

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

LOUMAG ALICEA,
Appellant

D1-13-165

v.

CITY OF HOLYOKE,
Respondent

Appearance for Appellant:

Michael Clancy, Esq.
International Brotherhood of
Police Officers
1299 Page Boulevard
Springfield, MA 01104

Appearance for Respondent:

Sara J. Carroll, Esq.
City of Holyoke Law Department
20 Korean Veteran's Plaza, Rm 204
Holyoke, MA 01040

Commissioner:

Christopher Bowman

DECISION

Pursuant to the provisions of G.L. c. 31 § 43, the Appellant, Loumag Alicea (Officer Alicea) seeks review of the City of Holyoke (City)'s decision to terminate him from employment with the Holyoke Police Department. The appeal was timely filed with the Civil Service Commission (Commission) on July 29, 2013. A pre-hearing was held on August 28, 2013 at the Springfield State Building in Springfield, MA. A full hearing was held over two days at the same location on November 12th and November 20th, 2013.¹ All witnesses were sequestered. The hearing was

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

private. A digital recording was made of the proceeding and copies of the CD were provided to both parties.²

FINDINGS OF FACT:

I accepted twenty-two (22) Appointing Authority exhibits at the hearing and accepted four (4) additional documents post-hearing and marked them as Appointing Authority exhibits 23 through 26. I also accepted three (3) Appellant exhibits at the hearing. Based on these exhibits³ and the testimony of the following witnesses:

For the Appointing Authority:

- Joseph Garcia, Sergeant, Holyoke Police Department;
- Frederick Seklecki, Captain, Holyoke Police Department;
- Michael McCoy, Lieutenant, Professional Standards Division;
- Denise Duguay, Captain, Holyoke Police Department;
- James Neiswanger, Chief of Police, Holyoke Police Department;
- Edgar Lopez, Officer, Holyoke Police Department;

For the Appellant:

- Loumag Alicea, Officer, Holyoke Police Department (Appellant);
- Patricia Alicea, Officer, Holyoke Police Department (Appellant's Sister);

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

1. The Appellant, Loumag Alicea (Officer Alicea), has been employed with the Holyoke Police Department (Department) as a Patrolman in the Operations Division since September 1998. (Stipulated Fact)

² 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/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

³ For the purposes of these proceedings, I have deemed Respondent Exhibits 1, 2, 3, 5, 9, 11, 12, 13, 17, 18, 19, 23, 24, 25 and 26 as confidential.

2. The Department employs approximately 110 to 120 persons, consisting of the Chief of Police, four (4) Captains, eight (8) Lieutenants, thirteen (13) Sergeants, and numerous Patrolmen and Detectives. (Testimony of Sgt. Garcia)
3. In 2009, Officer Alicea received a written reprimand for misconduct. The reprimand stated in part, “you went on a ten to fifteen minute vulgar, obscene out of control tirade hurling vulgar and obscene comments in reference to [a Captain]. Your tirade was witnessed by several of the individuals that gave statements ...”. (Exhibit 21)
4. In 2011, Officer Alicea received a three (3)-day suspension for failing to proceed to a detail assignment during a snowstorm. He appealed the suspension to the Commission. The Commission upheld the suspension and denied his appeal. (Exhibits 19 and 20)
5. On September 15, 2012, Officer Alicea was scheduled to work the evening shift from 4:00 p.m. until 12:00 a.m. He was assigned to the Operations Division and instructed to patrol in Car #2. (Testimony of Officer Alicea Appellant and Lt. McCoy)
6. Generally, officers on patrol are assigned to a patrol area. This area is a general guideline, as cars often vary from their patrol area when they are dispatched to other areas throughout the City. The patrol area, or “beat,” for car #2 includes the Holyoke Mall, South Holyoke, Whiting Farms Road, the Kmart Plaza, and Main Street in Holyoke stopping at the intersection of Route 391. Officer Alicea’s home is not included in the patrol area for Car #2. (Testimony of Officer Alicea and Lt. McCoy and Respondent Exhibit 14)
7. While on patrol the evening of September 15, 2012, Officer Alicea was carrying his police issued service weapon on his person. Generally, officers on patrol are required to carry their service weapon. When officers are done with their shifts, some return their weapons

to the Holyoke Police Department while others take their weapons home with them.

