Article XII (General Rules), Sections 5 ["customary rules of good behavior observed by law-abiding and self-respecting citizens"] & Section 37 ["conduct which may bring

[9] North Attleborough ended negotiations after giving the Appellant a deadline to accept a number of conditions to which the Appellant objected, including a release of all claims, a right to be terminated for any minor infraction, release of his right to appeal any future termination to the Commission, and unlimited drug testing at his expense. (*Tr.II:45-46, 70-72 [Appellant]*) I note that the draft agreement proffered by the Respondent as Exhibit A to the Motion to Reopen the Record contains mark-ups that corroborate the Appellant's testimony about his objections but I draw no inferences from that document, alone, as I had agreed to accept it in evidence only subject to certain stipulations by the parties as to the mark-ups, among other things, which I never received.

discredit upon the fire department"]; Article XXIV (Prohibited Conduct) Section A (Conduct Unbecoming a Firefighter) ["any specific act of immoral, improper, disorderly or intemperate personal conduct"], Section G (Incompetence)["lack of knowledge", "unwillingness or inability to perform assigned duties", "failure to conform to work standards" or "repeated infractions of the rules"] and Section J (Use of and or Possession [of] Intoxicating Beverages or Drugs) ["shall not report for duty . . . under the influence of intoxicating liquor or . . . any narcotic drug or controlled substance unlawfully administered."") (*Jt.Exhs.4 & 9*)

31. TM Borg cited the following specific conclusion in support of his decision:

> Your conduct in reporting for duty under the influence of alcohol was a serious error of judgment and represented a serious threat to the safety of both Town employees and its residents. . . . . Additionally, your conduct in pressuring another Town employee to not report your actions brings discredit upon the Fire Department, reflects dishonesty and seriously undermines any ability for you to return to work as a trustworthy employee of the Town. At the hearing, although you explained that you were doing better, you failed to express any remorse or take responsibility for your actions. You did not state that you needed assistance until after you had already violated the aforementioned Rules and Regulations and after you were notified that your conduct was to be reported. It is worth noting that the Town has previously sought termination of employment of another Fire Department employee that had been determined to have reported for duty under the influence of alcohol. After considering all of the information before me, I have determined that the aforementioned conduct and failures on your part constitute just cause for your termination and are incompatible with your continued employment in the Town.

The TM also made certain subsidiary findings to support his conclusion, including, in addition to the Appellant's admission to reporting for duty under the influence of alcohol and the evidence of his impairment from corroborating witnesses, the following collateral findings:

- You provided . . . varying times in which you claimed you stopped drinking alcohol prior to the beginning of your shift . . . [telling] at least one witness that you had stopped drinking alcohol 6 hours prior to the beginning of your shift.[10]

[10] Lt. Picchi and Chief Coleman's contemporaneous reports indicate that the Appellant told them he had stopped drinking about six hours or seven hours before his shift. Capt. Bristol's report stated that the Appellant told him he stopped nine hours earlier. (*Jt.Exhs.2, Resp.Exhs.1 & 2; Tr.I:110 [Coleman]*)

- You pressured an employee of the Fire Department to not report [his] observations of impairment and to give you a pass.
- You denied drinking alcohol from a mason jar at the fire station.[11]
- You chose not to respond to any of the charges at the hearing.
- You had previously been offered employee assistance in November 2022 after you were involved in a criminal proceeding. Upon information and belief, you did not seek such assistance at the time.[12]
- You have been previously disciplined . . . . in March 2023 February 2023 and August 2019.[13]
- There is at least one Department employee that has been subject to discharge for reporting for duty under the influence of alcohol. This employee subsequently separated from employment with the Town as a result of such conduct.

