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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1781CV02478
NO. 1381CV02245

BRIAN SWEET

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION, and another¹

**DECISION AND ORDER ON THE PARTIES CROSS MOTIONS FOR
JUDGMENT ON THE PLEADINGS (Papers # 19, #19.2 and #20)**

Plaintiff Brian Sweet's ("Sweet") complaint seeks judicial review pursuant to G. L. c. 30A, § 14, of a decision of the Massachusetts Civil Service Commission ("Commission") dated July 20, 2017 ("2017 Decision") that amended an earlier decision ("2013 Decision") imposing a suspension of Sweet's employment as a Massachusetts State Trooper. The 2017 Decision rescinded the relief granted in the 2013 Decision, which was a 60-day suspension of employment, and dismissed Sweet's appeal nunc pro tunc, the effect of which was to affirm a Massachusetts State Police Department disciplinary decision terminating Sweet's employment. Following a long litigation history, before the court are the parties' cross motions for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c).

Sweet argues that the 2017 Decision should be set aside for the following reasons: (1) the Commission lacked jurisdiction to reopen its 2013 Decision; (2) the Commission abused its discretion in considering additional information concerning Sweet's inability to obtain a firearms license; (3) the 2017 Decision violates G. L. c. 31, § 43; (4) the 2017 Decision is not supported

¹ Commonwealth of Massachusetts Department of State Police.

by substantial evidence; (5) the 2017 Decision is based on an error of law; and (6) the reopening of the 2013 Decision was the result of an unlawful procedure. The Commission and the Massachusetts Department of State Police (“MSP”) argue that the Commission’s 2017 Decision was appropriate in all respects and cross-move for dismissal of Sweet’s petition on the additional grounds of waiver, mootness, and futility.

After hearing and careful review of the parties’ submission, Sweet’s motion for judgment on the pleadings is **DENIED** and the defendants’ cross motions are **ALLOWED**.

BACKGROUND

The following undisputed facts are taken from the Administrative Record filed with the court. See G. L. c. 30A, § 14. The court also takes notice of certain court papers from the related District Court, Superior Court and Appeals Court cases. See U.S. Bank Nat. Ass’n v. Schumacher, 467 Mass. 421, 426 n.8 (2014), citing Brookline v. Goldstein, 388 Mass. 443, 447 (1983).

This matter has a long procedural history involving five separate cases filed in this court, two District Court actions, and one filing in the Appeals Court.

The dispute began in 2010, when a Trial Board of the MSP found Sweet guilty of conduct unbecoming a State Trooper, insubordination, workplace violence, and untruthfulness and recommended discipline including termination of Sweet’s employment. On October 28, 2010, the Superintendent of State Police adopted the Trial Board’s recommendations and terminated Sweet’s employment. The superintendent simultaneously revoked Sweet’s firearms license, but on the separate basis of an “escalating pattern of misconduct” that led them to conclude that Sweet was “no longer a suitable person to possess a firearms license.”

Sweet timely appealed the Superintendent’s imposition of the Trial Board

recommendations to the Commission. The appeal, however, challenged only the validity of the Trial Board's charges of workplace violence, conduct unbecoming, insubordination, and untruthfulness. The appeal did not challenge the subsequent revocation of Sweet's firearms license.

The Commission held six days of hearings, heard from seventeen witnesses, and reviewed a 2,300-page administrative record before issuing its 58-page decision on May 13, 2013. The Commission's decision ("2013 Decision") upheld the Trial Board's charge against Sweet for untruthfulness. The Commission modified the discipline imposed to a 60-day suspension without pay concluding that termination was an inappropriate level of discipline.

In June 2013, Sweet filed a timely appeal of the 2013 Decision in this court (Docket No. 1381cv02245) seeking judicial review of the Commission's upholding of his suspension for untruthfulness. A few days later, the Colonel of the State Police Department filed a separate complaint in Suffolk County Superior Court (Docket No. 1384cv02245) seeking judicial review of the Commission's conclusion that termination was not appropriate discipline for Sweet's conduct. In 2014, this court (Wilson, J.) ordered the Suffolk County case transferred here (Docket No. 1481cv08044) and consolidated it with the pending Middlesex County case.