(Testimony of Officer Alicea and Lt. McCoy)

8. The Holyoke Police Department Dispatch Log indicates that Officer Alicea responded to a call at approximately 4:21 p.m. at the Holyoke Mall for a report of shoplifting. The Appellant cleared this call at 4:40 p.m. (Testimony of Lt. McCoy and Respondent Exhibit 13)
9. At approximately 7:00 p.m., Officer Alicea notified dispatch that he was returning home in his cruiser for his evening meal break. At this time, Officer Alicea's sister, Patricia Alicea, also a Holyoke police officer, was hosting a party at her house across the street. Officer Alicea stopped to make two plates of food for dinner, for him and his wife. Officer Alicea proceeded back across the street to his residence to have dinner. Officer Alicea and his wife finished their dinner and Officer Alicea returned to his shift at approximately 7:35 p.m. (Testimony of Officer Alicea)
10. At approximately 8:18 p.m., Officer Alicea was dispatched to a disturbance on Hitchcock Street in Holyoke. Hitchcock Street is located within $\frac{1}{2}$ mile to $\frac{3}{4}$ mile from Officer Alicea's home on Willow Street. Officer Alicea cleared this call at approximately 8:40 p.m. (Testimony of Lt. McCoy and Respondent Exhibit 13)
11. While at the call on Hitchcock Street, Officer Alicea received a phone call from his wife who asked him to return home. Officer Alicea, without notifying dispatch, returned to his home at approximately 8:45 p.m. (Testimony of Officer Alicea)
12. Officer Alicea was then dispatched to a third call for the evening, at approximately 9:44 p.m. for violation of a city ordinance on Main and Vernon Streets. (Respondent Exhibit 13)

13. Officer Alicea was cleared from the call at Main and Vernon Streets at approximately 9:55 p.m. (Exhibit 13)
14. Shortly after 9:55 p.m., Officer Alicea returned home again in his police cruiser, without notifying dispatch. Officer Alicea met his wife at the sliding glass door to his house. Officer Alicea put his hand on his wife's chest, shoved her back to get inside, and told his wife that she needed to leave the house the next day. (Testimony of Officer Alicea)
15. At some point on the night of September 15, 2012, Officer Alicea took his Department-issued firearm from his holster and held it to his wife's head. (Based on Officer Alicea's admission to Officer Lopez)⁴
16. On September 20, 2012, Officer Alicea was working a double shift with the Holyoke Police Department. He returned home at approximately 9:00 p.m. Later that night, he got in a "big blowout" with his wife, calling her "a bitch" and "a whore" and being "verbally abusive to her." (Testimony of Officer Alicea)
17. During the early morning hours of September 21, 2012, Officer Alicea pushed his elbow back and struck his wife with enough force that his wife landed on the kitchen floor and had a "black eye." (Testimony of Officer Alicea)
18. On September 23, 2012, Officer Alicea's wife visited Mercy Medical Center in Springfield, Massachusetts. Medical records from the hospital document "a 33 year old female complaining of Assault / Face Injury / Chest and Rib Pain." Specifically, the report documents her complaint of chest pain and facial injury with bruising and discoloration. The report also indicates "patient states she was assaulted by her husband" and "patient is going to press charges after her emergency room visit." The discharge notice states under

⁴ While I do not credit Officer Alicea's version of events regarding the firearm, it is noteworthy that, according to Officer Alicea, he did not put the gun to his wife's head, but, rather, threatened to take out the gun and "eat it".

diagnosis: “acute right periorbital contusion” and “acute left-sided-rib pain status post assault.” (Respondent’s Exhibit 12)