(*Jt.Exh.9*)

32. The Appellant stopped drinking and remained sober after he completed his rehabilitation treatment in June 2023. He suffered a temporary relapse in December 2023, after his termination, when he lost his health insurance and came off his medications. Since getting health insurance again, he has been back on all his medications and has resumed his mental health therapy. He last drank alcohol on December 27, 2023. (*Tr.II:19-20, 74-77 [Appellant]*)

33. The Appellant currently works full-time as a 911 Paramedic for a private company, a position he obtained about three months after his termination. He typically works two, 24-hour shifts per week, plus overtime when available. (*Tr.II:68-69 [Appellant]*)

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[11]The Notice of Intent to Discharge stated: "There was also an empty mason jar near your vehicle which you retrieved during the incident, suggesting that you may have been drinking alcohol on-site as well as prior to the beginning of your shift." Capt. Bristol asked the Appellant about the empty jar when he arrived on scene. The Appellant had explained that the jar contained lemon-flavored water. No witness or other evidence disputed the Appellant's testimony. (*Resp.Exhs.1 through 3;Jt.Exh.2;Tr.I:83-84[Bristol]; Tr.I:145, 148, 161-162[Coleman]; Tr.II:14 [Appellant]*)

[12] No evidence of such a criminal proceeding or offer of employee assistance was proffered at the Commission hearing.

[13] There was no evidence proffered of a disciplinary record involving the Appellant prior to 2023. The parties agreed that the June 10, 2023 incident was the first and only occasion in which the Appellant's was found to be, or suspected to be, under the influence of alcohol and, specifically, that alcohol was not involved in any of the Appellant's other prior discipline in 2023. (*Jt.Exhs.2, 5 through 7 & 18; Tr:I:136-138 [Coleman]; Tr.II:11-12, 46-51[Appellant]*)

Evidence of Disparate Treatment – Firefighter A

34. On or about June 3, 2020, as part of a routine physical examination, Firefighter A tested positive for amphetamines. He admitted that he did not have a prescription for the drug. He had been written up for an "inability to focus" at work and had scheduled a neurological examination which was postponed due to the COVID-19 state of emergency. He started self-medicating by taking his girlfriend's Adderall "to remain focused." (*Jt.Exh.12*)

35. On June 8, 2020, Chief Coleman issued a "File Note" which stated that Firefighter A was placed on paid administrative leave pending completion of a substance abuse rehabilitation program after which he would be reinstated following a negative drug screen, and subject to such random drug testing as the Fire Chief may prescribe. (*Jt.Exh.12; Tr.I;154-156 [Coleman]*)[14]

36. Chief Coleman distinguished the discipline he imposed on firefighters found to be under the influence of drugs from the discipline imposed on the Appellant on the grounds that the Collective Bargaining Agreement (CBA) between the Town of North Attleborough and the North Attleborough Firefighters Local 1992, IAFF AFL-CIO (the Union), makes firefighters subject to random drug testing and the CBA specifically provides that a firefighter who tests positive for a controlled substance shall be placed on leave pending completion of a substance abuse program and must be reinstated after receiving a negative drug screen subject to such conditions as the Fire Chief may prescribe. Chief Coleman does not believe that the CBA provision applies to alcohol

[14] Chief Coleman did not specifically investigate when Firefighter A started to use Adderall to address problems with his focusing because he had not seen "evidence of any impairment at work." (*Tr.I:156 [Coleman]*)

impairment although he agreed that the NAFD Rules and Regulations "require you to treat alcohol, drugs and narcotics similarly." (*Jt.Exh.11; Tr.I:117-118, 148-149 [Coleman]*)[15]

Evidence of Disparate Treatment – Firefighter/Paramedic B

37. On or about April 8, 2021, Firefighter/Paramedic B (Employee B) was called to report to a brush fire incident and appeared to others "not to be himself." When he reported to work on April 9, 2021, both Capt. Bristol and Lt. Picchi thought they smelled alcohol on his breath. Employee B denied drinking on either of the two days. Upon investigation by Chief Coleman on April 9, 2021, Employee B denied drinking that day, but changed his story and admitted that he "had a relapse a few weeks ago" and did have some beers before reporting for duty on the date of the brush fire incident. Chief Coleman did not find present evidence of intoxication or odor of alcohol but, as a precaution asked the Union President to drive Employee B home. As this incident was not the first time Employee B had been to an alcohol rehabilitation facility, Chief Coleman ordered Firefighter/Paramedic B to arrange to be admitted as soon as possible to an inpatient rehabilitation facility, preferably, at "a longer inpatient facility." Chief Coleman issued a formal written reprimand and advised TM Borg who was "in complete agreement with the recommended course of action." (*Jt.Exh.13; Tr.I:118-122 [Coleman]*)

