

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

FRANKLIN TEJEDA,

Appellant

v.

CITY OF BROCKTON,

Respondent

Docket Number:

D1-24-177

Appearance for Appellant:

James W. Simpson, Jr., Esq.
Law Offices of James Simpson
One Clark's Hill Office Park,
Suite 102
Framingham, MA 01702

Appearance for Respondent:

Kayla Venckauskas, Esq.
Karen Fisher, Esq.
City of Brockton
45 School Street
Brockton, MA 02301

Commissioner:

Angela C. McConney¹

SUMMARY OF DECISION

The Commission affirmed the decision of the City of Brockton to terminate a police officer for (1) neglecting his duties by leaving the scene of an active motor vehicle accident without completing an OUI investigation; and (2) abusing his authority by initiating a reckless motor vehicle pursuit of a fellow off-duty officer.

¹ The Commission acknowledges the assistance of law clerk Erasmus Ablernarh in the drafting of this decision.

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Franklin Tejada (Mr. Tejada), timely appealed to the Civil Service Commission (the Commission) contesting the November 24, 2024 decision of the City of Brockton (City) to terminate his employment as a permanent full-time police officer with the Brockton Police Department (BPD or the Department).²

The Commission held a remote pre-hearing conference on January 7, 2025. I held an evidentiary hearing on March 12, 2025 at the offices of the Commission located at 100 Cambridge Street, Suite 200, Boston, MA.³

The parties submitted post hearing briefs in April 2025, whereupon the administrative record closed.

For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

I admitted 12 exhibits from the Respondent (R. Exhibits 1-12). I admitted 11 exhibits from the Appellant (A. Exhibits 1-11). The Respondent objected to A. Exhibits 4-7, 10 and 11.

Based on these exhibits and the testimony of the following witnesses:

Called by the City:

- Chief Brenda Perez, BPD
- Sergeant Kevin Amaral, BPD

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR § 1.01 (Formal Rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ Copies of the audio / video recordings were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/it wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recordings provided to the parties should be used to transcribe the hearing.

Called by the Appellant:

- Franklin Tejada, Appellant

and taking administrative notice of all pleadings filed in the case, pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence, I make the following findings of fact:

1. The BPD appointed Franklin Tejada (Mr. Tejada or Appellant) as a police officer on May 6, 2019. (R. Exhibit 6; Testimony of Appellant)

2. Mr. Tejada attended and graduated from the Cambridge Northeastern Police Academy. (Testimony of Appellant)

3. Mr. Tejada is a staff sergeant in the Massachusetts Army National Guard. He has received several commendations for his exemplary service. (A. Exhibit 11; Testimony of Appellant)

4. Mr. Tejada was absent for military leave from July 14, 2021 – October 1, 2021, and November 3, 2021 – April 23, 2023. (R. Exhibit 6)

Last Chance Agreement

5. Mr. Tejada was subject to a February 2, 2021 Last Chance Agreement due to the following discipline. (R. Exhibit 4)

6. While on a December 5, 2020 patrol, Mr. Tejada lost control of his cruiser in inclement weather and crashed into a wooded area. The cruiser was deemed a total loss, and Mr. Tejada sustained personal injuries that placed him on injured on duty (IOD) leave. (R. Exhibit 4)

7. Then-Chief Emmanuel Gomes ordered an Internal Affairs (IA) investigation into the matter. (R. Exhibit 4)

8. On February 5, 2021 Mr. Tejeda and the City entered into a last chance agreement (LCA) that called for a sixty-day unpaid suspension; additionally, Mr. Tejeda was removed from injured on duty status, required to take the Police Emergency Vehicle Operations and Attention Distraction courses, and would be assigned as the Chief deemed fit upon his return. (R. Exhibits 3 and 4; Testimony of Perez)

9. Further, Mr. Tejeda acknowledged and agreed to comply with the Department's Policies, Procedures and Guidelines, including but not limited to the *Use of Departmental Vehicles* (which sets forth the expectations of officers operating police cruisers). He agreed to always wear a seat belt when occupying a City-owned vehicle and to comply with the mandates of G.L. c. 89, § 7B (all drivers of police vehicles shall be subject to the same laws and rules of the road when not responding to an emergency). (R. Exhibit 4)

10. Mr. Tejeda agreed to be subject to the terms of the LCA for his remaining tenure.⁴ (R. Exhibits 3 and 4; Testimony of Perez)

Events of October 13-14, 2023

11. On October 13, 2023, Mr. Tejeda was working his regularly assigned 4 p.m. – 12 a.m. shift. He was assigned to patrol the southwest sector of Brockton. (R. Exhibit 2)

12. Officer Drew Fonseca was assigned to work the same 4:00 p.m. – 12:00 a.m. shift as a dispatcher. Officer Chris Perez worked the same shift, with his assignment changing to dispatch at 11:00 p.m. (R. Exhibit 2)

13. At approximately 11:01 p.m., there was a two-car motor vehicle accident near 977 Warren Avenue. When the 911 emergency call came in at approximately 11:36 p.m., Officer

⁴ Mr. Tejeda agreed to termination without the right of appeal should he “ever commit a similar offense in the future (traveling at excessively high speeds while on duty without explanation).” (R. Exhibit 4)

Perez advised Officer Fonseca to dispatch Mr. Tejeda to the accident scene. Officer Perez assumed the call was simply a motor vehicle accident with no injury, which Mr. Tejeda could handle in short order. (R. Exhibit 2)

