

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

BRIAN SWEET,
Appellant

v.

D-09-334

DEPARTMENT OF STATE POLICE,

Respondent

Appellant's Attorney:

Timothy M. Burke, Esq.
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Needham, MA 02494

Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43 and G.L. c. 22C, § 13 as amended by Chapter 43 of the Acts of 2002, the Appellant, Brian Sweet (hereinafter "Sweet" or "Appellant"), is appealing the decision of the Department of State Police (hereinafter "State Police") to suspend him for ten (10) days, requiring him to forfeit ten (10) days of accrued time off and involuntarily transferring him for six months to the State Police barracks in Belchertown as a result of his actions on May 9, 2007 and subsequent dates in

Medford and on August 9, 2007 in Andover. The appeal was timely filed with the Civil Service Commission (hereinafter “Commission”) on August 7, 2009. A pre-hearing conference was conducted on September 15, 2009 and a full hearing was held on October 5, 2009 at the offices of the Commission. All witnesses who testified, other than the Appellant, were sequestered. The hearing was digitally recorded. Both parties submitted post hearing briefs on November 23, 2009.

FINDINGS OF FACT:

Twenty-seven (27) Exhibits were accepted into evidence during the hearing. Based upon the documents entered into evidence and the testimony of:

For the Massachusetts State Police:

- Private citizen complainant (hereinafter “private citizen”);
- Trooper Jodi A. Gerardi, Massachusetts State Police;
- Lt. Robert Favuzza, Massachusetts State Police;

For the Appellant:

- Trooper Jeffrey Boutwell, Massachusetts State Police;
- Andrew Padellaro, Assistant Clerk Magistrate, Lynn District Court;
- Trooper Matthew Lavita, Massachusetts State Police;
- Trooper Brian Sweet, Appellant;

I make the following findings of fact:

1. The Appellant, Brian Sweet, is a Trooper employed by the Massachusetts State Police, a position and rank he has held for approximately nine (9) years. (Stipulated Fact) The Appellant described himself as an “active Trooper” who issues many citations. (Testimony of Appellant)

2. In regard to prior discipline, the Appellant received a letter of counseling in 2004 and was required to forfeit three (3) days of vacation time in 2005 for violation of Article 5.1 (Violation of Rules); Article 5.2 (Unbecoming Conduct) and Article 5.17 (Identification). (Stipulated Fact and Exhibit 19)
3. The discipline that is the subject of the instant appeal involves a 2007 citizen complaint regarding incidents in May 2007 and August 2007 that was investigated by the State Police. The State Police Trial Board proceedings regarding this matter, at which the Appellant testified, did not take place until July 24, 2009 and July 30, 2009. (Stipulated Fact)
4. The State Police Trial Board, whose findings were adopted by the Superintendent / Colonel of the State Police, concluded that the Appellant violated various sections of the rules and regulations (hereinafter “the rules”) of the State Police. (Exhibit 10)
5. The State Police Trial Board found that the Appellant violated Article 5.8.2 of the rules by demonstrating a lack of knowledge of the application of laws required to be enforced, as well as a lack of proper procedures. Specifically, the Trial Board found that the Appellant “intentionally and without justification” filed an “immediate threat” request for suspension of the private citizen’s license where no threat existed. (Exhibit 10)
6. The State Police Trial Board also found that the Appellant violated Article 5.27.3 of the rules by filing false written reports and making false statements. Specifically, the Trial Board found that the Appellant was untruthful when he wrote in a report that two of his colleagues (Sergeant Outerbridge and Trooper Gerardi) witnessed the private citizen’s “tirade” against him at a May 9, 2007 traffic stop. Further, the Trial

Board found that the Appellant was untruthful when he stated that the Registry of Motor Vehicles authorized the use of the “immediate threat” form in question.

