Decision mailed: 9/24/10
Civil Service Commission

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, SS.

One Ashburton Place - Room 503
Boston, MA 02108
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KEVIN SYLVIA,
Appellant
v.

CASE NO: D-09-39

CITY OF NEW BEDFORD,
Respondent

Appellant's Attorney:

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Commissioner:

Paul M. Stein

DECISION

The Appellant, Kevin Sylvia, acting pursuant to G.L.c.31, §43, duly appealed the decision of the City of New Bedford (New Bedford), the Appointing Authority, to suspend him for 15 days for alleged continued abuse of time. A full hearing was held by the Civil Service Commission (Commission) on July 10, 2009. The hearing was declared private as no party requested a public hearing. Witnesses were not sequestered. New Bedford called two witnesses and the Appellant testified on his own behalf. Thirty-two exhibits were received into evidence. The hearing was digitally recorded. Post hearing submissions were received from the Commission by both parties.

FINDINGS OF FACT

Giving appropriate weight to the exhibits, the testimony of the witnesses (the Appellant; New Bedford Fire Chief Paul Leger; and New Bedford Deputy Fire Chief Brian Faria) and inferences reasonably drawn from the evidence as I find credible, I make the findings of fact set forth below.

1. The Appellant, Kevin Sylvia, originally became employed by the City of New Bedford Fire Department as a Signal Maintainer on October 1, 2007. His employment was terminated on February 28, 2009 due to budget cuts. *(Exhibit C-1)*
2. The duties of a Signal Maintainer include handling all maintenance and repairs for the fire alarm systems, exterior of the building, and wires in the road. Signal Maintainers are considered essential personnel who are required to plow during snowstorms. *(Testimony of Leger & Faria)*
3. Mr. Sylvia's original work shift was 7:30AM – 3:30PM, which at some point was changed to 8:00AM – 4:00PM. His place of business was Station 2, which was the fire station headquarters. *(Testimony of Sylvia)*
4. Mr. Sylvia reported to Fire Prevention Captain Kruger, although Mr. Sylvia was being trained in the position by Richard Dias, another Signal Maintainer. *(Exhibit C-26; Testimony of Leger & Faria)*
5. On January 15, 2008, Mr. Sylvia received a three-month Employee Performance Review in which he was rated as "Requires Improvement" in the categories of Job Knowledge, Dependability, and Overall Rating. *(Testimony of Leger; Exhibit C-2)*
6. On August 6, 2008, Chief Leger and Deputy Chief Faria met with Mr. Sylvia to discuss his sick leave use. Mr. Sylvia was told that he was out of sick time as he had used 11.5

days since January 1, 2008. He was also advised that he needed to improve his attendance or future action would be taken. *(Testimony of Leger; Exhibit C-6)*

7. On August 22, 2008, Mr. Sylvia received an Employee's Warning Record for being 1.5 hours tardy. *(Testimony of Leger; Exhibit C-7)*
8. On October 16, 2008, Chief Leger informed Mr. Sylvia that he was abusing sick leave and would be required to provide a doctor's certificate for all future sick leave. Mr. Sylvia was also told that further action of this type could initiate further discipline including termination. *(Testimony of Leger; Exhibit C-10)*
9. On October 27, 2008, Mr. Sylvia was issued an Employee's Warning Record for the second offense of using sick leave in a holiday week and also for excessive use of sick leave. *(Testimony of Leger; Exhibit C-11)*
10. Mr. Sylvia received a three-day suspension from December 9, 2008 through December 11, 2008 for excessive use of sick leave and excessive tardiness. He was informed that future action of this nature would result in further discipline. Mr. Sylvia did not appeal the suspension because he felt he deserved it. *(Testimony of Leger & Sylvia; Exhibits C-17 & C-18)*
11. On December 12, 2008, Mr. Sylvia received an Employee Performance Review in which he was rated "Requires Improvement" in the categories of Job Knowledge, Dependability, Contacts/Communication Skills, and Overall. It was noted in the Dependability category that "Mr. Sylvia is having difficulty with his ability to come to work on time. His use of sick leave is problematic. He has received warnings and suspension for his absenteeism." Mr. Sylvia did not dispute the evaluation because he "knew [he] was wrong." *(Testimony of Sylvia; Exhibit C-20)*