While judicial review of the 2013 Decision was pending, on January 9, 2014, Sweet filed an application for a firearms license with then Superintendent of the State Police, Col. Timothy Alben.² On February 18, 2014, Col. Alben denied Sweet's application stating that (1) Sweet was not eligible to apply for a new license because his previous license (although revoked) did not expire until July 19, 2014, and (2) that even if eligible, Col. Alben determined that Sweet was not a suitable person to possess a firearms license. Sweet sought review of the denial in the

² Sweet failed to timely appeal within 90 days the October 28, 2010 revocation of his license as required by G. L. c. 140, § 131(f), requiring him to apply for a new license.

District Court, which upheld (Singer, J.) Col. Alben's denial. Sweet did not appeal the District Court decision.

On August 26, 2014, Sweet submitted an application for a *new* firearms license to Col. Alben. On September 4, 2014, Col. Alben denied Sweet's application concluding that Sweet's possession of a license to carry a firearm "may create a risk to public safety" based upon his review of "reliable and credible information" concerning Sweet's "disturbing pattern of misconduct and overly aggressive behavior[.]"

Sweet timely appealed the September 4, 2014, denial to the District Court (Stoddard, J.), which ordered the matter remanded to Col. Alben for further factual findings concerning the reliability of the evidence cited in his denial. Col. Alben sought certiorari review of the District Court decision of remand to this court (Docket No. 1581cv05825). In a decision dated November 3, 2016, this court (Kern, J.) held that the District Court had applied an improper standard of review and impermissibly shifted the burden of proof away from Sweet. This court ordered the District Court to "conduct an evidentiary hearing in accordance with this Decision . . . to place the burden of persuasion on Sweet and to apply the appropriate standard of review" The District Court held new evidentiary hearings in the spring of 2017, and considered a 3,500-page administrative record, before issuing its decision (Carroll, J.) on May 26, 2017, affirming Col. Alben's September 2014 denial of Sweet's application for a new firearms license.³ Sweet sought certiorari review of the District Court's decision in this court (Docket No. 17cv02255), which was dismissed for failure to prosecute in September 2019 (Ricciuti, J.).

³ In light of the pending District Court case concerning revocation of Sweet's firearm license, the Commission moved for and was granted a stay of Docket No. 1381cv02245 by this court (Krupp, J.) on March 24, 2017 (Paper No. 31).

On June 22, 2017, the Commission issued an Order to Show Cause to Sweet. The Order to Show Cause stated that the Commission was considering exercising its discretionary power to reopen the previously closed proceeding that resulted in the 2013 Decision reducing Sweet's discipline to a 60-day suspension. As grounds therefore, the Commission cited the fact that "from October 28, 2010 to the present . . . Sweet has been found 'unsuitable' to carry a firearm." The Commission noted "[t]he October 28, 2010 order to revoke Mr. Sweet's LTC was not one of the grounds stated by the [] Trial Board for recommending Trooper Sweet's termination," and that Sweet's likelihood that he will be able to obtain a firearms license in the future "remains in substantial doubt." The Commission stated that "[those] facts now raise a substantial question as to whether this appeal should be reopened and the [2013 Decision] in this appeal should be reconsidered." The Order to Show Cause gave Sweet until July 14, 2017, to show good cause why the Commission should not reopen the appeal. Sweet made no filing with the Commission in response to the Order to Show Cause. The Commission considered and rejected arguments made by Sweet in a motion for relief from stay that he filed in the original c. 30A action (Docket No. 1381cv02245, Paper No. 36) where he sought an order from this court precluding the Commission from reopening the 2013 appeal.⁴

On July 20, 2017, the Commission voted to reopen the 2013 appeal and issued an amended decision ("2017 Decision"). The 2017 Decision rescinded the relief granted in the 2013 Decision and dismissed Sweet's appeal to the Commission nunc pro tunc. The 2017 Decision stated that the ability to obtain an unrestricted license to carry a firearm was "a requirement to serve as a [Massachusetts State Police] Trooper" and that Sweet "became and remained permanently and irreversibly ineligible to be relicensed for a period of three years."

⁴ The motion for relief from stay was denied by this court (Freniere, J.) on December 4, 2017.

The Commission concluded that “[s]uch ineligibility coupled with [Sweet’s] involuntary separation from employment rendered Mr. Sweet incapable of performing the essential functions of his former State Trooper position for a length of time (exceeding three years) that precludes unfettered reinstatement.” Administrative Record (“A.R.”), pp. 20-23. The Commission noted that these conditions were not known to it before issuing its 2013 Decision and concluded that amendment of the prior decision was warranted.

Sweet timely filed the instant action (Docket No. 1781cv02478) seeking judicial review of the Commission’s 2017 Decision on the ground that the Commission committed errors of law in reopening the 2013 appeal and rescinding the 2013 Decision. The matter was consolidated with Docket No. 1381cv02245 per order of this court (Freniere, J.) on December 4, 2017 and the stay in place in that case was applied to the instant case.