(Exhibit 10)

7. Finally, the State Police Trial board found that the Appellant violated Article 5.5.3 of the rules when he left his post without first receiving permission to leave from his duty assignment supervisor or proper authority. (Exhibit 10)
8. The private citizen who filed the complaint regarding the Appellant testified before the Commission. He was a good witness and I found his testimony to be credible. He offered candid testimony regarding the events in question without regard to whether or not it portrayed him (the citizen) in a favorable light. He appeared to make a conscious effort in his testimony not to overreach regarding the actions of the Appellant. (Testimony, demeanor of private citizen)
9. In March 2006, the Appellant pulled over the private citizen while the private citizen was driving his Cadillac on Route 93 North. The Appellant cited the private citizen for tinted windows. The private citizen appealed this citation and was subsequently found “not responsible”. (Testimony of private citizen)
10. In April 2006, the Appellant pulled the private citizen over while the private citizen was riding his motorcycle on Route 93 South. (Testimony of Appellant and private citizen)
11. During the April 2006 motorcycle stop, the Appellant cited the private citizen for handlebars that were too high, wearing an improper helmet and a loud exhaust. The Appellant appealed this citation and was found “not responsible”. (Testimony of Appellant)

12. On May 9, 2007, the Appellant again pulled the private citizen over while the private citizen was riding his motorcycle in Medford at approximately 11:00 P.M. The Appellant ordered the private citizen to stay seated on the motorcycle, despite the private citizen's objection to sitting on an idle motorcycle with his back to traffic late at night. (Testimony of Appellant)
13. During this May 9, 2007 traffic stop, the Appellant again cited the private citizen for high handlebars, an improper helmet and a loud exhaust. (Testimony of Appellant) Also during this traffic stop, the Appellant told the private citizen that he wouldn't "beat" the citation this time and that he (the Appellant) would file for a "registry hearing" if the private citizen did successfully appeal the citation. (Testimony of Appellant; Exhibit 10) The private citizen became angry during this traffic stop and at one point put his finger in the face of the Appellant. (Testimony of Appellant)
14. On the May 9, 2007 citation issued by the Appellant, there is the notation "N.C.". State Police Lt. Robert Favussa, the Station Commander at the Medford barracks, testified that he believes these initials stand for "no consideration" and is meant as a message to the clerk magistrate not to overturn the citation. (Testimony of Favussa)
15. After the traffic stop, the private citizen drove to a restaurant in Medford. Three (3) Medford firefighters who the private citizen is acquainted with, were inside the restaurant. While inside the restaurant, the private citizen saw the Appellant drive by the restaurant in his police cruiser at a very low speed on two occasions. At this point, the private citizen felt he was being followed by the Appellant. (Testimony of private citizen)

16. Shortly after the May 9, 2007 traffic stop, the private citizen filed a complaint against the Appellant. (Testimony of Appellant and Exhibit 10)
17. In December 2006, prior to these traffic stops with the private citizen, the Appellant arrested a woman coming out of the above-referenced Medford restaurant for OUI. According to the Appellant, he was unaware at the time of the OUI arrest that the restaurant was owned by a Medford police officer and that the woman who he arrested was the girlfriend of a Medford police officer. According to the Appellant, the woman he arrested is affiliated with [the private citizen] and a motorcycle group (Testimony of Appellant)
18. The Appellant also testified about a related incident that occurred at this restaurant in January 2007. According to the Appellant, four individuals on motorcycles evaded or failed to stop for the Appellant. He subsequently located two of them at the restaurant in question. While in the parking lot of the restaurant, the owners of the motorcycles came out of the restaurant and the Appellant identified them as the individuals he had been pursuing. He filed an "immediate threat" report against them with the RMV. According to the Appellant, a Medford police officer filed a statement indicating that he (the Medford police officer) had been having dinner with one of the motorcycle operators that night and he could not have been one of the individuals that the Appellant was pursuing. Also, according to the Appellant, the Medford Police Chief contacted the RMV and "squashed" the Appellant's immediate threat reports. (Testimony of Appellant)
19. The Appellant believes that the private citizen is part of a motorcycle club that frequents this restaurant. The Appellant, in emotional testimony before the