19. On September 23, 2012, Officer Edgar Lopez and his wife had a personal conversation at Officer Alicea’s residence. Officer Alicea was very distraught and wanted to speak to him about a situation with his wife. (Testimony of Officer Lopez)
20. Officer Lopez is a patrolman for the Holyoke Police Department. He has worked with the Department for approximately 23 ½ years. Officer Lopez has worked with Officer Alicea for approximately 15 years in the Holyoke Police Department. He considers himself a friend of Officer Alicea, and has been friends with him for several years prior to the Officer Alicea’s hire with the Department. (Testimony of Officer Lopez)
21. Officer Alicea was upset when he started the conversation with Officer Lopez and he broke down crying. Officer Alicea told Officer Lopez that he busted his wife’s lip and that he pulled out his gun and held it to his wife’s head. (Testimony of Officer Lopez)
22. On September 28, 2012, at approximately 9:00 a.m., Officer Alicea’s wife came into the Holyoke Police Department headquarters and spoke with Officer Lopez about a criminal complaint. Officer Lopez referred the matter to Sergeant Joseph Garcia, who was the commanding officer on the day shift assigned to the Operations Division. (Testimony of Sgt. Garcia)
23. As soon as Officer Alicea’s wife entered the commanding officer’s office, she started crying immediately. When she took her sunglasses off, Sergeant Garcia noticed a black eye and two marks underneath her right eye. Officer Alicea’s wife told him that Officer Alicea had hit her, causing injury to her lip, ribs, and eye. (Testimony of Sgt. Garcia; Respondent Exhibit 9)

24. Officer Alicea's wife described to Sergeant Garcia a previous incident in which Officer Alicea put his police department service weapon to her head while stating "I could kill you right now, if I want to kill you I can." When asked why she didn't report the incident sooner, Officer Alicea explained that she tried to go to the hospital but Officer Alicea wouldn't let her out of fear that he would lose his job. (Testimony of Sgt. Garcia; Respondent Exhibits 9 and 17)
25. Around 10 a.m., Captain Frederick Seklecki, who was serving as acting Chief of Police in the absence of Chief Neiswanger, was briefed by Captain Arthur Monfette regarding the allegations by Officer Alicea's wife. After his conversation with Captain Monfette, Captain Seklecki made the determination that Officer Alicea should be arrested. (Testimony of Captain Seklecki)
26. On September 28, 2012, at approximately 11:10 a.m., Officer Alicea was arrested by the Holyoke Police Department. He was escorted to the station and booked. He was cooperative as the officers took his service weapon from him and accompanied him to the station. (Testimony of Captain Seklecki)
27. Officer Alicea was charged with Domestic Assault and Battery and Assault with a Dangerous Weapon. The charge of Domestic Assault and Battery is a misdemeanor, resulting from the act of striking or intentionally hitting someone. The Appellant was charged with Domestic Assault & Battery on the allegations that he struck his wife and caused her injury. The charge of Assault with a Dangerous Weapon is a felony. The Appellant was charged with Assault with a Dangerous Weapon based on the allegations that Marilyn Alicea made that the Appellant held a gun to her head and threatened to kill her. (Testimony of Captain Seklecki)

28. On September 28, 2012, after Officer Alicea was brought to the station, Officer Lopez revealed to Sgt. Garcia that Officer Alicea had previously admitted to Officer Lopez that he had held a gun to his wife's head. Officer Lopez was instructed by Sergeant Garcia to document the conversation in a narrative to be included in the Arrest Report. (Testimony of Sgt. Garcia and Officer Lopez and Respondent Exhibit 9)
29. On September 28, 2012, Officer Alicea and Officer Lopez exchanged text messages regarding this incident. Officer Lopez writes in a text message to Officer Alicea's phone, "[I]isten, I [sic] been meaning to tell you that what you shared with me, needs to be shared with someone here such as Cpt. Pratt. I am not referring to the personal stuff, even though all of it is personal, but the stuff we as police officers deal with on a daily basis. It has been really bugging me, even more as a man of God. Do the right thing and put it in the Lords hand." In response, Officer Alicea writes, "[i]f you mean what happen [sic] in my house between her and I Edgar I can't. I have to live with that but they are looking to get rid of me there and bringing this to them gives them ammunition to fire me!! I can't trust them and she is not gonna come forward because she knows I can lose my job...Please Edgar I'm sorry but they won't understand and they will fire me...Please don't say anything I will deal with this with the Lord!!!" (Respondent Exhibit 10)
30. Upon the arrest of the Appellant, the criminal investigation was turned over to Captain Denise Duguay. Captain Duguay has been employed with the Holyoke Police Department for over 20 years and has served as a captain in the Criminal Investigations Bureau for 2 ½ years. (Testimony of Captain Duguay)

