

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JASON YAGODZINSKI,
Appellant,

v.

D-13-72

DEPARTMENT OF STATE POLICE,
Respondent

Appearance for Appellant:

Margaret Rubino, Esq.
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Acton, MA 01720

Appearance for Respondent:

Sean W. Farrell, Esq.
Department of State Police
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Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

On March 12, 2013, the Appellant, Jason Yagodzinski (“Trooper Yagodzinski”), pursuant to G.L. c. 31, § 43, filed this appeal with the Civil Service Commission (“Commission”) contesting the decision of the Department of State Police (“Department”) to forfeit seven (7) days accrued time off. A pre-hearing conference was held at the Commission on April 14, 2013 and a full hearing was held at the same location on June 19, 2013. Neither party requested a public hearing so the hearing was deemed private. The witnesses, except Trooper Yagodzinski, were sequestered. The hearing was digitally recorded and the parties were provided with a CD of the hearing. The parties submitted proposed decisions.

¹ The Commission acknowledges the assistance of Law Clerk Kari-Ann E. Greene in preparing this decision.

FINDINGS OF FACT

Eighteen (18) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

Called by the Appointing Authority:

- William J. Scott, Lieutenant, Department of State Police;
- Michael Biagini, Assistant Chief, Cheshire Volunteer Fire Department;
- Angela Lind, Member Status Firefighter, Cheshire Volunteer Fire Department;

Called by Trooper Yagodzinski:

- Jason Yagodzinski, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations and policies, and reasonable inferences from the credible evidence, a preponderance of the evidence establishes the following findings of fact:

1. Trooper Yagodzinski has been a State Trooper for approximately nine (9) years. (Testimony of Trooper Yagodzinski)
2. In May 2011, Trooper Yagodzinski was assigned as a State Trooper First Class with Station B-4, SP Cheshire. The area he covered included eighteen (18) towns. (Testimony of Trooper Yagodzinski)
3. At 9:44 AM on May 12, 2011, while working the day shift from 7:00 AM – 3:30 PM, Trooper Yagodzinski left North Adams District Court and resumed his normal patrol. (Testimony of Trooper Yagodzinski)
4. At 10:06 AM, Trooper Yagodzinski made an arrest and took the arrestee back to the barracks where he filled out paper work. (Testimony of Trooper Yagodzinski)

5. At approximately 12:15 PM, Trooper Yagodzinski responded to a stolen car that was on fire.
(Testimony of Trooper Yagodzinski)
6. At approximately 1:30 PM, Trooper Yagodzinski made a wellness check at a residence, after which he returned to normal patrol. (Testimony of Trooper Yagodzinski)
7. After returning to normal patrol, Trooper Yagodzinski noticed a car with a flashing red light on the dashboard speed past him going in the opposite direction. (Testimony of Trooper Yagodzinski)
8. Trooper Yagodzinski made a radio transmission inquiring whether there was an active, ongoing emergency. Trooper Yagodzinski was told that dispatch did not know of any emergency. (Testimony of Trooper Yagodzinski)
9. Trooper Yagodzinski was then passed by “Rescue 5,” the Cheshire Fire Department’s ambulance, which also had its lights flashing. Trooper Yagodzinski again made a radio transmission and again was informed that dispatch was unaware of an emergency. Trooper Yagodzinski had no way of contacting the Cheshire Fire Department to inquire of them if there was an emergency as the radios of the State Police are not set up to communicate with the Fire Department’s radios. (Testimony of Trooper Yagodzinski)
10. Trooper Yagodzinski then reversed direction in pursuit of the ambulance. Trooper Yagodzinski did not find the ambulance but came upon several cars with red flashing lights parked by a bike path in Cheshire. Three (3) of the cars were unlocked, had their windows down, and had keys visible. One (1) of the (3) cars had a visible wallet in the cup holder area. Trooper Yagodzinski did not try to find the injured individual in the bike path area.
(Testimony of Trooper Yagodzinski)

11. A State Police bulletin notes that an individual was arrested on August 9, 2011 for breaking and entering into a vehicle and larceny for an incident occurring at the bike path in Cheshire. (Exhibit 16 and Testimony of Trooper Yagodzinski)
12. Trooper Yagodzinski entered the cars, turned them on to roll up the windows, took the visible wallet out of one of the cars, locked the cars, and took the keys and wallet to the Cheshire Fire Station. When he arrived at the Fire Station, he discovered it was unlocked and unmanned. Trooper Yagodzinski proceeded to leave the keys and wallet on a shelf in the Fire Station and locked the door of the Fire Station when he left. (Testimony of Trooper Yagodzinski)
13. Trooper Yagodzinski then returned to the bike path parking lot, where he encountered Assistant Chief Michael Biagini (“Mr. Biagini”). He informed Mr. Biagini that he had “secured” the three cars and taken the keys to the Fire Station. At no time did he inquire if there was someone injured. (Testimonies of Trooper Yagodzinski and Assistant Chief Biagini)
14. The Fire Chief, who was not present at this incident, and Angela Lind (“Firefighter Lind”), a volunteer firefighter whose keys and wallet were taken by Trooper Yagodzinski, filed complaints with the Department immediately after the incident occurred. (Testimonies of Assistant Chief Biagini and Firefighter Lind; Exhibits 6 and 7)
15. It is the practice of members of the Cheshire volunteer Fire Department to leave their cars unlocked, wherever they park them, with the keys inside in case the car should need to be moved or a member should need to access emergency equipment from within the car. (Testimonies of Assistant Chief Biagini and Firefighter Lind)