14. Officer Fonseca dispatched Mr. Tejeda to Warren Avenue at 11:39 p.m. (R. Exhibit 2)

15. Mr. Tejeda arrived at the Warren Avenue scene at approximately 11:43 p.m. (R. Exhibit 11)

16. Mr. Tejeda learned that Operator A's motor vehicle had struck Operator B's motor vehicle. Mr. Tejeda noticed that Operator A had slurred speech, glossy eyes, and the odor of alcohol. Mr. Tejeda spoke to Operator B in Spanish. (R. Exhibit 12; Testimony of Appellant)

17. Operator B informed Mr. Tejeda that Operator A had removed alcohol from his motor vehicle and placed it in a nearby yard. Operator B took Mr. Tejeda to the yard and showed him a soft cooler containing alcohol. (R. Exhibit 11; Testimony of Amaral)

18. Mr. Tejeda contacted dispatch to query the vehicles' registrations at approximately 11:45 p.m. When he learned that Operator A's motor vehicle was unregistered, Mr. Tejeda asked for permission to order a tow truck, and it was granted. Mr. Tejeda had not yet obtained either operator's identification information. (R. Exhibit 2; Testimony of Amaral, Testimony of Appellant)

19. Sometime between 11:39 p.m. and 11:51 p.m., Mr. Tejeda called dispatch, and Officer Fonseca answered the phone. Mr. Tejeda complained about being assigned to Warren Avenue so late in his shift, which he believed was outside his sector. Mr. Tejeda also told Officer Fonseca that he believed he had been sending him to calls outside his sector throughout the shift. Officer Fonseca did not respond and hung up on Mr. Tejeda after approximately ten seconds.

(R. Exhibit 2; Testimony of Amaral, Testimony of Appellant)

20. Mr. Tejeda then called the Commanding Officer's (CO) direct line and spoke to Sgt. Robert Diliddo. Lt. Frank Vardaro was present and was able to overhear the conversation between the two men. Mr. Tejeda relayed his conversation with Officer Fonseca about being assigned outside his sector and so late in his shift. Mr. Tejeda said that he had an appointment the next morning. (R. Exhibit 2; Testimony of Amaral, Testimony of Appellant)

21. Sgt. Diliddo advised Mr. Tejeda that the sergeant would handle any grievances regarding Officer Fonseca's performance. He directed Mr. Tejeda to respond to the scene and determine whether an arrest was appropriate in the event of an OUI, and whether medical assistance was necessary. (R. Exhibit 2; Testimony of Amaral, Testimony of Appellant)

22. From the accident scene, Mr. Tejeda called Sgt. Diliddo again. He described the particulars of the Warren Avenue scene, including that Operator A was "wasted" and "reek[ed] of alcohol." (R. Exhibit 2; Testimony of Amaral, Testimony of Appellant)

23. At approximately 11:50 p.m., Officer Marcos Sequeira relieved Officer Fonseca. Officer Fonseca then drove home via Warren Avenue. (Testimony of Fonseca)

24. While Mr. Tejeda was still on the Warren Avenue scene, Officer Fonseca pulled up in his personal motor vehicle. Mr. Tejeda, unaware of the identity of the operator, approached the motor vehicle. (R. Exhibit 2; Testimony of Appellant, Testimony of Amaral)

25. Officer Fonseca rolled down the front passenger window, made a hand gesture to Mr. Tejeda and yelled, "When dispatch sends you to a call, you go to those calls! You don't have to call and yell at me!" Mr. Tejeda rested his arms on the window frame of the front passenger window, and began to say, "If you ever hang up on me again ..." when Officer Fonseca told him to get away from the vehicle. Mr. Tejeda backed calmly away, and Officer Fonseca drove away

at a speed of 5-10 mph.⁵ (R. Exhibit 2; Testimony of Amaral, Testimony of Fonseca, Testimony of Appellant)

26. The entire interaction lasted approximately ten seconds. (R. Exhibit 5)

27. Mr. Tejeda walked back to his cruiser. At 12:02 a.m., he got in his cruiser and pursued Officer Fonseca. (R. Exhibit 2)

28. Mr. Tejeda did not call for backup or notify dispatch that he was leaving an active accident/OUI investigation. He did not speak to either operator before he left. He did not conduct sobriety tests or establish Operator A's identity. (Testimony of Amaral, Testimony of Appellant)

29. When Mr. Tejeda caught up to Officer Fonseca at approximately 12:03 a.m., he activated his lights and sirens. When Officer Fonseca realized that he was being followed, he called Officer Perez and stated that he was afraid to go home because Mr. Tejeda was pursuing him. He began to drive around the block when he neared his home. (R. Exhibit 2)

30. Officer Perez advised Officer Fonseca to call the CO's Office. Officer Fonseca called the CO's Office and informed Lt. Vardaro that Mr. Tejeda was pursuing him with sirens and lights and attempting to pull him over. Lt. Vardaro then radioed Mr. Tejeda to terminate the pursuit. Because Mr. Tejeda was radioing in his location to dispatch at the same time, he did not hear Lt. Vardaro's directive. Lt. Brian Benvie then got on the radio and ordered Mr. Tejeda to

⁵ Mr. Tejeda and Officer Fonseca gave different accounts of what constituted the verbal altercation. Mr. Tejeda stated (in his IA interview and in his testimony at the Commission hearing): 1) that he simply told Officer Fonseca that Officer Fonseca's presence at the Warren scene was inappropriate and requested him to leave; 2) that Officer Fonseca responded that he (Officer Fonseca) spoke for the Chief regarding who to dispatch; and 3) that Officer Fonseca used expletive language on Mr. Tejeda. Officer Fonseca on the other hand, during his IA interview, claimed Mr. Tejeda told him, in a threatening manner, to never hang up on him (Mr. Tejeda) again. Mr. Tejeda testified that he "just wanted to stop him and essentially have a conversation." (R. Exhibit 2; Testimony of Appellant)

terminate the pursuit and return to the station. (R. Exhibit 2)