31. On September 28, 2012, Captain Duguay met with Officer Alicea's wife in person. Captain Duguay observed that Officer Alicea's wife had a visible mark on her face under her eye, which appeared to be consistent with a black eye. (Testimony of Captain Duguay)
32. Captain Duguay took digital photographs of Officer Alicea's wife's injuries. Image Number 5 is a photograph of her face which shows an injury to the right eye, which appears to be purple and yellowish, and a slightly swollen lip. Image Number 6 is a photograph of her face with her eyes closed and shows the same injuries on her eye lid. (Testimony of Captain Duguay and Lt. McCoy and Respondent Exhibit 9)
33. On September 28, 2012, Officer Alicea's wife applied for a restraining order against Officer Alicea. She went before a judge in Holyoke District Court in consideration of her application for restraining order. The 209A Order was granted, ordering Officer Alicea not to abuse the Plaintiff, not to contact the Plaintiff, to stay at least 100 yards from the Plaintiff, and to leave the Plaintiff's residence and return the keys to the house. (Respondent Exhibit 9; Testimony of Captain Duguay)
34. On October 1, 2012, a dangerousness hearing was held in Holyoke District Court before Judge Maureen Walsh to determine whether Officer Alicea posed a danger to his wife or to the community which would prevent him from being released on his own recognizance or afforded the right to bail. At this hearing, the court heard testimony from Officer Alicea's wife, Officer Edgar Lopez, Janet McMillian, Millie Odabashin, Officer Patricia Alicea, Officer Manual Rivera, and the Officer Alicea. (Respondent Exhibit 9; Testimony of Lt. McCoy)
35. At the conclusion of the dangerousness hearing, Judge Maureen Walsh determined, "[t]hrough thorough cross-examination by Defense Counsel, the record clearly establishes

that the alleged victim in this case and her credibility is seriously compromised. Counsel has appropriately pointed to almost a dozen instances that the alleged victim told outright lies to the Defendant, family, boyfriends and to the Court. That being said, the testimony also clearly establishes, in this court's mind, by admission, that the Defendant assaulted his wife with a firearm...the nature and the seriousness of the danger posed and the nature and ser-, and circumstances of the offense charge[d], they are grave. Under the circumstances, I find that no conditions reasonably assure the safety of [Officer Alicea's wife]. He [Officer Alicea] should be held without the right to bail." (Respondent's Exhibit 17; Testimony of Lt. McCoy)

36. On October 12, 2012, a second hearing was held in Holyoke District Court to re-assess the dangerousness of Officer Alicea. Judge Maureen Walsh found that "there are other conditions that...other than pretrial detention that would reasonably assure the safety of the alleged victim in this case." As a result, Officer Alicea was released into the custody of his brother, ordered to avoid all contact with the victim, ordered to report to the Probation Department, refrain from the use of drugs or alcohol, and required to wear a GPS monitoring bracelet with a curfew from 10 p.m. to 6 a.m. (Respondent' Exhibit 17A)
37. Additionally on October 12, 2012, the order of the court pursuant to the restraining order issued under G.L. c. 209A was terminated at the Plaintiff's request. When questioned why she wished the restraining order be vacated, Officer Alicea's wife responded "because I love him." (Respondent Exhibit 26)
38. The criminal trial for the charges against Officer Alicea was scheduled for February of 2013. Around that time, the Holyoke Police Department was notified by the Assistant