16. Lieutenant William Scott (“Lt. Scott”), who has been a State Trooper for over twenty-four (24) years, was assigned to investigate this matter. (Testimony of Lt. Scott)
17. Lt. Scott sent Trooper Yagodzinski a letter with questions about this matter. Trooper Yagodzinski replied with a letter containing brief answers. Due to the short nature of Trooper Yagodzinski’s answers, Lt. Scott determined it would not be productive to interview Trooper Yagodzinski. (Testimony of Lieutenant Scott; Exhibits 11 and 12)
18. Lt. Scott reviewed the Assistant Fire Chief’s and Firefighter Lind’s complaints. He then asked Assistant Fire Chief Mr. Biagini and Firefighter Lind to write letters detailing the incident. All three provided Lt. Scott with such letters. In her letter, Firefighter Lind noted that being locked out of her car could have delayed response time and put potential injured persons’ safety at risk as she had no access to her car or the gear inside of it. In his letter, Assistant Chief Biagini stated that had he received another call, he would not have been able to access his gear and critical supplies inside his locked car.² (Testimony of Lt. Scott; Exhibits 8-10)
19. Trooper Yagodzinski was brought before a Department Trial Board on January 18, 2013, where he was charged with violating both:
 - a. Article 5.2 of the Department’s Rules and Regulations:
 - i. “Members shall conduct themselves at all times in such a manner as to reflect most favorably upon themselves and the Massachusetts State Police. Conduct unbecoming shall include that which brings the Massachusetts State Police into disrepute or reflects discredit upon the person as a member of the Massachusetts State Police, or that which impairs the operation, efficiency, or effectiveness of the Massachusetts State Police or the member.” And
 - b. Article 5.8.1 of the Department’s Rules and Regulations:

² Assistant Chief Biagini further notes in his letter that Trooper Yagodzinski’s police car at one point was parked in front of a gate, which blocked an ambulance from accessing the bike path. Trooper Yagodzinski was found not guilty of this offense by the Trial Board.

- i. “Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in such a manner as will maintain the highest professionally accepted performance standards in carrying out the functions and objectives of the State Police.”

and he violated these Rules and Regulations when he responded to a medical emergency and failed to properly perform his duties. (Exhibits 1 and 3)

20. On March 4, 2013, the Trial Board found Trooper Yagodzinski not guilty of the first charge, which alleged that he blocked the gate of the bike path with his car, preventing an ambulance from going to the aid of the injured individual. Trooper Yagodzinski was found guilty of the second charge, which alleged that he failed to go to the aid of, or inquire about the injured individual, and failed to properly perform his duties. Accordingly, Trooper Yagodzinski was disciplined by having to forfeit seven (7) days of accrued time off. (Exhibits 1 and 2)

21. Trooper Yagodzinski had been previously disciplined in 2011 for a 2008 violation of Article 5.4 of the Department’s Rules and Regulations, for which Trooper Yagodzinski forfeited five (5) days accrued time off. Article 5.4 states, in part, that “members who know or have reason to believe that they have been identified as a suspect in any criminal investigation shall notify their duty assignment supervisor forthwith of said incident or belief.” (Exhibit 15)

22. Trooper Yagodzinski filed this appeal with the Commission on March 12, 2013.

DISCUSSION

Applicable Law

The Commission has jurisdiction over a State Trooper “aggrieved by the finding of... a trial board [who] may appeal the decision of the trial board under sections 41 to 45, inclusive of chapter 31.” G.L. c. 22C, § 13. The role of the Civil Service is to determine “whether the

appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304 (1997); Town of Watertown v. Arria, 16 Mass.App. Ct. 331, 334 (1983). Reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Comm’rs of Civil Serv. v. Mun. Ct., 359 Mass. 211, 214 (1971) (quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (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.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); Sch. Comm. of Brockton v. Civil Serv. Comm’n, 43 Mass.App.Ct. 486, 488 (1997).