31. At 12:04 a.m., Mr. Tejeda returned to the station. (R. Exhibit 2; Testimony of Amaral, Testimony of Appellant)

32. At 12:04 a.m., Operator A and his passengers drove away southerly on Warren Avenue. Two minutes later, Operator B and his passenger entered their vehicle and left the scene. (R. Exhibit 2)

33. Upon his return to the station, Lt. Benvie and Lt. Vardaro asked Mr. Tejeda for the outcome of the accident scene. Mr. Tejeda informed them that he had not returned to the Warren Avenue scene to complete the OUI investigation because they had asked him to report back to the station. (R. Exhibit 2; Testimony of Amaral, Testimony of Appellant)

34. Lt. Benvie and Lt. Vardaro ordered Mr. Tejeda to return to Warren Avenue to complete the investigation. However, Mr. Tejeda returned to the scene after the operators and their passengers had left. (R. Exhibit 2; Testimony of Amaral, Testimony of Appellant)

35. When he returned to the station a second time and reported that the operators had left the accident scene, Lt. Vardaro relieved him from duty and ordered him to go home. (R. Exhibit 5)

36. In an October 14, 2023 letter to Chief Perez, Lt. Vardaro described the events of October 13-14, 2023, and expressed serious concern about Mr. Tejeda's capacity to endanger citizens should they anger him. (R. Exhibit 2)

37. Chief Perez immediately ordered the Bureau of Professional Affairs (BPA) (the successor to Internal Affairs) to investigate the matter, which was docketed as Complaint No. 23-22-IA. (R. Exhibit 1; Testimony of Perez)

38. On October 16, 2023, Chief Perez placed Mr. Tejeda and Officer Fonseca on paid administrative leave pending the BPA investigation. In the notice of administrative leave, the Chief wrote to Mr. Tejeda:

On or about October 13, 2023, it was alleged that you responded to a motor vehicle accident near 977 Warren Ave (Brockton Police Call #23-10710). It is alleged that, during your investigation, you involved yourself in a confrontation with a passerby. The passerby drove away. You improperly decided to abandon the crash scene, to initiate a motor vehicle pursuit of the passerby. It was not until the Commanding Officer ordered you to terminate the motor vehicle pursuit, that you stopped the pursuit.

(R. Exhibit 1)

39. The Chief further advised that Mr. Tejeda always tell the truth through the investigation, and that untruthfulness included making false statements and/or intentionally omitting significant or pertinent facts.⁶ (R. Exhibit 1)

Bureau of Professional Affairs Investigation: Complaint No. 23-22-IA

40. Chief Perez assigned Sgt. Kevin Amaral to conduct the BPA investigation. Sgt. Amaral has been a Brockton police officer for twenty-one years and has been assigned to the BPA for the past two years. (R. Exhibit 2; Testimony of Amaral)

41. Sgt. Amaral reviewed (a) the BPA Complaint; (b) calls and radio transmissions; (c) a transcription of the city's CCTV video footage of the street⁷; and (d) Mr. Tejeda's query

⁶ If you violate any of these directives, you will be subject to disciplinary action, up to and including dismissal, separate and apart from any disciplinary action that is warranted based on a final determination as to whether you engaged in the misconduct alleged.

(R. Exhibit 1)

⁷ The video footage shows:

12:01:42 – Officer Fonseca arrives at the scene in his vehicle

12:01:47 – Mr. Tejeda turns his head toward Officer Fonseca as if he heard him shout from the vehicle

12:01:52 – Mr. Tejeda leans into Officer Fonseca's vehicle – arms rest on top of car door where

report from the accident. Between October 23 and November 1, 2023, Sgt. Amaral and Lt. Carpenter interviewed Lt. Benvie, Lt. Vardaro, Sgt. Diliddo, Officer Perez, Officer Callie Royster, Officer Sequeira, Officer Andrea Salamone, Officer Raymond Parret, Officer Fonseca, Mr. Tejeda and Operator B. (R. Exhibit 2)

42. Sgt. Amaral examined whether Mr. Tejeda's October 13-14, 2023 conduct violated the following Department rules, regulations and policies:

BPD Rule 1.0 provides in relevant part: ...

Effective police operations require loyalty to the Department and to one's associates, maintaining a genuine spirit of cooperation and rendering appropriate assistance to a fellow police officer or citizen exposed to danger or in a situation where danger may be impending.

To accomplish these purposes, the professional responsibilities of police officers within their area of jurisdiction, include the following functions:

- a) The protection of life and the safeguarding of property.
- b) The prevention and control of crime.
- c) The investigation of crime, the apprehension of criminal offenders and the recovery of stolen property.
- d) The preservation of public peace and good order. ...

(R. Exhibit 8)

BPD Rule 1.02 provides as follows:

Officers shall not commit any specific act or acts of immoral, improper, unlawful, disorderly, or intemperate conduct whether on or off duty, which reflects discredit or reflects unfavorably upon the officer himself, upon his fellow officers or upon the Police Department. Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department and its members. Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to

window recedes into door cavity, hands are inside the vehicle, head is mostly outside the vehicle, face is inside the vehicle
12:01:56 – Officer Fonseca pulls away in his vehicle
12:02:01 – Mr. Tejeda walks hurriedly to cruiser (does not run)
12:02:09 – Mr. Tejeda enters his vehicle

(R. Exhibits 5 and 11)

continue as a member of the Department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the Department or its members.

(R. Exhibit 8)

BPD Rule 2.0 provides in relevant part:

. . . Officers shall not be absent from their assigned duty without leave; leave their post, sector, community, or assignment without being properly detailed, relieved, or making required notifications; fail to take suitable and appropriate police action; fail to promptly perform, as directed, all lawful duties required by the constituted authority, notwithstanding the officer's normal assignment of duties and responsibilities.