12. On December 31, 2008, Mr. Sylvia went to work feeling sick because of his prior discipline for excessive sick leave and because he expected that he would be working a half-day due to the holiday. Instead, the city experienced a snowstorm and the Signal Maintainers were informed that morning that they would have to stay for emergency plowing. *(Testimony of Sylvia)*

13. After learning that he would be required to plow, Mr. Sylvia told Mr. Dias that he was sick and was going home. Mr. Dias reminded Mr. Sylvia to get a doctor's note. Mr. Sylvia clearly knew that he was required to obtain a note in order to justify his early departure on December 31, 2008. *(Testimony of Sylvia; Exhibit C-23)*

14. The evidence concerning Mr. Sylvia's efforts to obtain the doctor's note on December 31, 2008 is disputed. Deputy Chief Faria reported that Mr. Sylvia told him that he (Sylvia) had called his doctor's office that afternoon and was told not to come in because of the storm. Mr. Sylvia was inconsistent in his testimony, first stating that the doctor himself told him not to come in, then stating that the doctor's clerk told him not to come in. He also testified inconsistently regarding his discussion of symptoms with his doctor, in that he first testified that he told the doctor his symptoms by telephone on December 31, 2008, and then later testified that he did not speak to his doctor until January 2, 2009. Despite these inconsistencies, I find that it reasonable to infer that, due to the weather, it would have been unlikely that Mr. Sylvia could have gone to see his doctor and returned to work with a doctor's note on December 31, 2008. *(Testimony of Faria & Sylvia; Exhibit C-23)*

15. Mr. Sylvia returned to work on Friday, January 2, 2009 and met with Deputy Chief Faria at approximately 10:00AM to discuss his sick leave on December 31, 2008. Deputy

Chief Faria asked Mr. Sylvia if he had seen a doctor, and Mr. Sylvia responded that he had not. Deputy Chief Faria advised Mr. Sylvia to get a note as soon as possible and that he could do this during lunch, after work, or use personal time. Deputy Chief Faria testified that he did not document this conversation immediately because he assumed that Mr. Sylvia would attend to getting the required note and, if he did so, that would have ended the issue. *(Testimony of Sylvia & Faria; Exhibit C-23)*

16. Mr. Sylvia decided to use personal time and left work between 10:00AM and 10:30AM. Mr. Sylvia testified that he went home, called the doctor's office, talked to his doctor on the phone, told him he was still sick and asked the doctor to write the note for both December 31, 2008 and January 2, 2009 to be sure he was "covered" for both days. He picked up the doctor's note about 2:00 and did not return to work that day. Mr. Sylvia's doctor is 15 – 20 minutes away from the station. *(Testimony of Sylvia & Faria; Exhibit C-23)*

17. Mr. Sylvia returned to work on Monday, January 5, 2009 with a note from Dr. Joseph A. Costa, dated 1/2/09 and stating, "Kevin Sylvia DOB 2/22/88 was home due to viral gastroenteritis on 12/31/08 and 1/2/09." Mr. Sylvia did not see the doctor, but instead described his symptoms to the doctor by telephone and picked up the note from a clerk. Mr. Sylvia does not recall telling anyone at work that he was still sick on January 2, 2009. I do not find Mr. Sylvia's testimony that he was still sick to be credible, as there is no evidence he ever made this claim until the Commission hearing. *(Testimony of Sylvia & Leger, Exhibit C-22)*

18. On January 15, 2009, Chief Leger hand-delivered a letter to Mr. Sylvia, which advised that Mr. Sylvia was immediately suspended, with contemplated termination, for

continued abuse of time and failure to remain as essential personnel. *(Testimony of Leger; Exhibit C-24)*

19. A hearing was held on January 22, 2009 and was attended by Mr. Sylvia; Michael Medeiros, Local 851 Business Agent; Eli Barrett, Local 851 Shop Steward; Chief Leger; and Deputy Chief Faria. Mr. Sylvia was given the opportunity to comment on the issue of his continued use of sick time and failure to remain on duty as essential personnel. Richard Dias and George Pelletier were called in to answer questions. *(Testimony of Leger; Exhibit C-26)*

20. Following the hearing, Mr. Sylvia was informed by letter dated January 29, 2009 that he would receive a 15-day suspension without pay from January 16, 2009 through February 6, 2009.[1] The reasons for the suspension were stated as follows:

> "...I have find [sic] that there is cause for a 15 day suspension without pay for your continued abuse of time, including the use of sick leave on 12/31/2008...
>
> As a short term employee your attendance record has been poor as indicated in the documents that were attached to the notice dated January 15, 2009.
>
> Specifically, you have either been tardy, over used both personal time and sick time, and out sick before or after a holiday on numerous occasions, including December 31, 2008 when you left sick duty after notification of the requirement to stay for plowing. During the hearing it was stated that both Mr. Dias and Mr. Pelletier advised you to get a Doctor's note for your absence. Upon return to work on January 2, 2009 you did not provide a Doctor's note for your absence of December 31, 2008. After being questioned by Deputy Faria about a note you indicated that you did not get one because you thought your Doctor would be closed. Then when asked why you did not go to a walk-in, you stated you thought the wait would be too long. After leaving work on personal time at approximately

[1] The evidence did not indicate whether Mr. Sylvia January 15, 2009 suspension was with or without pay, but it would appear that the ultimate 15-day suspension without pay does include 10 days served prior to the appointing authority decision on January 29, 2009. This issue was not addressed by either party in this appeal. The Commission notes, however, that a suspension for more than five days without pay, pending a hearing and appointing authority decision, is not authorized by G.L.c.31,§41.

> 10:00AM you did not return until Monday, January 5, 2009 with a note from Doctor Costa's office. The note indicates that you were home on December 31, 2008 and on January 2, 2009 with viral gastroenteritis. In fact, you came to work on both days and was [sic] not out sick on January 2, 2009 but on personal leave. I find that the note was not valid.
>
> You have received numerous verbal warnings regarding your tardiness and sick leave use, a written warning on 8/25/2008 for tardiness, a written warning for a second offense of using sick leave on holiday, and a 3 day suspension for excessive tardiness on December 5, 2008."

Chief Leger chose not to terminate Mr. Sylvia because he determined that there was no refusal to stay as essential personnel and maybe Mr. Sylvia "did not understand what was going on," so a 15-day suspension was proper progressive discipline. *(Testimony of Leger; Exhibit C-27)*

21. The documentary evidence shows that Mr. Sylvia was not charged for sick leave on December 31, 2008 or personal leave on January 2, 2009. I find that this was most likely due to either a clerical error or a delay in the payroll system, which was not corrected prior to Mr. Sylvia's layoff. *(Testimony of Faria & Leger; Exhibits C31-33)*

CONCLUSION

Under G.L.c.31,§43, a tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L.c.31,§41, may appeal to the Commission. The Commission has the duty to determine, under a "preponderance of the evidence" test, whether the appointing authority met its burden of proof that "there was just cause" for the action taken. G.L.c.31,§43. See, e.g., Town of Falmouth v. Civil Service 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); McIsaac v. Civil Service Comm'n, 38 Mass App.Ct.473,477 (1995); Town of Watertown v. Arria, 16 Mass.App Ct. 331,334, rev.den.,390 Mass. 1102, (1983).

An action is "justified" if "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 (1971); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (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, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983) 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.' " Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of the "merit principle" which governs Civil Service Law that discipline must be remedial, not punitive, designed to "correct inadequate performance" and "separating employees whose inadequate performance cannot be corrected." G.L.c.31,§1.

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 (1956); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) The Commission must take account of all credible evidence in the record, including whatever would fairly detract from the

weight of any particular supporting evidence. See, e.g., 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 the credibility of the testimony presented through the witnesses who appear before 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." E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) 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). See also Covell v. Dep't of Social Services, 439 Mass. 766, 787 (2003) (where live witnesses giving different versions testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing)

In performing its appellate function, "the commission does not view a snapshot of what was before the appointing authority . . . the commission hears evidence and finds facts anew. . . . [after] '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' . . .For the commission, the question is . . .'whether, *on the facts found by the commission*, there was reasonable justification for the action taken by the appointing authority *in the circumstances found by the commission to have existed* when the appointing authority made its decision.' " Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003) (affirming Commission's decision to reject appointing authority's evidence of appellant's failed polygraph test and prior domestic abuse orders and crediting appellant's exculpatory testimony) (*emphasis added*). cf. Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (inconsequential differences in facts

found were insufficient to hold appointing authority's justification unreasonable); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (commission arbitrarily discounted undisputed evidence of appellant's perjury and willingness to fudge the truth); Town of Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev.den., 390 Mass. 1102, (1983) (commission improperly overturned discharge without substantial evidence or factual findings to address risk of relapse of impaired police officer) See generally Villare v. Town of North Reading, 8 MCSR 44, reconsid'd, 8 MCSR 53 (1995) (discussing need for de novo fact finding by a "disinterested" Commissioner in context of procedural due process); Bielawksi v. Personnel Admin'r, 422 Mass. 459, 466, 663 N.E.2d 821, 827 (1996) (same)