Commission, expressed frustration that the above-referenced OUI arrest and his interaction with individuals affiliated with this Medford restaurant has negatively impacted his career and that the State Police has failed to support him when he was simply performing his duties as a State Trooper. (Testimony of Appellant) In a June 5, 2007 memorandum, the Appellant stated that he has been “continually harassed by members of this club...and received two false citizen complaints and numerous harassing phone calls directly to the SP Medford barracks”. (Exhibit 10)

20. As part of a log entry regarding the May 9, 2007 traffic stop, the Appellant wrote in part:

“Upon being issued citation, operator becomes belligerent with Tpr Sweet. Oper points his finger in Tpr Sweet’s face and begins yelling at him. Tpr Sweet advises oper several times to remove his finger out of his face and sit back on the m/c. At this time Sgt. Outerbridge and Tpr Gerardi are travelling N/B side and observe exchange...” (*emphasis added*) (Exhibit 10)

21. Trooper Jodi Gerardi testified before the Commission. She was a good witness and I credit her testimony. She struck me as someone who appreciates the requirement of providing truthful testimony while under oath, regardless of how that testimony may portray her or others. She had a solid recollection of the events in question, including her conversations with the Appellant. (Testimony, demeanor of Trooper Gerardi)
22. Trooper Gerardi was travelling northbound on Route 93 when she noticed that a cruise was involved in a traffic stop on the opposite side of Route 93 (southbound). She tried to radio the trooper involved in the traffic stop to ensure that he was O.K., but received no response. She was going to make the “flip” and go back on 93 South when a State Police sergeant indicated on the radio that he was already en route. Other than noticing that there was a traffic stop, Trooper Gerardi made no other

observations while she was travelling in her cruiser on Route 93 North. She did not know whose cruiser was involved in the traffic stop and only knew it was a cruiser because of the flashing blue lights. (Testimony of Trooper Gerardi)

23. The day after the above-referenced traffic stop, the Appellant spoke to Trooper Gerardi and said words to the effect, "Did you see that guy in my face last night?" In response, Trooper Gerardi told the Appellant that she hadn't seen anything. Trooper Gerardi was subsequently told by a sergeant investigating this matter that the Appellant had stated that she observed the interaction between the Appellant and the private citizen. In response, Trooper Gerardi angrily confronted the Appellant asking him why he continued to state something that she previously told him was not accurate. (Testimony of Trooper Gerardi)

24. Despite hearing Trooper Gerardi's vehement denial that she ever saw the Appellant on the night in question, the Appellant equivocated on this matter during his testimony stating, "I was just seeing what details she saw of my interaction with [private citizen]; she saw me on the stop; that's why I brought in the radio transmissions. It's just to show you she was driving by on the northbound side." (Testimony of Appellant)

25. As referenced above, Trooper Gerardi only saw blue flashing lights on the night in question. She did not see any interaction between the Appellant and the private citizen and she did not even know it was the Appellant who was involved in the stop. This directly contradicts the Appellant's written statement that Trooper Gerardi observed the exchange. (Testimony of Trooper Gerardi and Exhibit 10)