District Attorney that Officer Alicea's wife refused to testify. The criminal case did not go forward. (Testimony of Captain Duguay)

39. On October 15, 2012, Lt. McCoy began his internal affairs investigation into this matter. While the original criminal complaint was filed on September 28, 2012, Lt. McCoy explained that where there is an ongoing criminal investigation, he must proceed carefully with the internal affairs investigation as not to interfere or in any way taint the criminal investigation. (Testimony of McCoy)
40. In conducting the internal affairs investigation, Lt. McCoy gathered and reviewed the police reports of Sergeant Garcia, Officer Lopez, and Captain Duguay which included the photographs and statements of Officer Alicea's wife. Lt. McCoy also requested and obtained the audio recording from the court proceedings, such as the dangerousness hearing and the 209A hearings. Lt. McCoy also requested medical records for Officer Alicea's wife from Mercy Hospital and telephone records. Lt. McCoy reviewed several witness statements, taken by Captain Denise Duguay within a couple of days after the arrest. (Testimony of McCoy)
41. Lt. McCoy attended a portion of the dangerousness hearing held on October 1, 2012 and requested a certified transcription of the audio recordings from said hearing. Lt. McCoy testified that he compared the testimony of Officer Alicea's wife at the Dangerousness Hearing to the statement given by Officer Alicea's wife to the Holyoke Police Department and the 209A affidavit, and he found them to be very consistent. (Testimony of Lt. McCoy; Respondent Exhibit 17)
42. On April 12, 2013, Lt. McCoy presented his Final Report on this matter to Chief Neiswanger. The report contains a summary of all information and evidence gathered and

cites ten (10) violations of the Holyoke Police Department Rules and Regulations. After review of this matter by special counsel, Chief Neiswanger added nine (9) additional violations of the Holyoke Police Department Rules and Regulations to his findings.

(Testimony of Lt. McCoy and Chief Neiswanger; Respondent Exhibit 1)

43. The investigative report was forwarded to the Holyoke Police Department's Commanders Review Board for review. All violations of the Holyoke Police Department Rules and Regulations were upheld by the Board. (Testimony of Chief Neiswanger)
44. On April 23, 2013, Chief Neiswanger contacted Officer Alicea regarding the findings against him. He was given an opportunity to come in and speak with the Chief, but declined to do so. (Testimony of Chief Neiswanger)
45. On July 9, 2013, Chief Neiswanger sent a letter to Officer Alicea and Mayor Alex B. Morse notifying him of his findings based on the internal affairs investigation and suspending him for five (5) days. A hearing was held on July 17, 2013 at 10:00 a.m. in the Mayor's Office to determine whether there was just cause for the suspension or other appropriate action up to and including termination of Officer Alicea. (Testimony of Chief Neiswanger; Respondent Exhibit 3)
46. A decision was issued on July 26, 2013. The Mayor found that the conduct alleged did occur and that the severity of the misconduct warranted termination from his employment with the Holyoke Police Department. (Respondent Exhibit 5)
47. The City found that Officer Alicea violated G.L. c. 265 s. 15B, Assault with a Dangerous Weapon; . and that he violated the following rules: Rule 3.2 "Unbecoming Conduct," Rule 3.3 "Moral Conduct," Rule 3.4 "Compliance to Law," Rule 3.9 "Veracity of Police Statements," Rule 3.13 "Proper Leave - Reporting," Rule 3.11 "Use of Force," Rule 3.15

“Courtesy Towards Public,” Rule 3.17 “Obligation to Report Crimes,” Rule 4.2
“Competency in the Performance of Duty,” Rule 5.5 “Off Duty Use of Intoxicants,” Rule
5.13 “Misrepresentation of Facts in Official Capacity,” Rule 7.1 “Use and Care of
Department Equipment,” Rule 7.2 “Department Firearms,” and Rule 7.3 “Weapons
Handling.” (Testimony of Chief Neiswanger; Respondent’s Exhibit 5; Respondent’s
Exhibit 6)

Legal Standard

G.L. c. 31, § 43, provides:

“If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority’s procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.”