38. Following completion of an intensive inpatient hospitalization and out-patient program over a period of several months, Chief Coleman reinstated Firefighter/Paramedic B to active duty, subject to receipt of a medical return-to-work note and an agreement to meet with Chief Coleman to review the relevant rules and regulations pertaining to use of alcoholic beverages while on-duty and off-duty. (*Jt.Exh.13; Tr.I:120 [Coleman]*)

[15] At least two North Attleborough DPW employees also received the same CBA-negotiated level of discipline (reinstatement after completing a rehabilitation program) for their first offense of a testing positive for illegal drugs. (*App.Exhs.8 & 9*)

39. On December 3, 2021, Capt. Bristol informed Chief Coleman that two members (Lt. Picchi and another firefighter) had reported that Firefighter/Paramedic B had reported for duty with the smell of alcohol on him. Chief Coleman called Firefighter/Paramedic to his office where he denied drinking, claimed that he had chicken marsala the night before, and stated he was taking "medication to control an Alcohol Abuse Disorder." Firefighter/Paramedic B agreed to be sent to the hospital for evaluation, which resulted in a positive breathalyzer result of 0.029. Firefighter/Paramedic B was allowed to call his therapist, who indicated that none of the local rehabilitation facilities were a good option at this point and recommended that Firefighter/Paramedic B be sent to a facility in Florida. Chief Coleman drove him home. Employee B was placed on Paid Administrative Leave pending an investigation, with a view to placement on sick leave once he had been admitted to a long-term rehabilitation facility and, upon clearance to return to work, "written reprimands will be discussed." (*Jt.Exh.14; App.Exhs.10 through 12; Tr.I:55-58 [Picchi]; Tr.I:91-92 [Bristol]; Tr.I:120-122 [Coleman]*)

40. For several months from January through March 2022, Chief Coleman made numerous attempts to contact Firefighter/Paramedic B via telephone and e-mail, along with several direct orders sent by certified mail for a status update, to which no response was received. (*Jt.Exh.15; Tr,123-124 [Coleman]*).

41. By letter dated April 4, 2022, TM Borg issued a Notice of Intent to Discharge to Firefighter/Paramedic B, based on the history of his alcohol abuse, failure to respond to Chief Coleman's order for a status update, failure to undergo treatment for his alcoholism, and the lapse of his Paramedic certification. (*Jt.Exh.15*)

42. On June 16, 2022, Firefighter/Paramedic B and the Union entered into a Separation Agreement and General Release which allowed him to voluntarily resign upon exhaustion of sick

leave donated from the Sick Leave Bank or approval of his application for "medical" retirement, but in no event later than December 31, 2022. (*Jt.Exh.16; Tr.I:123-124 [Coleman]*) [16]

**APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills" and protecting them from "arbitrary and capricious actions" and "coercion for political purposes." G.L. c. 31, § 1. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996). This means that an appointing authority is tasked with "assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap or religion" and with "retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected." G.L. c. 31, § 1.

A tenured civil service employee may be disciplined for "just cause" after due notice and hearing upon written decision "which shall state fully and specifically the reasons therefor." G.L. c. 31, § 41. An employee aggrieved by the decision may appeal to the Commission. G.L. c. 31, § 43. Under section 43, the appointing authority carries the burden to prove "just cause" for the

[16] The Appellant called Employee B as a witness at the Commission hearing. His testimony about the events of 2021 and 2022 concerning the multiple episodes on which he reported for duty under the influence of alcohol and the treatment and discipline he received generally tracked the documented record and testimony of the other witnesses. He did have a somewhat self-serving recollection of some events but nothing that materially conflicted with the relevant facts about his discipline or that of the Appellant. (*Tr.I:206-246 [Employee B]*) For example, Employee B testified about a "culture" of drinking to excess at the NAFD, on-duty and off-duty. His testimony on this subject was not sufficiently specific and I do not give that aspect of his testimony any significant weight. (*Tr.I:207-210 [Employee B]*)

action taken by a "preponderance of the evidence." Id. See, e.g., Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814, 823 (2006); Police Dep't of Boston v. Collins, 48 Mass. App. Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000).