(R. Exhibit 8)

Policies, Procedures and Guidelines, High speed Pursuit, Section II *Abandoning Pursuit* provides, in relevant part:

Officers shall terminate pursuit (1) when it becomes evident to the officer(s) involved in the pursuit that the risks to life and property begin to outweigh the benefit derived from the immediate apprehension on continued pursuit...

(R. Exhibit 8)

BPD Policy § 18 provides as follows:

An officer shall maintain sufficient competency to perform his duty and to assume the responsibilities of his position. Incompetence may be demonstrated by the following:

- a. A lack of knowledge of the application of laws required to be enforced;
- b. An unwillingness or inability to perform assigned tasks;
- c. The failure to conform to work standards established for the officer's rank, grade, or position by D.P.A. job description.

(R. Exhibit 8)

43. The investigators learned that on October 13, 2023, Officer Fonseca, based on Officer Perez's advice, assigned Mr. Tejeda—operating a solo cruiser—to respond to a motor vehicle accident on Warren Avenue. Officer Perez advised Officer Fonseca to dispatch Mr. Tejeda to Warren Avenue because it is preferable to assign solo cruisers to less complicated assignments that could be completed in a short period of time. (R. Exhibit 2)

44. At the scene, Mr. Tejeda suspected one of the operators was under the influence as he “slurred his words”. He also requested a tow for an unregistered, uninsured vehicle; dispatch approved the request. Subsequently, Mr. Tejeda called dispatch to complain about his assignment. Officer Fonseca answered the phone call. Mr. Tejeda asked why Officer Fonseca was sending him outside his sector the entire night. Officer Fonseca did not respond and terminated the call.⁸ (R. Exhibit 2)

45. At approximately 11:50 p.m., Officer Sequeira relieved Officer Fonseca from his dispatch duties. Officer Fonseca drove home via Warren Avenue. When he saw Mr. Tejeda at the Warren Avenue accident scene, Officer Fonseca rolled down his window and yelled at him. (R. Exhibit 2)

46. Mr. Tejeda approached the vehicle and the two engaged in a verbal altercation. The details of the altercation are in dispute. Mr. Tejeda asked Fonseca to leave the scene and Officer Fonseca told Mr. Tejeda to get away from his vehicle, before driving away at a speed of 5-10 mph. (R. Exhibit 2)

47. A few seconds later, Mr. Tejeda got into his cruiser, activated his siren and lights, and began pursuing Officer Fonseca. When Officer Fonseca observed Mr. Tejeda following him with lights and sirens activated, he immediately called Officer Perez. Officer Perez told Officer Fonseca to call the Commanding Officer’s (CO) line. Officer Fonseca called the CO’s line to inform them of the pursuit. Officer Fonseca drove around the block a few times as he awaited further directions from the CO’s Office. (R. Exhibit 2)

⁸ The administrative record does not permit to reject the views of Lt. Benvie, Officer Perez and Officer Callie Royster that there was no evidence that Officer Fonseca was discriminately dispatching Mr. Tejeda outside his sector.

48. When Lt. Vardaro realized that Mr. Tejeda was chasing Officer Fonseca, he ordered him to disengage, but Mr. Tejeda may not have heard. Lt. Benvie repeated the order, asking Mr. Tejeda to return to the station. Mr. Tejeda stopped pursuing Officer Fonseca a short while after he made the call to the CO's office. (R. Exhibit 2)

49. When Mr. Tejeda returned to the station without completing the accident/OUI investigation, Lt. Vardaro ordered him back to the scene. Shortly after Mr. Tejeda left, Officer Andrea Salamone called to report that the tow-truck had arrived at the scene to find no vehicles were present. (R. Exhibit 2)

50. Lt. Vardaro reported the incident to Chief Perez; Cpt. William Hallisey also completed a report. (R. Exhibit 2)

Internal Affairs Investigations Findings: Complaint No. 23-22-IA

51. Sgt. Amaral found that Mr. Tejeda had violated Rules and Regulations of the BPD and issued his findings in a report.

52. Sgt. Amaral found that Mr. Tejeda improperly abandoned a motor vehicle accident involving an unregistered vehicle, failed to conduct an OUI investigation, and left the scene. He neglected to protect the public or provide aid to an accident victim, violating Rules and Regulations 1.0 *Professional Conduct and Responsibilities* and 2.0 *Neglect of Duty*. (R. Exhibit 2; Testimony of Perez)

53. Sgt. Amaral found that Mr. Tejeda demonstrated incompetence and a lack of understanding of his duties by prioritizing a pursuit of a known colleague over handling a motor vehicle accident and potential OUI investigation, thereby violating BPD Policy – Prohibited Conduct § 18 *Incompetence*. (R. Exhibit 2; Testimony of Perez)

54. Sgt. Amaral found that Mr. Tejeda's call to dispatch and his approach to Officer Fonseca's vehicle at the accident scene did not violate Rules and Regulation 1.02 *Conduct Unbecoming an Officer*. (R. Exhibit 2)

55. Sgt. Amaral found that Officer Fonseca's appearance at the Warren Avenue scene amounted to interference and distracted Mr. Tejeda from his investigation. (R. Exhibit 2)

56. Cpt. Steven Williamson, Commanding Officer of the BPD Bureau of Professional Standards, recommended termination of Mr. Tejeda. Chief Perez accepted the captain's recommendation in consideration of Mr. Tejeda's prior discipline.⁹ (R. Exhibit 2)

Termination

57. After an October 8, 2024 Section 41 hearing, the hearing officer issued a November 7, 2024 Disciplinary Decision, upholding the City's decision to terminate Mr. Tejeda. (R. Exhibit 5)