26. For the reasons cited above, I find that the Appellant's May 9, 2007 log entry was untruthful when he stated that Trooper Gerardi observed the exchange between him and the private citizen. Even if he believed this to be true when he made the log entry, Trooper Gerardi subsequently confronted the Appellant and made it clear that he was mistaken. The Appellant failed to correct his log entry and continued to equivocate on this issue in his sworn testimony before the Commission. (Testimony, demeanor of Appellant and Testimony of Trooper Gerardi)
27. State Police rule 5.27.3 states "no member or civilian employee shall, in the course of his / her official duties, execute, file or publish any false written report, minutes or statements, knowing the same to be false." (Exhibit 12)
28. On June 19, 2007, a clerk magistrate found the private citizen "not responsible" for the loud exhaust citation and "responsible" for the handlebar and helmet citations. On July 11, 2007, a district court judge, ruling on the private citizen's further appeal, ruled that the Appellant was "not responsible" for the handlebar and helmet citations but "responsible" for the loud exhaust citation. (Exhibit 1)
29. Also in June 2007, the private citizen received a notice to appear for a June 11, 2007 RMV hearing regarding a possible license suspension. (Testimony of Appellant)
30. The above-referenced RMV hearing was scheduled after the Appellant wrote a May 9, 2007 report stating, "Due to [private citizen]'s attitude and refusal to comply with M.G.L.'s, I respectfully request the RMV inspect his motorcycle for compliance. I further request the RMV revoke MA registration #[omitted] if [private citizen] fails to comply with the above M.G.L.'s." (Exhibit 3)

31. Lt. Robert Favuzza, the station commander at the Medford barracks, testified that he had a conversation with the Appellant regarding the RMV hearing that the Appellant was seeking against the private citizen. According to Lt. Favussa, the Appellant told him that he (the Appellant) had talked to someone at the RMV and that since there was no specific form to request a suspension of a motorist's *registration*, the form used to request a *license* registration should be used after crossing out the word license and replacing it with the word registration. Based on the Appellant's representation, Lt. Favuzza made the change on the RMV form, even though he (Favuzza) had never heard of this before. Lt. Favuzza testified that he later learned that the Appellant had previously asked a Sgt. Outerbridge to sign the immediate threat request but he refused. (Testimony of Lt. Favuzza)
32. The above-referenced request for an RMV hearing was submitted to the RMV with the signature line for "Police Chief or Authorized Person" left blank. (Exhibit 3)
33. Although the Appellant testified that he had submitted such requests in the past without the required signature, he couldn't cite one other example. (Testimony of Appellant)
34. Andrew Padellaro is the Assistant Clerk Magistrate in the Lynn District Court and previously worked for the RMV. He testified before the Commission that there is no specific form to request a revocation of a motorist's registration. (Testimony of Padellaro)
35. Mr. Padellaro also testified that a Police Chief's signature is required when making such requests because such requests are sometimes used as a means of retaliation against a motorist. (Testimony of Padellaro)

36. As a result of the RMV hearing, it was determined that there was no “immediate threat” and the private citizen’s registration was not revoked. (Testimony of private citizen)
37. The State Police Trial Board found that Trooper Sweet “submitted an Immediate Threat License Suspension form inappropriately after Sgt. Outerbridge refused to sign the document and suggested that there was not enough evidence that [private citizen] was an immediate threat.” (Exhibit 10) The State Police did not call Sgt. Outerbridge as a witness during the hearing before the Commission and there is insufficient reliable information upon which I can make a finding regarding this portion of the charge.
38. The Trial Board also found that “Trooper Sweet intentionally and without justification, filed an immediate threat request for suspension on [private citizen]’s license where no threat existed.” (Exhibit 10)
39. While I find that the Appellant did not seek to revoke the Appellant’s *license*, I do find, based on the evidence and the testimony of the Appellant and the private citizen, that the Appellant’s request for a compliance hearing and possible revocation of the private citizen’s *registration* was retaliatory. The Appellant acknowledged during his emotional testimony before the Commission that he believes that the private citizen is somehow associated with a motorcycle group that is seeking to harass him personally and damage his career. I find that the Appellant’s repeated motor vehicle stops of the private citizen and the subsequent RMV request were meant as a means of fighting back against the perpetrators of this alleged harassment. While the Appellant may be frustrated by a perceived lack of support from the State Police regarding this alleged

harassment, it does not justify him using his official position to harass a private citizen.

