

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

PAUL A. TUROWSKI,
Appellant

D-18-234

v.
CITY OF QUINCY,
Respondent

Appearance for Appellant:

Gerard S. McAuliffe, Esq.
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Quincy, MA 02169

Appearance for Respondent:

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Commissioner:

Paul M. Stein

DECISION

The Appellant, Paul A. Turowski, acting pursuant to G.L.c.31,§43, appealed to the Civil Service Commission (Commission) from the decision of the Respondent, the City of Quincy (Quincy), suspending him for five (5) days from his position of Police Lieutenant with the Quincy Police Department (QPD).¹ The Commission held a pre-hearing conference in Boston on January 8, 2019 and held a full hearing on February 11, 2019 at that location, which was digitally recorded.² The hearing was declared private with witnesses sequestered. Fourteen (14) exhibits were received in evidence (*Exhs.1 through 11; CityExhs. 1 through 3*). One post-hearing exhibit was received and marked *PHExh.1*. Neither party filed proposed decisions. For the reasons stated below, Officer Turowski’s appeal is denied.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² CDs of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by Quincy:

- QPD Police Sergeant Jennifer Tapper
- QPD Police Captain John Dougan
- QPD Police Chief Paul Keenan

Called by the Appellant:

- QPD Officer Paul A. Turowski, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Paul A. Turowski, has over thirty-six year of tenured service as a sworn member of the QPD. He held the the rank of Lieutenant since 2012 and at the time of this appeal was a Last Half (midnight - 11:30 pm-7:00am) shift commander. (*Testimony of Appellant*)

2. In 2003, then Sergeant Turowski received a five (5) day suspension for violating the QPD Conduct Regulations concerning Civility and Insubordination. His only other discipline, prior to the incident that gave rise to this present appeal, were two written reprimands, one in 2000, also when he was a Sergeant, for failing to obey a lawful order, and one as a Lieutenant in 2012 for sick time abuse. (*CityExhs.1 through 3*)

3. Lt. Turowski has a long history of serious medical issues, going back at least to 2012, which flared up again in the middle of 2018, causing him to take regular, intermittent sick leave that summer, for which he routinely submitted the required medical documentation. (*Exh.8; Testimony of Appellant*)

4. On September 4, 2018, Lt. Turowksi worked a paid detail at the polls for Primary Election Day. (*Exh. 1; Testimony of Appellant & Chief Keenan*)

5. The election detail is a desired assignment and officers must successfully bid for the assignment. In addition, the QPD is subject to a so-called “16-hour rule” (meant to prohibit an

officer from fatigue by working more than 16 hours in a 24 hour period without an eight (8) hour rest period). Under this rule, Lt. Turowski knew he would not be eligible to work that detail and also work his regular night shift at 11:30 pm following the completion of his election detail assignment. (*Exhs. 1 6, 7 & 9, Testimony of Appellant & Chief Keenan*)

6. Lt. Turowski understood that he was eligible to bid for and perform the September 4, 2018 election detail duty because, based on past practice, he had previously scheduled a medical appointment on September 5, 2018, planned to return home and take a sick day after the detail to rest up before the appointment and, thus, knew he would not be working the Sept 4/Sept 5 night shift; thus, he would not be violating the “16 hour rule.” (*Exhs 1 & 8; Testimony of Appellant*)

7. As planned, upon completing the election-day detail, Lt. Turowksi went home, attended his medical appointment on September 5, 2018 and next reported for duty for the Sept 5/Sept 6 midnight shift. (*Exh. 8; Testimony of Appellant*)

8. Immediately after completion of his shift, shortly after 7:00 am on September 6, 2018, as was his usual practice, Lt. Turowski went to see Captain Dougan, the QPD Executive Officer, with the intent of delivering the medical leave documentation covering the prior midnight shift and obtaining a copy of the “stamped” document for his own records. (*Testimony of Appellant & Capt. Dougan*)³

9. Lt. Turowksi walked upstairs to Capt. Dougan’s office and saw him seated at his desk. Also present in the office was Chief Keenan, who just completed a work-out and was still in gym attire, seated in a chair to the left of Capt. Dougan’s desk. Also present was Sgt. Jennifer Tapper, of the Professional Standards Unit, seated in another chair in front of Capt. Dougan’s desk. (*Exh. 11; Testimony of Appellant, Chief Keenan, Capt. Dougan and Sgt. Tapper*)