58. Mayor Robert F. Sullivan issued a November 14, 2024 Notice of Termination, effective immediately, attaching and incorporating the hearing officer's November 7, 2024 Disciplinary Decision. The Mayor also enclosed two checks: one for payment of wages owed through November 14, 2024; and a second check for all other separation costs owed to date. (R. Exhibit 5)

59. The Mayor noted within the Notice of Termination:

The behavior you displayed during an incident occurring between October 13 and 14, 2023 was intemperate and unacceptable for any employee, especially those

⁹ Cpt. Williamson recommended a written reprimand for Officer Fonseca. Chief Perez increased the recommended discipline to a three-day unpaid suspension, finding that his behavior was a violation of BPD Rules and Regulation 1.02 – Conduct Unbecoming an Officer. After a November 27, 2024 Section 41 hearing, the hearing officer issued a decision finding that the appointing authority had just cause to impose the three-day suspension. (A. Exhibit 9; R. Exhibit 2)

charged with ensuring public safety. Instead of performing your job duties, you abandoned a criminal investigation into an intoxicated operator and left the victims on the side of the road in order to engage in a motor vehicle pursuit of a fellow officer following a verbal altercation. Your inexcusable actions resulted in the operator, who you described as “wasted” and “reeking of alcohol,” being permitted back onto the City roadway in an unregistered vehicle. You also used you[r] position as a police officer to intimidate and exercise power over a fellow officer without any justification whatsoever. Your egregious behavior is a poor reflection on the Brockton Police Department and the City of Brockton. I have no hesitation in the decision to terminate you under the egregious circumstances of this matter as you are clearly unfit to serve the great residents of Brockton.

(R. Exhibit 5)

60. Mr. Tejeda filed an appeal with the Commission on November 15, 2024. (A. Exhibit 2)

Disparate Treatment

61. Mr. Tejeda submitted documentation of discipline meted out to police officers, allegedly similarly situated, including an online news article. (A. Exhibits 4–10) The Mayor issued an April 3, 2023 Notice of Termination after an off-duty officer drove on the wrong side of the road, crashed into a private residence, and fled without reporting the accident. In the later Internal Affairs investigation, the officer was obstructive and untruthful to investigators. The August 2022 Internal Affairs investigation report substantiated seven violations of the Rules and Regulations: Rules and Regulations 1.01 *Privacy and Off-Duty Conduct*; Rules and Regulations 1.02 *Conduct Unbecoming*; Rules and Regulations 1.07 *Use of Official Position* (1.07); Rules and Regulations 6.08 *Withholding Evidence*; Rules and Regulations 6.09 *Truthful Testimony*; Rules and Regulations 8.05 *Responsibility for Vehicle*; Rules and Regulations 9.02 *Falsifying Records* 9.02. The officer was also charged with the criminal offenses of: Misleading an investigator in a criminal investigation; Leaving the scene of a property damage; Negligent Operation of a Motor Vehicle, Misdemeanor. He also had motor vehicle infractions for marked

lanes violation and failure to stop/yield. The administrative record does not show whether this officer had past discipline. (A. Exhibit 4)

62. Chief Perez issued a May 19, 2023 one-day Notice of Suspension after an off-duty officer brandished a firearm in a road rage incident. The district attorney's office later dismissed the assault with a dangerous weapon charge. The administrative record does not show whether that officer had past discipline. (A. Exhibit 5; Testimony of Perez)

63. Chief Perez issued an April 24, 2023 three-day Notice of Suspension after an off-duty officer's conduct for violation of Rules and Regulations 1.02 *Conduct Unbecoming*; violation of G.L. c. 90, §24 *Leaving the scene after property damage*; and G.L. c. 90, §24 *Operating to endanger*. The officer failed to report the accident; a witness reported the accident via a 911 call. This officer had no previous discipline. (A. Exhibit 6, R. Exhibits 9 and 10)

64. Chief Perez issued a September 13, 2023 three-day Notice of Suspension for violation Rules and Regulations 1.02 *Conduct unbecoming an officer*. The off-duty officer involved was operating after a night of drinking when he rear-ended a civilian stopped at a red light. The accident resulted in significant property damage and required medical transport for the other operator and passengers. (A. Exhibit 8)

65. The responding officers failed to administer field sobriety tests. The IA investigator concluded that the allegation of operating under the influence was not sustained due to insufficient evidence and recommended no disciplinary action. The Chief disagreed, citing concerns about the officer's judgment and the reputational impact on the Department. (A. Exhibit 8)

Applicable Legal Standard

A tenured civil service employee may be discharged for “just cause” after due notice and hearing upon written decision “which shall state fully and specifically the reasons therefor.” G.L. c. 31, § 41. An employee aggrieved by the decision may appeal to the Commission. G.L. c. 31, § 43. Under section 43, the appointing authority carries the burden to prove to the Commission by a “preponderance of the evidence” that there was “just cause” for the action taken. *Id.* See, e.g., *Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 823 (2006); *Police Dep’t of Boston v. Collins*, 48 Mass. App. Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000).

In performing its §43 review, the commission hears evidence and finds facts anew. Examining an earlier but substantially similar version of the same statute, the court in *Sullivan v. Municipal Ct. of the Roxbury Dist.*, 322 Mass. 566, 572, 78 N.E.2d 618 (1948), stated: “We interpret this as providing for a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer.” There is no limitation of the evidence to that which was before the appointing officer. *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the [C]ommission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the [C]ommission to have existed when the appointing authority made its decision.” *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). The Commission determines just cause for discipline by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” *Police Comm’r of Boston v. Civil Serv. Comm’n*, 39 Mass. App. Ct. 594, 599 (1996); *School Comm. v. Civil Serv.*

Comm'n, 43 Mass. App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997). The Commission must take account of all credible evidence in the entire administrative record, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law, including whatever would fairly detract from the weight of any particular supporting evidence. *See Commissioners of Civil Serv. v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971), citing *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928); see also *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. "[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance." *Leominster v. Stratton*, 58 Mass. App. Ct. at 729. *See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n*, 401 Mass. 526, 529 (1988); *Doherty v. Retirement Bd. of Medford*, 425 Mass. 130, 141 (1997).