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); 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 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).

Analysis

A preponderance of evidence establishes that Officer Alicea: 1) shoved his wife in the chest; 2) struck his wife with enough force to cause her to fall to the floor and suffer a black eye; and 3) held a gun to his wife's head.

Officer Alicea acknowledges that he shoved his wife in the chest. According to him, he shoved her in order to move her away from the entranceway to his home.

Officer Alicea also acknowledges that, during another incident, his elbow made contact with his wife with such force that she landed on the floor with a black eye. Officer Alicea argues that this incident was accidental and, astonishingly, places the blame for the injuries on his wife. According to Officer Alicea, his wife grabbed onto his shoulder; when he "shrugged his arm" and moved his elbow, his wife fell onto his elbow and then to the floor, resulting in her black eye. That portion of his testimony appeared contrived, self-serving and inconsistent with common sense.

In regard to the third allegation, I credit the testimony of Officer Lopez. Officer Alicea admitted to Officer Lopez that he (Alicea) held a gun to his wife's head. Officer Lopez had no reason to fabricate his testimony. The two men are longtime friends and Officer Alicea has sought out Officer Lopez for spiritual guidance in the past. Officer Lopez had a vivid recollection of the conversation and is certain that he did not misconstrue what Officer Alicea told him. Officer Lopez took his sworn testimony seriously and only testified to those events for

which he had a specific memory. Officer Lopez acknowledged that he failed to report this information in a timely manner. While this was an error, for which he was disciplined, it only reinforced to me that Officer Lopez was not eager to offer testimony that painted his friend and colleague in an unfavorable light. While I do not credit his testimony, it is noteworthy that Officer Alicea testified that while he did not hold a gun to his wife's head, he did threaten to use the gun on himself.

In reaching these conclusions, I did not rely on the hearsay statements of Officer Alicea's wife. According to the City, she chose not to comply with the subpoena issued to her by the City and was out of state at the time of the hearing before the Commission. I was unable to assess her credibility without her live testimony. Moreover, a Superior Court judge deemed that her credibility was "seriously compromised", while also concluding that the testimony "clearly established" that Officer Alicea assaulted his wife with a firearm.

I did consider, however, the various documents and testimony of others (including those who observed the injuries of Officer Alicea's wife), medical records, and text and voicemail records which tend to corroborate that Officer Alicea shoved his wife on one occasion, struck his wife with an elbow on another occasion and terrorized her by holding a gun to her head.

An undercurrent throughout these proceedings was the suggestion that, even if these events occurred, they could be excused by the grief and anguish brought upon Officer Alicea by the untruthfulness and transgressions of his wife. There was no justification for Officer Alicea's abusive conduct toward his wife and his actions were unbecoming a police officer, thus justifying disciplinary action against him.

Having determined that it was appropriate to discipline Officer Alicea for his misconduct, I must determine if the City was justified in the level of discipline imposed.

The Commission is guided by “the principle of uniformity and the equitable treatment of similarly situated individuals” [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ... to guard against political considerations, favoritism and bias in governmental employment decisions.” Falmouth v. Civil Service Commission, 447 Mass. 814, 823 (2006) and cases cited. Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune an employee’s discipline to ensure perfect uniformity. See Boston Police Dep’t v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

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

Here, after a de novo hearing, I have concluded, similar to the City, that Mr. Alicea engaged in serious misconduct that is unbecoming of a police officer. I reviewed the cases put forward by Mr. Alicea alleging disparate treatment and found them wholly incomparable. The seriousness of the misconduct here, including, but not limited to, placing a gun to his wife’s head, warrants the City’s decision to terminate Mr. Alicea’s employment as a Holyoke police officer.

Civil Service Commisison

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on March 6, 2014.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of the Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), 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 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 to:
Michael Clancy, Esq. (for Appellant)
Sara Carroll, Esq. (for Respondent)