In performing its review, the Commission hears evidence and finds facts anew. Examining an earlier but substantially similar version of the same statute, the Supreme Judicial Court said: "'We interpret this as providing for a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer.'" Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

The Commission determines just cause 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." School Comm. v. Civ. Serv. Comm'n, 43 Mass. App. Ct. 486, 488, *rev. den*., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983). As noted above, basic merit principles require that discipline of a tenured civil service employee must be remedial, not punitive, designed to "correct inadequate performance" and "[only] separating employees whose inadequate performance cannot be corrected." G.L. c. 31, § 1.

The Commission must take account of all credible evidence in the entire administrative record, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law, including whatever would fairly detract from the weight of any particular supporting evidence. See Comm'rs of Civ. Serv. v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine credibility of testimony presented to the Commission.

"[T]he assessing of the credibility of witnesses is a preserve of the [Commission] upon which a court conducting judicial review treads with great reluctance." Leominster v. Stratton, 58 Mass. App. Ct. at 729. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997).

**ANALYSIS**

The Appellant admits that he violated NAFD Rules and Regulations by reporting for duty under the influence of alcohol and improperly asking a superior officer for leniency. He admits that this misconduct provided just cause to discipline him. (See Appellant Patrick Steinkamp's Proposed Findings of Fact and Ruling of Law, p.12) The Appellant disputes only that the Respondent failed to establish by a preponderance of the evidence that the level of discipline imposed – termination from employment – is justified. I agree with the Appellant and conclude that, on the facts of this appeal, the Appellant's termination must be modified to a 30-day suspension.

The Respondent points to three alleged reasons to support a finding of just cause for the decision to discharge the Appellant:

- He admitted to reporting to work while intoxicated;
- He was dishonest and insubordinate in seeking to pressure a supervisor to give him a pass and not report his misconduct; and
- He was either untruthful or incompetent in the past by claiming he did not know the proper procedures for calling in sick and failed to provide details to explain why he failed to report to work or call in sick.

I conclude that the Respondent did not prove by a preponderance of the evidence that these alleged reasons, alone or in combination, provide just cause to discharge the Appellant.

The Appellant's Use of Alcohol

The Appellant does not fit the pattern of an employee whom the Commission has found to be lawfully discharged because he had been "habitually using intoxicating liquor to excess" in violation of G.L. c. 31, § 50. See, e.g., Officer A v. Town of Randolph, 36 MCSR 72 (2023) (three-year history of untreated alcohol abuse by police officer); Muth v City of Leominster, 24 MCSR 349 (2011), *aff'd*, 84 Mass. App. Ct. 1105 (2013) (Rule 1:28) (firefighter with long-standing problems with alcohol under Last Chance Agreement terminated after subsequent arrest for OUI); Alves v. Fall River School Comm, 22 MCSR 4 (2009) (addressing history of untreated alcohol related absences); Smith v. Boston Police Dep't, 17 MCSR 31 (2004) (finding that "egregious attendance" due to alcoholism justified termination for "substantial misconduct," noting applicability of §50); Crimlisk v. Waltham School Dep't, 10 MCSR 141 (1997) (affirming discharge of school custodian with a long history of alcoholism accompanied by tardiness and absenteeism); Bamberry v. Stoneham, 10 MCSR 11 (1996) (affirming discharge of firefighter who refused to enroll in alcohol treatment program and had engaged in numerous incidents of abusive alcohol-induced behavior).

I find the Appellant to be a credible witness who, until the incident that gave rise to the Appellant's termination, was a good employee, gaining recognition as the Paramedic of the Year in 2021. The first and only evidence that the Appellant's work suffered from problems with alcohol was the incident on June 10, 2023. Contrary to the findings in the discharge letter, the Appellant immediately recognized and acknowledged his mistake and asked for help. He completed a rehabilitation program at the earliest opportunity and, thereafter, continued outpatient treatment, remaining sober well beyond the date of his termination in September 2023. He briefly relapsed after he was terminated as a result of losing his health insurance and being without his

medication but then regained and maintained sobriety thereafter. He is now gainfully employed as an EMT, working a minimum of two, 24-hour shifts per week.