The Commission has also consistently held police to a high standard of conduct even in the absence of indictable conduct or a criminal conviction. For example, in *Zorzi v. Norwood*, 29 MCSR 189 (2016), the Commission noted:

An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion. *McIsaac v. Civil Serv. Comm'n*, 38 Mass. App. Ct. 473, 475 (1995) (negligent off-duty handling of firearm). "When it comes to police officers, the law teaches that there is a special 'trust reposed in [a police officer] by reason of his employment Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.'" *Police Comm'r v. Civil Serv. Comm'n*, 22 Mass. App. Ct. 364, 371, *rev. den.*, 398 Mass. 1103 (1986).

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 biases in governmental employment decisions.’” *Falmouth*, 447 Mass. 814, 823 and cases cited. The Commission is equally guided by the basic merit principle governing civil service law that discipline must not be punitive, but remedial, designed to “correct inadequate performance” and only “separating employees whose inadequate performance cannot be corrected.” G.L. c. 31, § 1.

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

Analysis

The City has established, by a preponderance of the evidence, that it had just cause to terminate Mr. Tejeda for engaging in misconduct. I find that Mr. Tejeda: (1) neglected his duties as a police officer by leaving the scene of an active motor vehicle accident without completing an OUI investigation, thereby allowing a potentially intoxicated individual to continue operating an unregistered vehicle; and (2) abused his authority by initiating a reckless motor vehicle pursuit of a fellow off-duty officer.

After an investigation, the BPA sustained 1-3 and 5 of the following charges:

Charge 1: Rules and Regulations 1.0 *Professional Conduct and Responsibilities*

Charge 2: Rules and Regulations 1.02 *Conduct Unbecoming an Officer*

Charge 3: Rules and Regulations 2.0 *Neglect of Duty*

Charge 4: Policies, Procedures and Guidelines, High Speed Pursuit - Section II.
Abandoning Pursuit

Charge 5: Policies, Procedures and Guidelines, Prohibited Conduct - Section 18
Incompetence.

The hearing officer substantiated charges 1-3 and 5 by a preponderance of the evidence and upheld the Department's decision to terminate in a November 7, 2024 report. Further, the hearing officer found that each charge, whether separately or in conjunction with another charge, provided just cause for termination.

I now examine each charge.

Charge 1 – Rules and Regulations 1.02 Professional Conduct and Responsibilities

I find that the City has established, by a preponderance of the evidence, that Mr. Tejeda violated Regulations 1.0 *Professional Conduct and Responsibilities*. Specifically, Mr. Tejeda neglected his core responsibilities to protect life, safeguard property, and prevent or control potential criminal activity in a situation involving an apparent threat to public safety. However, I do not find that Mr. Tejeda's actions in calling dispatch to inquire about his assignment,

contacting the Commanding Officer's office to report that Officer Fonseca had ended their call abruptly, or approaching Officer Fonseca's vehicle at the accident scene, on their own, rise to the level of a violation of this rule.

Mr. Tejeda has offered unpersuasive justifications for his decision to abandon the scene of an active accident investigation in order to pursue a fellow officer. He claimed that Officer Fonseca (1) interfered with a police investigation, (2) was disorderly, (3) disturbed the peace, and (4) committed an alleged assault with a dangerous weapon when he drove away while Mr. Tejeda was in proximity to the vehicle. Mr. Tejeda has asserted that Officer Fonseca's conduct at the Warren Avenue scene warranted the pursuit.

Officer Fonseca's presence was brief, lasting approximately ten seconds, and therefore provided no basis for abandoning an active accident/OUI investigation. Mr. Tejeda acknowledged during his BPA interview that the accident scene was not the proper forum for any dispute with Officer Fonseca, and that the matter should have been handled later at the station or by telephone. It is difficult to reconcile his decision to immediately pursue Officer Fonseca while leaving behind unknown operators, including one appearing intoxicated, one possibly injured, and an unregistered vehicle.

When he was ordered to return to the station, Mr. Tejeda failed to notify his supervisors of the unfinished investigation. By the time he returned upon Lt. Benvie and Lt. Vardaro's orders, both operators had left. Mr. Tejeda's failure to complete the investigation was unreasonable, demonstrated a serious lapse in judgement, and exposed the City to significant risk and potential liability.

Mr. Tejeda's claim that he was unable to return to the accident scene because of the order to report to the station is disingenuous and is belied by his earlier willingness to challenge

dispatch and contact superior officers about his assignment to Warren Avenue. Both Lt. Benvie and Lt. Vardaro testified that they believed Mr. Tejeda had already completed the investigation. Had Mr. Tejeda informed them otherwise, it is very unlikely they would have ordered him back to the station.

Additionally, I find no merit in Mr. Tejeda's claim that Officer Fonseca's behavior constituted disorderly conduct or disturbance of the peace. Under *Commonwealth v. Accime*, 476 Mass. 469, 472-73 (Mass. 2017), disorderly conduct requires proof of intent to cause public inconvenience, annoyance, or alarm, or reckless creation of such risk. Similarly, under G.L. c. 272, §53, disturbing the peace requires intentional and unreasonable conduct causing annoyance to at least one person.