40. On June 8, 2007, at approximately 6:30 A.M., while driving on Route 93 North from his home in Medford to his place of work in Andover, the private citizen was again stopped by the Appellant. When the Appellant approached the private citizen, the Appellant stated, “[private citizen first name], we need to stop meeting like this” and then asked him where he was going. The Appellant then asked the private citizen to stay seated on his motorcycle while he (the Appellant) took pictures. (Testimony of private citizen)
41. The Appellant, as part of the June 8, 2007 traffic stop, again cited the private citizen for high handlebars, loud exhaust and an improper helmet. (Testimony of private citizen)
42. On August 9, 2007, at approximately 6:50 A.M. when the private citizen was coming from the off-ramp from Route 93 on to Dascomb Road in Andover, less than a ¼ mile from his place of work, he was again stopped by the Appellant and cited for equipment violations. (Testimony of Appellant and Exhibit 11)
43. At the time the Appellant made the August 9, 2007 traffic stop, he was on his way home. It is undisputed that when the Appellant made this traffic stop, he was 5 – 8 miles outside of his patrol area even though his tour of duty had not ended. (Testimony of Appellant)
44. The Appellant testified that it is common practice for Troopers to begin heading home as soon as another Trooper has signed on and relieved them. (Testimony of Appellant)

45. Jeffrey Boutwell has been a Trooper since 2000 and has worked out of the same barracks as the Appellant. He testified before the Commission that it is common practice for a Trooper to begin to “slide home” once another Trooper has signed on to relieve them, even though the outgoing Trooper’s tour of duty has not ended.

(Testimony of Trooper Boutwell)

46. State Police Rule 5.53 states that “a member assigned to a patrol or post shall not leave the patrol or post except for police necessity or personal necessity. If required to quit such patrol or post, members shall first receive permission to leave from their duty assignment supervisor or proper authority.” (Exhibit 12)

47. In regard to the charge that the Appellant violated Rule 5.5.3, the State Police Trial Board stated, “[w]hile it may be the ‘practice’ of the members of a barracks to leave when the incoming shift signs on, it is not authorized. Therefore Trpr Sweet violated Article 5.5.3.” (Exhibit 10)

48. Based on the credible testimony of Trooper Boutwell coupled with the findings of the State Police Trial Board, I find that it is a common and accepted practice for State Troopers to begin commuting home once their relief has signed on, even if this occurs before their tour of duty has come to end. Having sanctioned this practice for many years, the State Police can not now categorize it as misconduct solely because it was the Appellant who engaged in this practice.

CONCLUSION:

G.L. c. 31, § 43, provides:

“If the commission by a preponderance of the evidence 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; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority."

Under Section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006) and cases cited. The role of the 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." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, rev.den., 426 Mass. 1102, 687 N.E.2d 642 (1997). See also Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, 792 N.E.2d 711, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, 721 N.E.2d 928, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm'n, 38 Mass App.Ct. 473, 477, 648 N.E.2d 1312 (1995); Watertown v. Arria, 16 Mass.App.Ct. 331, 451 N.E.2d 443, rev.den., 390 Mass. 1102, 453 N.E.2d 1231 (1983).

An action is "justified" if 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." Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214, 268 N.E.2d 346 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, rev.den., 426 Mass. 1102, 687 N.E.2d 642 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427 (1928). The Commission determines justification for discipline by inquiring, "whether the employee

has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 488, 684 N.E.2d 620, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514, 451 N.E.2d 408 (1983)

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36, 133 N.E.2d 489 (1956).

"The commission's task...is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision'", which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006). See Watertown v. Arria, 16 Mass. App. Ct. 331, 334, 451 N.E.2d 443, rev.den., 390 Mass. 1102, 453 N.E.2d 1231 (1983) and cases cited.

For all of the reasons cited in the findings above, I conclude that the State Police, by a preponderance of the evidence, has shown that the Appellant violated State Police rules by submitting a false log entry regarding a traffic stop on May 9, 2007. Specifically, the Appellant stated in this report that two other State Troopers observed an exchange

between him and a private citizen. Based on the credible testimony of one of those other Troopers, I conclude that this is not true. Further, I conclude that even after one of these Troopers angrily confronted the Appellant about this untruthful statement, he failed to correct the log entry in question. Finally, he continued to equivocate on this issue before the Commission even after being present for the live testimony of Trooper Gerardi.