In reviewing the commission's action, a court cannot "substitute [its] judgment for that of the commission" but is "limited to determining whether the commission's decision was supported by substantial evidence" and is required to 'give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it. . .This standard of review is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom.' " Brackett v. Civil Service Comm'n, 447 Mass. 233, 242-42 (2006) and cases cited.

G.L.c.31, Section 43 also vests the Commission with the authority to affirm, vacate or modify the penalty imposed by the appointing authority. The Commission has been delegated with "considerable discretion", albeit "not without bounds", to modify a penalty imposed by the appointing authority, so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. E.g., Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594,600 (1996) and cases cited.

> "It is well to remember that the *power to modify is at its core the authority to* review and, when appropriate, *to temper, balance, and amend*. The power to modify penalties permits the furtherance of uniformity and equitable treatment of similarly situated individuals. *It must be used to further, and not to frustrate, the purpose of civil service legislation, i.e., 'to protect efficient public employees from partisan political control' . . and 'the removal of those who have proved to be incompetent or unworthy to continue in the public service'*."

Id., 39 Mass.App.Ct. at 600. (*emphasis added*). See Faria v. Third Bristol Div., 14 Mass.App.Ct. 985, 987 (1982) (remanded for findings to support modification)

In deciding whether to exercise discretion to modify a penalty, however, 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 if "the circumstances found by the commission" vary from those upon which the appointing authority relied, there is still reasonable justification for the penalty selected by the appointing authority. "The 'power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded to the appointing authority." Falmouth v. Civil Service Comm'n, 61 Mass.App.Ct. 796, 800 (2004) quoting Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission's findings of fact differ materially and significantly from those of 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."). Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited (minor, immaterial differences in factual findings by Commission and appointing authority did not justify a modification of 180 day-suspension to 60 days). See, e.g., Town of Falmouth v. Civil Service Comm'n, 61 Mass.App.Ct. 796 (2004) (modification of 10-day suspension to 5 days unsupported by material difference in facts or finding of political influence); Commissioner of

MDC v. Civil Service Comm'n, 13 Mass.App.Ct. 20 (1982) (discharge improperly modified to 20-month suspension); cf. School Committee v. Civil Service Comm'n, 43 Mass.App.Ct. 486, rev.den., 426 Mass. 1104 (1997) (modification of discharge to one-year suspension upheld); Dedham v. Civil Service Comm'n 21 Mass.App.Ct. 904 (1985) (modification of discharge to 18-months suspension upheld); Trustees of the State Library v. Civil Service Comm'n, 3 Mass.App.Ct. 724 (1975) (modification of discharge to 4-month suspension upheld)

Mr. Sylvia argues that there was not just cause to issue the 15-day suspension since he provided a doctor's note for his sick leave on December 31, 2008 as he was required to do. He also argues that if the Commission finds that there was just cause for the suspension, a 15-day suspension is too harsh and not in line with progressive discipline, given his only prior suspension was for three days. The Commission finds that there was just cause to suspend Mr. Sylvia and that, while not all of the reasons for the discipline were proved, a 15-day suspension is justified. The Commission will not order modification of the penalty in this case.

The testimony of Chief Leger and Deputy Chief Faria on behalf of New Bedford was consistent and credible, and demonstrates that New Bedford was following proper progressive discipline standards prior to the suspension at issue. Mr. Sylvia clearly had continuing problems with sick leave abuse and tardiness, which were not improving despite counseling, written warnings, and a 3-day suspension. It is worth noting that Mr. Sylvia was a new employee, having only been hired in late 2007, but his attendance issues began at least as early as August 2008, less than a year into service. Over the course of just a few months, between August and December 2008, Mr. Sylvia's attendance problems were addressed at least five times, either through discipline or counseling, by Chief Leger and Deputy Chief Faria. Mr. Sylvia's performance evaluations also reflected the need for him to improve in this area, with the most

recent evaluation being mid-December 2008. Mr. Sylvia offered no reasonable justification or excuse for his sick leave and tardiness problems prior to December 31, 2008, only that he knew he was wrong.