The Warren Avenue accident scene was recorded via city camera. There is no evidence that Officer Fonseca's brief presence caused any public disturbance or disorder. The video footage shows six individuals on the sidewalk near the scene, none of whom appeared alarmed. Officer Fonseca approached at a reasonable speed, and there was no visible disruption of traffic or order among the people at the scene.

Even if a violation had occurred, I credit Sgt. Amaral's testimony that any such offenses were misdemeanors, and that Mr. Tejeda had no obligation to pursue Officer Fonseca once the alleged conduct had ended. Mr. Tejeda himself testified that the purpose of the pursuit was merely to "have a conversation"—a justification grossly disproportionate to the risk created by abandoning a potential OUI investigation.

Finally, I reject Mr. Tejeda's claim that Officer Fonseca's departure constituted an assault with a dangerous weapon. The video shows that Officer Fonseca departed the scene at a controlled speed. While Mr. Tejeda's hands were briefly on the passenger window, he disengaged

calmly and walked back to his cruiser without urgency. This conduct does not support a finding that he was in danger.

Accordingly, Mr. Tejeda's abandonment of the accident scene, and his use of police authority to pursue a fellow officer over a personal grievance reflects a serious failure in professional judgment and a disregard for his fundamental duties. I find that Mr. Tejeda violated BPD Rule 1.0 – *Professional Conduct and Responsibilities*.

Charge 2 - Rules and Regulations 1.02 Conduct Unbecoming an Officer.

Mr. Tejeda does not dispute that his conduct qualifies as improper, disorderly, or intemperate, and that it reflected unfavorably on himself, his fellow officers, and the Police Department.

He left the scene of a motor vehicle accident after stating that one of the operators "reeked of alcohol" and reporting that one of the vehicles had revoked registration and insurance. He failed to conduct a field sobriety test, did not collect identifying information from either operator, and left without securing the scene or completing his investigation.

Instead, he initiated a high-speed pursuit of a known fellow officer over a personal disagreement that he could have resolved in a more professional and appropriate setting.

This conduct reflects a serious lapse in judgment and professionalism. Mr. Tejeda failed the very people he swore to protect. By leaving the scene, he allowed the suspected intoxicated operator to continue operating an unregistered vehicle, putting others at risk. His decision endangered not only those directly involved in the accident but also the broader community. He prioritized personal grievance over public safety.

These actions undermined public trust and discredited both Mr. Tejeda and the Department. The legitimacy of a law enforcement agency depends on officers demonstrating

restraint, responsibility, and a commitment to the public good. Mr. Tejeda's decision to abandon his post and misuse his authority damaged the reputation of the Brockton Police Department and the City itself.

I find that Mr. Tejeda's conduct was improper, disorderly, and intemperate. His actions reflect unfavorably on himself, his fellow officers, and the Department. He violated BPD Rule 1.02 – *Conduct Unbecoming an Officer*.

Charge 3 - Rules and Regulations 2.0 Neglect of Duty

The record reflects that Mr. Tejeda had been tasked with investigating the accident. At no point was he relieved of this duty. Instead of fulfilling his assignment, he chose to pursue a fellow officer over a prior personal dispute—an action that was neither assigned, necessary, nor appropriate under the circumstances.

Mr. Tejeda did not inform dispatch, a supervisor, or any other officer that he was leaving the scene, nor did he ensure that another officer was detailed or relieved him of duty. Both Lt. Benvie and Lt. Vardaro confirmed they believed Mr. Tejeda had already completed his investigation, highlighting that he failed to correct their assumptions or request clarification. His failure to communicate or coordinate his departure further underscores his disregard for established protocol.

Mr. Tejeda failed to conduct a field sobriety test, even after he personally noted that the operator "reeked of alcohol." He also failed to obtain any personal identifying information from either driver. These omissions allowed an unregistered vehicle, possibly operated by an intoxicated individual, to leave the scene without consequence, placing the public at risk.

Mr. Tejeda admitted during the hearing that he regretted leaving the scene of the accident and acknowledged that he should not have pursued Officer Fonseca. His conduct demonstrates a

pattern of neglect that goes beyond a momentary lapse in judgment. He failed to perform his lawful duties as required, failed to maintain communication with his superiors, and failed to ensure public safety. These failures directly contravene multiple prongs of BPD Rule 2.0 and warrant the finding that he neglected his duty.

Charge 4 - Policies, Procedures and Guidelines, Prohibited Conduct - Section 18 Incompetence

Mr. Tejeda demonstrated a lack of competency to perform his duty and to assume the responsibilities of his position as required by BPD Policy § 18. He was actively engaged in a motor vehicle accident investigation involving two civilian operators, one of whom he observed to be possibly intoxicated—an individual he described as “reek[ing] of alcohol.” Despite recognizing the need for a field sobriety test, and the fact that one of the vehicles had a revoked registration, Mr. Tejeda failed to collect any identifying information from the operators or complete the most basic investigative steps necessary to ensure accountability and public safety. Instead, he abandoned the scene without securing the drivers or evidence and engaged in an unauthorized pursuit of a fellow officer—whose identity he knew—over a personal and professional dispute.

Mr. Tejeda’s actions reflect a significant failure to conform to the professional standards expected of a police officer. His conduct suggests not only a disregard for the legal duties attached to his role, but also a troubling inability to prioritize urgent public safety needs over internal grievances. Even assuming he genuinely believed Officer Fonseca’s behavior warranted some form of response, it was unreasonable for him to leave a potentially intoxicated driver—whose information had not been recorded—free to leave the scene and potentially reoffend. His belief that the drivers would remain at the scene until he returned, without any measures in place to ensure this, further illustrates a lack of judgment and basic procedural awareness. Moreover,

Mr. Tejeda's explanations for his pursuit do not withstand scrutiny. He asserted that Officer Fonseca had interfered with the investigation, was disorderly, disturbed the peace, and committed an assault with a dangerous weapon. However, none of these claims are supported by credible evidence. Even if Officer Fonseca's behavior was unprofessional, abandoning a civilian investigation in progress was inappropriate. Mr. Tejeda had a duty to remain on scene, complete his investigation, and notify his supervisors of any subsequent concerns. That he failed to recognize this, and prioritized a personal dispute over his core duties, speaks to an inability to perform assigned tasks with the competence expected of his position.