The Appointing Authority’s burden of proof is one of a preponderance of the evidence, which is established “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). “In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” Id. at 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). Further, “[t]he commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether there was reasonable justification for the action taken by the

appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” Id. at 824 (quoting Watertown, at 334).

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 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.” Watertown at 332; Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003).

The Parties’ Positions

The Department argues that its decision to discipline Trooper Yagodzinski is supported by just cause. Trooper Yagodzinski failed to maintain sufficient competency to properly perform his duties and assume the responsibilities of his position as a State Trooper. Specifically, Trooper Yagodzinski failed to seek out the injured individual to see if he could offer assistance and further failed to inquire of Assistant Chief Biagini the condition of the injured individual. Therefore, the Department avers, based on the DOC’s policies regarding unsatisfactory performance, there was just cause to discipline Trooper Yagodzinski by requiring him to forfeit seven (7) days of his accrued time off.

Trooper Yagodzinski argues that he should not have been disciplined for this incident. He asserts that he was not dispatched to this emergency and, in fact, did not even know that an individual had been injured on the bike path. Trooper Yagodzinski contends that he had no duty to go to the injured individual’s aid or to inquire of his or her condition. He argues that he tried to figure out if there was an active, ongoing emergency through radio transmissions to the Department and through attempting to follow the ambulance. He contends that he locked the

cars because the area was known for thefts. Therefore, Trooper Yagodzinski argues, the Department should not be allowed to discipline him based on these allegations.

Credibility

While Trooper Yagodzinski appears to be credible in general, I do not find Trooper Yagodzinski's contention that there were frequent car thefts in the bike path area to be credible. The only evidence he offers to support his supposition is a police bulletin from August 9, 2011 advising that one individual had been arrested for a car theft in the bike path area. The present incident where Trooper Yagodzinski locked the cars and took the keys occurred in May 12, 2011, which was three months prior to the theft. As a result, I am not persuaded that this area is one of frequent car thefts. Cheshire Volunteer Fire Department Assistant Chief Biagini and Volunteer Firefighter Lind testified in an earnest, straightforward, and knowledgeable manner and displayed no bias or other inappropriate motive in their testimony. As volunteer firefighters, they serve Cheshire admirably. State Police Lt. Scott similarly testified in a straightforward, knowledgeable and consistent manner, indicating no ill will toward Trooper Yagodzinski.

Analysis

While it is true that Trooper Yagodzinski was not dispatched to aid the injured individual, he made the conscious decision to follow the ambulance in an attempt to help the injured individual. He encountered the parked cars with the flashing red lights. Instead of going onto the bike path to try to find the firefighters or the injured individual, Trooper Yagodzinski chose to "secure" the cars and take the keys back to the Fire Station. Ensuring that cars are "secure" from possible theft seems rather less important than ensuring that an injured individual is receiving proper medical attention, as well as ensuring that the responding firefighters have access to the gear in their cars. Furthermore, there is no substantive evidence that there was a significant threat of

theft. After Trooper Yagodzinski came back to the parking lot and came across the firefighters, he even then did not inquire after the injured individual.

The Department cannot turn a blind eye to an employee who has exhibited unsatisfactory performance. Trooper Yagodzinski chose to respond to a medical emergency but failed to provide any assistance related to the emergency and hampered the ability of the firefighters to obtain the gear in their cars and/or respond to other emergencies. Trooper Yagodzinski had a duty to properly and competently perform his duties as a State Trooper and he failed to do so on this occasion.

The Department identified five (5) cases involving State Troopers with similar histories to Trooper Yagodzinski, who also violated Article 5.8.³ The Department also identified two (2) cases involving at least one violation of Article 5.8, which was adjudicated by a Trial Board. Trooper Yagodzinski's discipline requiring him to forfeit seven (7) days of accrued time off is comparable to the discipline of the cases provided by the Department. Thus, there is no evidence of disparate treatment meriting modification of Trooper Yagodzinski's discipline. As a result of Trooper Yagodzinski's unsatisfactory performance in this instance, established by a preponderance of the evidence, and in accordance with the principle of progressive discipline following Trooper Yagodzinski's previous discipline in another matter resulting in his forfeiture of five (5) days of accrued time off, the Department had just cause to discipline Trooper Yagodzinski by requiring him to forfeit seven (7) days of accrued time off.

CONCLUSION

For the reasons stated herein, the Department had reasonable justification to discipline Trooper Yagodzinski. Therefore, Trooper Yagodzinski's appeal filed under Docket No. D-13-72

³ The names of the State Troopers in the five cases have been redacted.

is hereby *denied*.

Civil Service Commission

Cynthia A. Ittleman, Esq., Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on August 22, 2013.

A true record. Attest:

Commissioner

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.

Notice:

Margaret Rubino, Esq. (for Appellant)

Sean W. Farrell, Esq. (for Respondent)