On September 27, 2019, this court (Ricciuti, J.) entered final judgment ordering the dismissal of the complaint in the original Chapter 30A action (Docket No. 1381cv02245; Paper No. 41). The court found that judicial review of the 2013 Decision was moot following the Commission’s 2017 Decision rescinding that decision. Sweet appealed the judgment of dismissal to the Appeals Court (Docket No. 2019-P-1724). That appeal was dismissed on March 26, 2020, on the ground that Sweet had not sought certification of a separate and final judgment for the consolidated Superior Court cases as required by Mass. R. Civ. P. 54(b).

The Commission moved in February 2020 to dismiss this case, or in the alternative stay the proceedings pending resolution of Sweet’s appeal in the licensing case (Paper No. 9). Sweet opposed the motion to dismiss and also filed, on February 12, 2020, a Motion for Leave to Clarify or Supplement the Administrative Record (Paper No. 10). This court, (Ricciuti, J.) ordered a 30-day stay pending the Commission’s report on whether Sweet’s Appeals Court case

was dismissed. The Appeal was dismissed on March 26, 2020, and the Commission filed a renewed motion to dismiss on May 17, 2022 (Paper No. 15), which was denied by this court (Mulligan, J.) on January 12, 2023 (Paper No. 17). The present motions were then filed and a hearing was held on May 16, 2023.

While the above cases were pending, Sweet was granted a license to carry a firearm on July 30, 2020 by his local licensing authority, the Andover Police Department.

DISCUSSION

Sweet seeks judicial review of the Commission’s 2017 Decision rescinding the 2013 Decision and dismissing Sweet’s appeal, nunc pro tunc, of the MSP Trial Board’s decision to terminate his employment. To prevail on his appeal Sweet must prove that the Commission’s decision was: “(a) in violation of constitutional provisions; or (b) in excess of statutory authority or jurisdiction of the agency, or (c) based upon an error of law; or (d) made upon unlawful procedure; or (e) unsupported by substantial evidence; or (f) unwarranted by facts found by the court on the record . . . or (g) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.” G. L. c. 30A, § 14(7).

The court’s review is confined to the administrative record (“A.R.”) and the burden of proof rests with Sweet, who must overcome the presumption that the agency’s decision is valid. Faith Assembly of God v. State Building Code Comm’n, 11 Mass. App. Ct. 333, 334 (1981). The standard of review is “highly deferential to the agency” and requires that the reviewing court “give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.” G. L. c. 30A, §14(7). A reviewing court may not substitute its judgment for that of the agency, “even though the court would justifiably have made different choice had the matter been before it de novo.” South

Worcester County Reg'l Vocational Sch. Dist. v. Labor Relations Comm'n, 386 Mass. 414, 420 (1982).

I. Authority of the Commission to reopen its 2013 Decision and discretion to consider Sweet's inability to obtain a license to carry a firearm

Sweet argues that the Commission lacked authority to reopen its 2013 Decision because there is no evidence that the 2013 Decision was based on "false, inaccurate or unreliable" information, or that it constituted a "miscarriage of justice." To conclude otherwise, Sweet argues, would undermine the finality of such administrative decisions.

"[A]gencies have inherent power to reopen their concluded proceedings in compelling situations as justice may require." Covell v. Department of Social Servs., 42 Mass. App. Ct. 427, 433, (1997). "An administrative agency, in the absence of statutory limitations, generally has the inherent authority to reconsider a decision or reopen a proceeding to prevent a miscarriage of justice." Soe v. Sex Offender Registry Bd., 466 Mass. 381, 395 (2013). The decision to reconsider or reopen a hearing "rests on the sound discretion of the [agency]." Id. at 396.

"[T]he discretion to reopen a closed proceeding should be exercised sparingly in order to preserve the 'resolving force' of final administrative decisions[.]" Alliance to Protect Nantucket Sound, Inc. v. Dep't of Public Utilities, 461 Mass. 190, 195 (2011), citing Stowe v. Bologna, 32 Mass. App. Ct. 612, 616 (1992), S.C., 415 Mass. 20 (1993) ("the power [to reopen an administrative proceeding] must be sparingly used if administrative decisions are to have resolving force on which persons can rely"). In general, "[t]he mere availability of additional evidence is insufficient" for an aggrieved party to reopen an administrative proceeding. Id. "[T]he moving party must demonstrate compelling circumstances that warrant reopening, so as to preserve finality." Id., citing Covell, *supra*.