BPD Policy § 18 identifies incompetence not only in terms of lack of knowledge, but also in the failure to conform to expected work standards and the inability to perform assigned tasks. Mr. Tejeda's conduct satisfies all three criteria. He failed to apply the law appropriately during the OUI investigation, showed an unwillingness to perform the most basic duties expected of him, and deviated significantly from the standards of performance required for his position. Accordingly, I find that the City has presented sufficient credible evidence to establish that Mr. Tejeda violated BPD Policy – Prohibited Conduct § 18 – *Incompetence*.

Disparate treatment

Finally, Mr. Tejeda argued that the appointing authority has not been even-handed in meting out discipline. This argument lacks merit. First, Mr. Tejeda was subject to an LCA, unlike the four officers whose disciplinary histories he proffered.

Second, each of the four officers was off-duty at the time of misconduct, thus did not abandon their job duties. (However, the Chief and the Department have consistently held that

when an officer's misconduct reflects discredit or unfavorably upon the officer, the Department or the City, Rule and Regulation 1.02 – *Conduct Unbecoming an Officer* explicitly applies – whether the officer is on-duty or off-duty.)

Third, Mr. Tejeda particularly points to the Chief's handling of the OUI discipline resulting in the September 13, 2023 three-day suspension. Mr. Tejeda argues that the Chief cited the seriousness of OUI as a justification for Mr. Tejeda's termination and yet issued only a three-day suspension to the officer suspected of OUI.

Based on the available evidence, I find that Chief Perez applied a progressive discipline system that matched the nature of each incident and the officer's disciplinary history. In certain cases, she imposed disciplinary measures that exceeded the Bureau of Professional Affairs' recommendations. This approach resulted in Mr. Tejeda receiving a "last chance agreement" on February 5, 2021, following his earlier misconduct.

Mr. Tejeda finally argues that the LCA he signed with the City should not be considered dispositive in evaluating the appropriateness of his termination. He cites *Kenney v. Cambridge Housing Authority*, 20 MCSR 160 (2007), in which the Commission held that a last chance agreement is unenforceable if it requires an employee to waive future civil service appeal rights, as such a waiver would violate public policy and contravene statutory protections under G.L. c. 31.

This case presents no jurisdictional defects. I find that the LCA Mr. Tejeda signed does not contain any language requiring a blanket waiver of his civil service rights. Mr. Tejeda has been afforded a full appeal before this Commission, and the City does not dispute the Commission's jurisdiction to review this disciplinary action. While LCAs cannot bar an employee from challenging a future disciplinary action through appropriate legal or

administrative channels, such agreements are relevant to lay context for progressively harsher discipline. Here, the Agreement serves as evidence that Mr. Tejeda had been given an opportunity to avoid termination with the clear understanding that continued employment was contingent on his compliance with department rules. This context informs, but does not dictate, the proportionality of the discipline imposed. Nevertheless, the LCA undermines any claim that termination was unexpected or disproportionate considering Mr. Tejeda's disciplinary history, the terms of the Agreement, and the egregiousness of his misconduct in October 2023.

Commission's Authority to Modify a Penalty

As previously noted, Mr. Tejeda concedes that his misconduct warrants disciplinary action but contends that termination is excessive. He has therefore asked the Commission to modify the penalty imposed by the appointing authority.

The Commission has consistently reaffirmed the standard set forth in *Watertown v. Arria*, 16 Mass. App. Ct. 331 (1983), that its role is not to decide what penalty it would have imposed in the first instance. Rather, the Commission must determine whether the appointing authority's action was "reasonably justified" considering the facts and circumstances as found by the Commission at the time the decision was made.

As the Appeals Court has clarified, "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 Serv. Comm'n*, 61 Mass. App. Ct. 796, 800 (2004), quoting *Police Comm'r v. Civil Serv. Comm'n*, 39 Mass. App. Ct. 594, 600 (1996). When the Commission reviews the discipline imposed, it is not free to disregard the appointing authority's judgment; rather, it must give due weight to the original decision. *Falmouth*, 447 Mass. at 823.

I find that the City's decision to terminate Mr. Tejeda is supported by the administrative record, including Mr. Tejeda's own admissions during the BPA investigation and his testimony before the Commission. None of the other four disciplinary records brought forth by Mr. Tejeda demonstrate that the Department failed to apply discipline uniformly or equitably. Further, Mr. Tejeda has not demonstrated that his conduct did not violate the four BPD rules specified by the City. Chief Perez's testimony – that Mr. Tejeda's termination would have been justified solely based on his abandonment of an active accident/OUI investigation in order to pursue a fellow officer, even in the absence of prior disciplinary history – is not contradicted by the evidence in this record.

Accordingly, I find no basis to modify the disciplinary penalty imposed by the City.

CONCLUSION

For all the above reasons, the appeal of Franklin Tejeda filed under Docket No. D1-24-177 is hereby *denied*.

Civil Service Commission

/s/ *Angela C. McConney*
Angela C. McConney
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein) on July 10, 2025.

Either party may file a motion for reconsideration within ten days of receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 C.M.R. § 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this commission order or decision.

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

Notice to:

James W. Simpson, Esq. (for Mr. Tejeda)

Kayla J. Venckauskas, Esq. (for Respondent)

Karen Fisher, Esq. (for Respondent)