The Commission must be careful to avoid confusing discipline for alcohol-related misconduct with discrimination merely for having an alcohol-related disability. See Mammone v. President and Fellows of Harvard College, 446 Mass. 657 (2006) (distinguishing lawful termination for egregious alcoholism-related misconduct as opposed to discriminatory termination for the handicap of alcoholism itself); Ward v. Mass. Health Research Institute, Inc., 209 F.3d 29 (1st Cir. 2000) (distinguishing termination "because of tardiness" from termination "because of disability"). Although civil service law incorporates a strong public policy that prohibits employment of persons who abuse alcohol, basic merit principles are also imbedded with the concept that deficient performance can be changed through progressive discipline and corrective action. As stated in Town of Plymouth v. Civ. Serv. Comm'n, 426 Mass. 1, 7 (1997):

> "While the legislative history is sparse, [G.L. c. 31] § 50 was likely enacted because serious abuse of alcohol presumptively has a negative effect on job performance. *Allowing an employee to be reinstated after completion of an alcohol rehabilitation program and demonstration of satisfactory job performance is consistent with ameliorating deficient job performance*." (*emphasis added*)

Here, within a few days after the June 10, 2023 incident, the Appellant was given an ultimatum from the Town Manager that he resign his position or he would be terminated. The Appellant had registered for a rehabilitation program but had not yet attended it. The Town Manager's position did not waver, even after the Appellant had successfully completed the program and had remained sober through July 2023, when he was notified formally of the intent to terminate him, and through the date of his termination in September 2023. This disciplinary process was far more severe than the process recently accorded Employee B, a habitual alcohol abuser given at least two

opportunities for rehabilitation by the same Town Manager who was then "in complete agreement with the recommended course of action" for Employee B.

The treatment of the Appellant was also far more severe than the treatment accorded NAFD firefighters found to be using narcotics or other drugs without a prescription. In the case of drug abuse, a first offender is automatically entitled to be given the opportunity for rehabilitation and, thereafter, to be reinstated to his position. While this policy was adopted by NAFD through collective bargaining with the Union, Chief Coleman acknowledged that NAFD should treat alcohol, drugs and narcotics "similarly". Thus, under basic merit principles of civil service law, tenured firefighters with alcohol abuse issues are entitled to the same opportunity for rehabilitation prior to termination as similarly situated firefighters who are disciplined for misusing drugs.

The evidence of the Appellant's good faith efforts at rehabilitation are equally, if not more, compelling than that presented in Burns v. Fall River Public Schools, 24 MCSR 117 (2011), a rare, but applicable example of an employee who, as did the Appellant here, admitted his mistakes, took prompt action to address his alcohol abuse prior to termination and, unlike his peers, was not given the same opportunity to demonstrate his rehabilitation as other similarly situated employees. In reducing the discipline in Burns from termination to suspension commensurate with the time allowed other employees to demonstrate rehabilitation, the Commission majority distinguished Burns's appeal from Dion v. New Bedford School Dep't, 23 MCSC 517 (2010), in which there had been no evidence of disparate discipline and Mr. Dion did not seek treatment until after termination, so that there was no possible proffer of rehabilitation "at the time the appointing authority made its decision".

In sum, the Appellant was denied the opportunity for reinstatement granted to other employees, including Firefighter B (who, unlike the Appellant, had a long history of alcohol abuse). The

Appointing Authority gave little, if any, consideration to the fact that the Appellant had immediately and successfully completed a program of rehabilitation, to the Appellant's lack of a prior history of any alcohol abuse, and, by the time of his termination, to the reasonable inference that the Appellant was "better" (as the discharge letter itself acknowledged).