Here, the Commission's stated reason for reconsideration of the 2013 Decision was that

“from October 28, 2010 to the present . . . Sweet has been found ‘unsuitable’ to carry a firearm.” The Commission noted “[t]he October 28, 2010 order to revoke Mr. Sweet’s LTC was not one of the grounds stated by the [] Trial Board for recommending Trooper Sweet’s termination,” and that Sweet’s likelihood that he will be able to obtain a firearms license in the future “remains in substantial doubt.” The Commission stated that “[those] facts now raise a substantial question as to whether this appeal should be reopened and the [2013 Decision] in this appeal should be reconsidered.”

The Commission did not abuse its discretion in deciding to revisit the 2013 Decision where the stated discipline (a 60-day suspension) could no longer be carried out due to Sweet’s inability to resume employment with the MSP due to his inability to obtain a license to carry a firearm.⁵ To the extent that a question as to Sweet’s eligibility for reinstatement arose, the Commission had authority to reexamine his suspended status. See Frawley v. Police Comm’r of Cambridge, 473 Mass. 716, 731 (2016). As will be discussed in more detail below, the ability to obtain a license to carry a firearm was a requirement of employment as a State Trooper. The Commission did not commit an abuse of discretion when it concluded that the 2013 Decision should be rescinded because the ordered discipline (suspension with reinstatement) was inconsistent with the rules of the MSP as Sweet was “incapable of performing the essential functions of his former State Trooper position for a length of time (exceeding three years) that precluded [Sweet’s] unfettered reinstatement.” Because these conditions rendered the remedy (reinstatement) impossible, and were not known to the Commission at the time of its 2013 Decision, it was within the Commission’s authority to reopen the proceeding and reconsider the

⁵ That Sweet would obtain a license to carry a firearm from the Andover Police Department in July 2020 was unknown at the time of the Commission’s decision and is irrelevant to determining whether the Commission abused its discretion.

2013 Decision to ensure a just result was reached. See Covell, supra.

II. G. L. c. 31, § 43

Sweet argues that the 2017 Decision violated the Civil Service statute, G. L. c. 31, § 43, which “statutorily required [the Commission] to order Mr. Sweet’s reinstatement.” Sweet misapplies the case of Brookline v. Alston, 487 Mass. 278, 306 (2021), which held that “[i]f the commission . . . determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights” Id.

Sweet’s conclusion that the Commission determined that there was not just cause for the action taken against him is incorrect. That the discipline was reduced from termination to suspension does not mean that the Commission determined there was not “just cause” for the disciplinary action taken against Sweet. See Brookline, supra. Instead, the Commission concluded that there was just cause for discipline and exercised its authority to determine the level of discipline; in Sweet’s case, suspension without pay. The 2017 Decision did not change the Commission’s conclusion that discipline was warranted, it only rescinded the remedy of the suspension, which it determined could no longer be carried out. The Commission’s 2017 Decision did not violate G. L. c. 31, § 43.

Sweet also argues that the Commission exceeded its authority by “penalizing Mr. Sweet for infractions the MSP didn’t charge him with,” stating the Commission penalized him with the uncharged infraction of lack of a firearms license. However, the Commission did not impose additional discipline based on Sweet’s lack of a firearms license. Instead, the Commission rescinded the original relief granted (suspension) after a finding that discipline was warranted

because it concluded that Sweet's "unfettered reinstatement" was now "precluded." There was no finding by the Commission that additional discipline was warranted due to Sweet's lack of a firearms license; only that the prior relief could no longer be imposed because Sweet was no longer eligible for reinstatement.

III. Lack of substantial evidence and error of law

Sweet argues that the Commission lacked substantial evidence for its conclusion that he could not be reinstated without a firearms license. He also argues that the Commission's conclusion was legally incorrect and that he could resume his position as a State Trooper without a valid firearms license.

General Laws c. 30A, § 1 (6), defines "substantial evidence" as "such evidence as a reasonable mind might accept as adequate to support a conclusion." Singer Sewing Mach. Co. v. Assessors of Boston, 341 Mass. 513, 517 (1960); McCarthy v. Contributory Retirement Appeal Bd., 342 Mass. 45, 47 (1961). An "error of law" occurs when a "decision of the commission [is] legally untenable." Hester v. Civil Service Commission, 78 Mass. App. Ct. 1109 at *2 (2010) (Rule 1:28 decision).