³ QPD procedure required that officers promptly deliver a sick note documenting the absence by bringing it to the Chief Keenan’s secretary who stamps it and forwards it for processing. As the secretary does not arrive until 9:00 am, however, some officers, including Lt. Turowski, preferred to bring the note to Capt. Dougan, who would stamp it and provide a copy to the officer, if requested. (*Testimony of Appellant, Capt. Dougan & Sgt. Tapper*)

10. Before Capt. Dougan could respond to Lt. Turowski, Chief Keenan (who regularly reviews the detail and attendance records) asked Lt. Turowski “why he worked the election detail when he was not eligible”, implying that, because he had been assigned to work the midnight shift that same night, he would be violating the “16-hour rule” by doing both. (*Exhs. 1, 2, 5 through 8; Testimony of Appellant, Chief Keenan, Capt. Dougan & Sgt. Tapper*)

11. Lt. Turwoski responded that he was eligible, and Chief Keenan repeated that Lt. Turwoski was not eligible. Lt. Turwoski then explained that he had a scheduled medical appointment and knew that he would be taking a sick day and not working the Sept4/Sept 5 midnight shift, to which Chief Keenan replied that he could not do that. (*Exhs. 1, 2, 5 through 8; Testimony of Appellant, Chief Keenan, Capt. Dougan & Sgt. Tapper*)

12. Lt. Turowski became upset and complained that he was being picked on and harassed because of his medical condition, which he believed was not the first time Chief Keenan had done so.⁴ Lt. Turowski then told Chief Keenan “I did not go through three [life-threatening medical crises] to take” this harassment. (*Exhs. 5 through 8; Testimony of Appellant; Chief Keenan & Capt. Dougan*)

13. At this point, Chief Keenan told Lt. Turowski to leave and get his note stamped. Lt. Turowski did not move. Chief Keenan rose from his chair, approached Lt. Turowski and repeated that he was ordering Lt. Turowski to leave. When Lt. Turowski still did not comply, Chief Keenan repeated the order on pain of suspension for non-compliance. (*Exhs. 5 through 8; Testimony of Chief Keenan. Capt. Dougan & Sgt. Tapper*)

14. After observing how the situation had escalated, Capt. Dougan, got up from his desk, told Lt. Turowski to “take it into the hall”, at which point, he and Lt. Turowski proceeded to leave the

⁴ Chief Keenan was the Chief who issued Lt. Turowski’s written reprimand in 2012 for sick time abuse. (*CityExh.3*)

office and head to the secretary's office where Capt. Dougan stamped the sick note as Lt. Turowski requested. (*Exhs. 5 through 8; Testimony of Appellant & Capt. Dougan*)

15. Even after leaving Capt. Dougan's office, Lt. Turowski had not calmed down, admitting that he was still "infuriated." At some point while Capt. Dougan was attending to the sick note, Lt. Turowski returned to Capt. Dougan's and, while standing at the door, again addressed Chief Keenan. (*Exhs. 5 through 8 & 11; Testimony of Appellant*)

16. On September 7, 2018, Lt. Turowski sent an e-mail complaint to the night patrol Captain, Greg Goyette, entitled "Work Place Harassment, Chief Keenan/Capt. Dougan. 9-6-18." The complaint outlined Lt. Turowski's version of the confrontation with Chief Keenan as well as recited how Lt. Turowski believed this encounter was part of a pattern of workplace harassment directed against him in the past. (*Exh. 8*)

17. On September 6, 2018, on Capt. Dougan's order, Lt. Turowski submitted a "To/From" report to Capt. Goyette containing an explanation for why he understood he was eligible to work the election-day detail and reiterating his claims of workplace harassment. (*Exh. 6*)

18. On September 12, 2018, after reviewing Lt. Turowski's report to Capt. Goyette, Capt. Dougan prepared a report of the September 6, 2018 encounter. His report concluded that "it is clear that [Lt. Turowski] does not understand that he was ineligible to work the [election-day] detail" and that Lt. Turowski's conduct on September 6, 2018 violated QPD General Order 91-18 (Conduct Regulations, Section 4.1 (Duty to Obey), Section 4.3 (Civility) and Section 4.9 Insubordination. Capt. Dougan's report did not cite Lt. Turowski for any violation of the "16-hour rule", General Order 16-03 (Detail Regulations) or for any sick leave abuse or other infraction attributable to Lt. Turowski taking sick leave from work on the Sept.4/Sept 5 midnight shift. (*Exhs. 7, 9 & 10; Testimony of Capt. Dougan*)