The Issues of Honesty and Insubordination

The Respondent also points to the Appellant's asking Lt. Picchi for a "pass", and making allegedly false statements that, in effect, Lt. Picchi had given others such a pass for showing up drunk on duty. The Respondent considered such behavior to be untruthful and insubordinate. Although no NAFD rules explicitly covering untruthfulness or insubordination were cited in the discharge letter, a generous parsing of the letter could infer that TM Borg believed this behavior came within the other NAFD Rules and Regulations he did cite: Article XII calling for "good behavior observed by law-abiding and self-respecting citizens" and prohibiting "conduct which may bring discredit upon the fire department" and Article XXIV (Conduct Unbecoming a Firefighter) "any specific act of immoral, improper, disorderly or intemperate personal conduct." The preponderance of the evidence does not support the Appellant's termination for such alleged behavior under any of these rules.

As to the Appellant's alleged untruthfulness, I agree with the Respondent that, as a firefighter/paramedic, he must be held to the same high standard expected of all public safety officers and that traits of trustworthiness and good judgement are necessary for a firefighter to perform his duties and responsibilities properly. See Doherty v. Town of Bourne, 25 MCSR 195 (2012); Mathews v. City of Boston, 22 MCSR 450 (2009). The duty imposed upon public safety personnel to be truthful is one of the most serious obligations he or she assumes. Thus, an appointing authority has just cause to discipline and/or terminate a firefighter who repeatedly

demonstrates a "willingness to fudge the truth". Public safety officers are often called upon "to speak the truth when doing so might put into question a search or might embarrass a fellow officer." Falmouth v. Civil Service Comm'n, 61 Mass. App. Ct. 796, 801 (2004), citing City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, *rev. den*., 428 Mass. 1102 (1997) ("It requires no strength of character to speak the truth when it does not hurt."). See also Waugaman v. Town of Falmouth, 25 MCSR 211 (2012) (firefighter terminated for lying about extra-marital affair conducted in firehouse while on duty); Polin v. Town of Randolph, 23 MCSR 229 (2011) (bypass of candidate for firefighter due to dishonesty in application process).

The corollary to the serious consequences that flow from a finding that a firefighter violated the duty of truthfulness requires that any such charges must be carefully scrutinized so that the employee is not unreasonably disparaged for honest mistakes or good faith misunderstandings. See, e.g., Swartz v. Town of Bourne, 34 MCSR 356 (2021), *aff'd sub nom.* Town of Bourne v. Civil Service Comm'n, Barnstable Sup. Ct. C.A. 2021-0314 (2022) (firefighter's alleged omissions in reporting his interactions on a medical call did not rise to the level of misrepresentations or untruthfulness that warranted his termination); Doherty v. Town of Bourne, 25 MCSR 195 (2012) (charge of untruthfulness was "an unwarranted stretch of the imagination"). See also Boyd v. City of New Bedford, 29 MCSR 471 (2016) (honest mistakes in answering ambiguous questions on application); Morley v. Boston Police Dep't, CSC No. G1-16-096, 29 MCSR 456 (2016) (candidate unlawfully bypassed on misunderstanding appellant's responses about his "combat" experience); Lucas v. Boston Police Dep't, 25 MCSR 420 (2012) (mistake about appellant's characterization of past medical history).

Here, the preponderance of the evidence established no basis to conclude that the Appellant was untruthful. None of the references in the discharge letter to what might be viewed as an

inference of untruthfulness rise to the level of knowingly (let alone intentionally) false statements. The alleged discrepancies in how many hours earlier the Appellant told his superiors he had his last drink on June 10, 2023 involve, in fact, only Capt. Bristol's report that the Appellant told him that he stopped nine hours earlier, while most of his superiors stated that the Appellant stopped around six or seven hours earlier, all well-within the range of an honest recollection of events. Similarly, if the finding in the discharge letter that the Appellant "denied drinking alcohol from a mason jar at the fire station" was meant to infer that the Appellant's denial was untruthful, such a finding lacks any support in the evidence. Finally, the Respondent's argument that the Appellant was untruthful in telling Lt. Picchi that he had given others a pass (which Lt. Picchi would certainly know of his own knowledge whether it was true or not) was not supported by the evidence.[17]

The Appellant's alleged insubordination in "pressuring" Lt. Picchi for a pass can be addressed summarily. Insubordination is defined by NAFD Rules and Regulations to be: "Failure or deliberate refusal to obey a lawful order given or issued by a superior officer." I heard no evidence to suggest that the NAFD ever applied that rule to a request made TO a superior officer by a subordinate. Moreover, the Appellant acknowledged that his request for a pass was wrong and promptly apologized to Lt. Picchi for having asked for that accommodation. The Appellant's overall performance record was an exceptional one. He has never before been known to be insubordinate to a superior or otherwise violated the rules that broadly impose an obligation to be on "good behavior" and to refrain from "intemperate personal conduct".