A public employer has the right to require a specific license as an essential requirement for employment where loss of such license may result in termination. See Ratta v. Civil Service Commission, 75 Mass. App. Ct. 1110 (2009) (Rule 1:28 decision) (loss of driver's license warranted termination where "a valid driver's license was an essential requirement" of continued employment); Wheeler v. Town of Franklin, 2003 WL 1114057, Norfolk Sup Ct. C.A. No. 2001-02034 (Fabricant, J.) (February 14, 2003) (loss of firearms license cause for termination even where police officer was otherwise qualified.). Where a police officer is required by rule to maintain a firearms license, the Commission has found that failure to maintain the license, by

itself, constitutes “just cause” for termination of the officer’s employment. See Murphy v. Salem Police Dept., Civil Service Case No. D-04-329 (July 26, 2007); Crawford v. City of Leominster, Civil Service Case No. D1-18-109 (May 9, 2019) (“because of the inherent requirement of a police officer to carry a firearm, the relief ordered by the Commission [was] contingent upon a successful [firearms license].”). Courts have upheld the right of Police departments “to declare the ability to possess a firearm an essential function of a police officer.” See Healy v. Civil Service Commission, 1999 WL 253150, at *4, Middlesex Sup Ct. C.A. No. 98-4162 (Gants, J.) (April 16, 1999). See also Wheeler, supra.

Recently, the Supreme Judicial Court (SJC) examined the Department of State Police’s authority to promulgate regulations applicable to Troopers and concluded that “a properly promulgated regulation has the force of law . . . and must be accorded all the deference due to a statute.” Perez v. Department of State Police, 491 Mass. 474, 479 (2023), quoting Borden, Inc. v. Commissioner of Pub. Health, 388 Mass. 707, 723, cert. denied sub nom. Formaldehyde Inst., Inc. v. Frechette, 464 U.S. 936 (1983). In so finding, the SJC recognized that “[t]he Legislature has recognized that the colonel has a need for such wide discretion in ensuring that the state police are able to accomplish their mission, based on their status as ‘traditionally an elite force subject to more arduous duties than other [police officers] and to quasi military disciplinary regulations.’” Id. at 480, quoting O’Hara v. Commissioner of Pub. Safety, 367 Mass. 376, 380 (1975).

There is no dispute that the Colonel of the State Police, prior to Sweet’s employment as a State Trooper, promulgated a department rule that requires all State Troopers to maintain a license to carry a firearm in performance of their duties, as authorized by the broad grant of authority given by the Legislature in G. L. c. 22C, the State Police statute.

Sweet relies on a pair of cases in arguing the Commission lacked substantial evidence and made an error of law in concluding he could not be reinstated without a firearms license. Those cases involved municipal police departments where an officer was allowed to return to duty despite their inability to carry a firearm. See Kraft v. Police Comm’r of Boston, 417 Mass. 235, 235-236 (1994); City Manager of Worcester v. New England Police Benev. Ass’n, Local 911, 85 Mass. App. Ct. 1119 (2019 (Rule 1:28 decision)). Neither case is applicable to this matter as neither the department nor the applicable rule are the same. Sweet cites to no case where a State Trooper was reinstated despite their inability to obtain a firearms license. Further, the MSP promulgated a rule requiring firearms licensing for all Troopers that “must be accorded all the deference due to a statute.” See Perez, supra.

Here, there was substantial evidence and legal authority supporting the Commission’s conclusion that Sweet could not be reinstated to his job as a State Trooper without a firearms license, rendering the prior relief granted by the Commission impossible. Sweet has not demonstrated the Commission’s 2017 Decision was unsupported by substantial evidence or constituted an error of law.⁶ See G. L. c. 30A, § 1 (6); Singer Sewing Mach. Co., supra; McCarthy, supra.

IV. Unlawful procedure

Sweet argues that the Commission deprived him of his property interest in continued public employment without due process. Sweet states that the order to show cause sent by the Commission failed to inform him that he was entitled to a hearing, and that no opportunity for hearing was provided prior to the Commission’s issuance of its 2017 Decision.

⁶ The court notes that the defendants argue in their motions that Sweet waived his ability to challenge the 2017 Decision based on lack of substantial evidence due to inaction. However, given the court’s conclusion that substantial evidence was present, the court declines to decide whether Sweet’s ability to challenge the 2017 Decision on that basis was waived.