Despite the inconsistencies in the testimony about Mr. Sylvia's efforts to procure a doctor's note for his absence on December 31, 2008, the delay in procuring the note, alone, would not have justified further discipline. The statement in the note that Mr. Sylvia was "home with viral gastroenteritis" is accurate as he was home, even if it was only for part of that day. The inexact wording of the note is most likely due to a busy medical staff, and not the fault of Mr. Sylvia. Although Mr. Sylvia's testimony is inconsistent and questionable as to why he did not immediately go to the doctor, he did eventually comply with the instruction to obtain the note. Deputy Chief Faria's testimony was clear that, even if the note had not been provided until January 2, 2009, he would have considered Mr. Sylvia to have complied with his obligations. Unfortunately, however, Mr. Sylvia did not seem to comprehend the importance of his compliance, even after being expressly ordered by Deputy Chief Faria to get a note ASAP. Instead, he chose to go home and get a doctor's note to cover him for January 2, 2009 as well.

There is no dispute that following his meeting with Deputy Chief Faria about the December 31, 2008 sick leave, Mr. Sylvia left at approximately 10:00 or 10:30AM to obtain a doctor's note, and did not return for the remainder of the day, despite the fact that his doctor is only 15-20 minutes away and Mr. Sylvia's shift did not end until 4:00PM. There is no justification for Mr. Sylvia to be absent virtually the whole day on January 2, 2009 to obtain a doctor's note to excuse the previous work day absence, especially in light of the fact that he had already been suspended for sick leave abuse just weeks earlier. Mr. Sylvia could have called the doctor's office, found out what time he could come in, and then left work for a short period of time to obtain the note.

Instead, Mr. Sylvia left immediately after the meeting with Deputy Chief Faria, but did not go to the doctor's office until approximately four hours later, around 2:00PM. Even after that, Mr. Sylvia would have had time to return to the station, as his shift did not end until 4:00PM, but he did not. Further, the Commission hearing appears to be the first instance that Mr. Sylvia claimed to have still been sick on January 2, 2009, as he was questioned about why he did not return to work that day.

Mr. Sylvia himself did not have a reasonable explanation as to why he did not return to work and provide the doctor's note on January 2, 2009, claiming that he did not know what he was thinking. His testimony that he was still sick is not credible given his other inconsistencies and the fact that he did not tell anyone at the station that he was sick that day. If he was truly still sick, he should have informed someone at the station that he would be out the remainder of the day because of his illness. Although the doctor's note references Mr. Sylvia being sick on January 2, Mr. Sylvia admitted that he did not even see the doctor; therefore, the doctor was relying on nothing more than a conversation with Mr. Sylvia. It is also important to note that this was the second work day Mr. Sylvia was out in connection with the New Year's holiday, after having received a warning in late October for the second offense of using sick leave in a holiday week. Clearly the prior discipline for Mr. Sylvia's attendance issues was not fully corrective and further discipline was justified at this time based on his actions of January 2, 2009.

The Commission agrees with Mr. Sylvia that, in part, as to the December 31, 2008 absence, New Bedford's reasons for the discipline was not justified, i.e., its assertion that the doctor's note was invalid because Mr. Sylvia had been at work part of the day on December 31, 2008. Nevertheless, New Bedford was justified to impose discipline upon Mr. Sylvia for his unacceptable actions in absenting himself on January 2, 2009 without good reason and which

clearly impaired the efficiency of the public service (leaving New Bedford an unanticipated, and unauthorized, one signal maintenance worker short for most of the day January 2, 2009). After carefully considering all of the circumstances, given the prior and serious attendance issues that preceded this misconduct, the Commission concludes that the 15-day suspension was reasonable progressive discipline and it is not appropriate in this case for the Commission to exercise its discretion to modify that penalty.

For the reasons stated above, the appeal of the Appellant, Kevin Sylvia, is hereby ***dismissed.***

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell & Stein, Commissioners) on September 23, 2010.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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 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 sent to:

Michael J. Maccaro, Esq. (for the Appellant) Attn: Joseph DeLorey, Esq.
Jane Medeiros Friedman, Esq. (for the Appointing Authority)