19. By “To/From” dated September 25, 2018, Chief Keenan concurred with the Capt. Dougan’s conclusions, finding Lt. Turowski had violated the QPD’s Conduct Regulations 4.1, 4.3 and 4.9, based on Lt. Turowski’s “verbal tirade” in Capt. Dougan’s office on September 6, 2018 and his refusal to obey “two (2) direct orders to leave the office.” The memo also stated that Chief Keenan was requesting a further review by the Mayor of Quincy “or possible further disciplinary action up to and including termination”. Chief Keenan forward that request to Quincy Mayor Thomas Koch on October 29, 2018. (*Exhs. 2 & 5; Testimony of Chief Keenan*)

20. On November 9, 2018, a Hearing Officer appointed by Mayor Koch conducted a hearing on the five (5) day suspension imposed by Chief Keenan and the Chief’s request for consideration of further discipline. (*Exh. 1*)

21. By letter dated November 15, 2018, the Hearing Officer submitted her report to Mayor Koch, finding that “respect and civility are vital components to the successful running of a police department”, that Lt. Turowski’s “actions to the contrary” during the September 6, 2018 incident in Capt. Dougan’s office justified the five-day suspension, but recommended that no further discipline be imposed. (*Exh. 1*)

22. By letter dated November 20, 2018, Mayor Koch accepted the Hearing Officer’s recommendations, upheld the five-day suspension and ordered that “no further disciplinary action will be taken at this time.” (*Exh. 1*)

23. This appeal duly ensued. (*Claim of Appeal*)

APPLICABLE LEGAL STANDARD

G.L.c.31,§41-45 requires that discipline of a tenured member may be imposed only for “just cause” after due notice, hearing (which must occur prior to discipline for any suspension from the payroll for five days or less) and a written notice of decision that states “fully and specifically the reasons therefore.” G.L.c.31,§41. An employee aggrieved by that decision may appeal to the

Commission, pursuant to G.L.c.31,§43, for de novo review by the Commission “for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited.

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 “merit principles” which govern 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 Commission also must take into account the special obligations the law imposes upon police officers, who carry a badge and a gun and all of the authority that accompanies them, and which requires police officers to comport themselves in an exemplary fashion, especially when it comes to exhibiting self-control and to adhere to the law, both on and off duty. “[P]olice officers voluntarily undertake to adhere to a higher standard of conduct 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 implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” Attorney General v. McHatton,

428 Mass. 790, 793-74 (1999) and cases cited. See also Falmouth v. Civil Service Comm'n, 61 Mass.App.Ct. 796, 801-802 (2004); Police Commissioner v. Civil Service Comm'n, 39 Mass.App.Ct. 894, 601-602 (1996); McIsaac v. Civil Service Comm'n, 38 Mass.App.Ct. 473, 475-76 (1995); Police Commissioner v. Civil Service Comm'n, 22 Mass.App.Ct. 364, 371, rev.den. 398 Mass. 1103 (1986) See also Spargo v. Civil Service Comm'n, 50 Mass.App.Ct. 1106 (2000), rev.den., 433 Mass. 1102 (2001).

ANALYSIS

Quincy had just cause to discipline Lt. Turowski for his disrespectful and insubordinate behavior toward Chief Keenan on September 6, 2018. The Hearing Officer's conclusion that a five-day suspension was warranted for Lt. Turowski's failure to meet his obligation to comply with these "vital components to the successful running of a police department", and to impose no further discipline, demonstrate the type of measured, appropriate remedial discipline that basic merit principles of civil service law require.

As a ranking officer with over thirty years of service, Lt. Turwoski should serve as an example of the standard of conduct required of all QPD officers. His outburst against Chief Kennan, in the presence of another superior officer and a subordinate, during which he admitted to using highly offensive language, cannot be condoned. His lack of self-control was not limited to one isolated outburst, but continued for some minutes. Even after leaving the office, Lt. Turwoski returned to repeat his earlier statements and then, by his own admission, uttered what may have been his most offensive remark.

I have not overlooked the fact that Lt. Turowski has faced more than his fair share of challenges in his personal life. However, this appeal concerns a lapse in judgment and failure to perform the essential duties of a police officer, i.e., to follow orders and maintain civility and self-control at all times. An appointing authority does not violate basic merit principles when it

enforces its right to expect performance of such essential duties, especially, those of a sworn law enforcement officer who carries a badge and a gun and must be held to the highest standard of performance at all times.

CONCLUSION

For these reasons, the appeal of the Appellant, Paul A. Turowski, Case No. D-18-234 is hereby denied.

Civil Service Commission

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

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 27, 2020.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or 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:

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