A public employee is entitled to “basic due process protections” before being deprived of any property interest in continued employment. City of Worcester v. Civil Service Commission, 87 Mass. App. Ct. 120, 124, 125 (2015), citing Cleveland Bd. of Education v. Loudermill, 470 U. S. 532, 545-546 (1985) (“Loudermill”). Such a property interest in continued employment has been recognized when a public employee has a right to continued employment absent “just cause” for termination. See Hall-Brewster v. Boston Police Dept., 96 Mass. App. Ct. 12, 23 (2019).

While the record is incomplete on this issue, the court accepts for the purposes of this decision that Sweet was only subject to termination as a State Trooper for just cause. The court also accepts that the 2017 Decision dismissing Sweet’s appeal and rescinding his reinstatement prejudiced his rights. However, the procedure followed by the Commission satisfied due process principles. The governing statute concerning Civil Service proceedings has been held to “clearly fulfill the due process requirements for pre-termination notice and opportunity to be heard.” O’Neill v. Baker, 210 F. 3d 41, 48 (1st Cir. 2000). The record establishes that Sweet was provided notice of the order to show cause and given an opportunity to respond.⁷ Sweet was not entitled to an in-person hearing, as he now argues, as all that is required is proper notice and “[t]he opportunity to present reasons, either in person or in writing.” See Hall-Brewster, *supra* at 23.

Also, there is a distinction in the Code of Mass Regulations between a “notice” to show cause, which initiates a proceeding, and an “order” to show cause in an existing proceeding. Where, as here, there was an already existing adjudicatory proceeding that had concluded, the

⁷ While Sweet did not formally respond to the show cause order, his counsel submitted a motion filed with the Superior Court and the Commission considered, and rejected, the reasons contained therein arguing against amending the 2013 Decision.

Commission issues only an “order” to show cause. See 801 Code Mass. Regs. § 1.01(6)(a) (“The notice or order shall state the reason for the action. . . , and, in the case of a notice, any right to request an Adjudicatory Proceeding.” (emphasis added)). Sweet’s argument conflates “notices” with “orders” to show cause, ignoring that due process considerations are different where a new proceeding is first initiated versus when a proceeding is already underway, and the party has received due process during the adjudicatory phase of the proceeding.

This court finds no error in the procedure followed by the Commission in issuing its order to show cause, considering Sweet’s written submission, and ultimately issuing its 2017 Decision.

V. Mootness and Futility

The MSP argues that Sweet’s petition should be dismissed on the grounds of both mootness and futility as “Sweet will remain forever ineligible for and/or disqualified from reinstatement between October 2010 through July 2014.” MSP states that, by statute, it cannot reinstate Sweet because he was dismissed from the State Police force after a trial under G. L. c. 22C, § 13.⁸ In addition, Sweet has been separated from service for more than three years requiring readmission and graduation from the police academy, remains ineligible for a firearms license, and will forever fail to meet the moral fitness requirements of the department after being found to have filed a police report containing a false statement and to have been untruthful during investigations into his own misconduct.

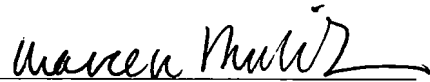
In support, the MSP correctly states that G. L. c. 6E, § 10 (a) (viii), requires the Massachusetts Peace Officers Standards and Training Commission (“POST”) to deny or revoke certification to any officer or applicant who commits “perjury” or “knowingly files a police

⁸ MSP argues in a footnote that the 2017 Decision had the effect of affirming Sweet’s termination from the MSP. The court does not reach that argument here.

report containing a false statement.” The administrative record reflects that the Commission found that Sweet had been untruthful in at least two instances and “failed to correct an incident report” when required. The MSP through its investigations found seven instances of untruthfulness by Sweet, including four in which he falsely testified under oath. Considering these findings, and the long history of abusive and inappropriate behaviors as a State Trooper catalogued in the record, the court agrees that Sweet is ineligible to receive required certification by POST to ever be reinstated to as a police officer. Accordingly, as Sweet is forever ineligible to be certified for work as a police officer in this Commonwealth, Sweet’s petition requesting reinstatement is also denied as moot. See Norwood Hosp. v. Munoz, 409 Mass. 116, 121 (1991).

ORDER

For the above reasons, Sweet’s motion for Judgment on the pleadings is **DENIED**, the Commission’s motion for judgment on the pleadings is **ALLOWED**, and the MSP’s motion for judgment on the pleadings is **ALLOWED**. The plaintiff’s petition is hereby **DISMISSED** with prejudice.



Maureen Mulligan
Associate Justice of the Superior Court

Dated: June 17, 2023