An Appointing Authority is well within its rights to take disciplinary action when a police officer has “a demonstrated willingness to fudge the truth in exigent circumstances” because “[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” See Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 801 (2004); citing City of Cambridge, *supra* at 303.

For the reasons cited in the findings, I conclude that the Appellant’s request to the RMV regarding the private citizen’s motorcycle registration was retaliatory and hence, not justified. The Appellant, through his own testimony, indicated that he believes that the private citizen is associated with a motorcycle group that has purportedly harassed him and harmed his career as a State Trooper. Although the Appellant’s allegations regarding this harassment and a lack of support by the State Police ring true to me, he can not use his position as a State Trooper to engage in his own harassment and retaliation against those individuals he believes to be associated with this motorcycle group.

Finally, for the reasons cited in the findings, I conclude that the State Police has not shown by a preponderance of the evidence that the Appellant engaged in misconduct by being outside of his patrol area. Credible witness testimony shows that beginning the commute home after your relief has signed on is a common and widely accepted practice.

The State Police has overreached by initiating selective enforcement of this rule against the Appellant.

Having determined that it was appropriate to discipline the Appellant for 2 of the 3 charges against him, the Commission must determine if the State Police was justified in the level of discipline imposed, which, in this case is a 10-day suspension, forfeiture of 10 days of accrued time and a 6-month involuntary transfer to Belchertown (a 1 hour and 45 minute commute each way from the Appellant's home).

The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.'" Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited.

"The 'power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.'" Falmouth v. Civil Service Comm'n, 61 Mass. App. Ct. 796, 800, 814 N.E.2d 735 (2004) quoting Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594, 600 659 N.E.2d 1190 (1996) Unless the Commission's findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to "substitute its judgment" for that of the appointing authority, and "cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation" E.g., Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006).

After a careful review of all the evidence and testimony, I have concluded that the penalty imposed by the State Police should be modified for the following reasons:

- First, the State Police failed to show by a preponderance of the evidence that the Appellant engaged in misconduct by beginning to commute home (and therefore going outside his patrol area) after his replacement had signed on for duty.
- Second, having listened to all of the testimony regarding this appeal and a companion case (CSC Case No. D-08-209) three days earlier, I find something seriously amiss. The State Police issued a penalty against the Appellant that is inappropriately harsh and punitive. As referenced above, the Appellant's concerns that he was targeted by those outside the State Police after the OUI arrest – and that the State Police has failed to support him regarding this matter – ring true to me. While I would reach this conclusion regarding the overly punitive nature of the penalty independently based on the evidence and testimony in this case, I am also mindful of the credible testimony offered by a State Trooper in the companion case referenced above. In that case, State Trooper Justin Peledge testified that he was told by a State Police sergeant investigating the Appellant that, “there are people on this job we protect and he [Sweet] is not one of them.”

Notwithstanding the reasonable conclusion that ulterior motives may have contributed to the harsh and punitive nature meted out in this case, the Commission can not ignore the serious nature of the charges which the State Police has shown by a preponderance of the evidence to be true.

For all of these reasons, the Appellant's appeal under Docket No. D-09-334 is hereby *allowed in part* and the discipline imposed is hereby *modified* as follows:

- The Appellant's 6-month involuntary transfer to Belchertown, imposed on August 4, 2009, is rescinded effective as of the issuance of this order on December 10, 2009.

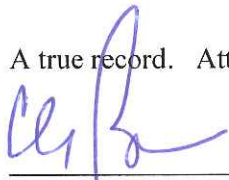
Civil Service Commission



Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on December 10, 2009.

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. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Timothy Burke, Esq. (for Appellant)

Michael Halpin, Esq. (for Appointing Authority)