Finally, the Respondent's Proposed Decision made the argument that the Appellant's failure to report to work or call in sick according to proper procedure prior to June 10, 2023 demonstrated

[17] Lt. Picchi actually clarified that the Appellant "didn't allege that I have given other people passes, no." (*Tr.I:51 [Picchi]*)

a history of being untruthful and/or incompetent. This claim is without merit. The Appellant was not charged with untruthfulness for these violations and received minor discipline for each of his prior attendance infractions. Moreover, the discharge letter did not include such prior behavior as a reason for the disciplinary decision here.

Modification of the Penalty

Section 43 of G.L. c. 31 vests the Commission with the authority to modify a penalty imposed by the appointing authority. The Commission is delegated "considerable discretion" in this regard, albeit "not without bounds" so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. See, e.g., Police Comm'r v. Civ. Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; Falmouth v. Civ. Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (2004); Faria v. Third Bristol Div., 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). However, in the absence of "political considerations, favoritism, or bias," the same penalty is warranted "unless the commission's findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way." Falmouth, 447 Mass. at 824.

As referenced above, my findings differ significantly from those of the Appointing Authority, The critical difference in my findings include: (1) the Appellant took immediate responsibility for his actions on June 10, 2023; (2) he was not untruthful about his drinking that day; (3) Chief Coleman promised him the opportunity for rehabilitation, and he took immediate steps to take advantage of that opportunity but, before the Appellant was given a fair chance to demonstrate his efforts at rehabilitation, Chief Coleman's offer was overruled by the Appointing Authority who gave the Appellant 24 hours to resign or be terminated; and (4) the Appointing Authority seemed to rely on alleged facts, including a 2019 discipline, a prior criminal proceeding, and offer of

rehabilitation (EAP), that were not presented in the evidence before the Commission. The Appointing Authority overlooked these facts as well as the fact that the Appellant had completed rehabilitation and maintained sobriety in the months prior to his termination.

I also found that, contrary to the inference in the discharge letter, the Appellant was treated differently by the Appointing Authority from other similarly situated firefighters, specifically Firefighter A and Employee B. In 2020, Firefighter A, after being disciplined for his "inability to focus" at work and testing positive for illegal use of prescription drugs, was allowed to be reinstated after attending rehabilitation subject to conditions imposed by Chief Coleman. Firefighter B, who had longstanding well-known issues with alcohol, had been found on more than one occasion during 2021 and 2022 to be under the influence at work; nonetheless, despite repeatedly denying his misconduct and eventually losing his paramedic license, he was allowed multiple opportunities for rehabilitation.

Having reached different findings than the Respondent and based on my conclusion that the Appellant was treated differently than other similarly situated individuals, a modification of the penalty (discharge) is warranted. After carefully considering the level of discipline that can be justified under the facts of this appeal, I conclude that a 30-day suspension is a reasonable level of maximum progressive, remedial discipline that takes into account the Appellant's acknowledgement of his misconduct, the time others were given to rehabilitate themselves and return to duty before further discipline is imposed, and comports with the timeframe of the Appellant's own demonstrated rehabilitation prior to his termination. See G.L. c. 31, § 41, ¶ 1.

**CONCLUSION**

For all of the above reasons, the appeal of Patrick C. Steinkamp, Docket No. D1-23-172 is hereby ***allowed, in part.***

The Appellant's termination is modified to a 30-day unpaid suspension and, otherwise, pursuant to G.L. c. 31, § 43, he shall be reinstated to his position without loss of compensation or other benefits, subject to compliance with such requirements of law governing his reinstatement as are consistent with this Decision.

Civil Service Commission

*/s/ Paul M. Stein*
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on May 30, 2024.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), 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 does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his/her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:
David Brody, Esq. (for Appellant)
Erik T. McKenna, Esq. (for Respondent)