

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

MICHAEL C. PUZA,
Appellant

v.

D1-12-318

WESTFIELD POLICE COMMISSION,
Respondent

Appearance for Appellant:

John D. Connor, Esq.
Connor, Morneau & Olin, LLP
73 State Street, Suite 310
Springfield, MA 01103

Appearance for Respondent:

Brian J. Pearly, Esq.
Assistant City Solicitor
City of Westfield
59 Court Street
Westfield, MA 01085

Commissioner:

Cynthia A. Ittleman

DECISION

Pursuant to G.L. c. 31, § 43, Michael Puza (“Mr. Puza” or “Appellant”), filed a timely appeal with the Civil Service Commission (“Commission”), contesting the decision of the Westfield Police Commission (“Respondent”) to terminate his employment as a police officer at the Westfield Police Department (“Department” or “WPD”) based on the results of a fitness for duty evaluation. The Appellant filed an appeal at the Commission on November 16, 2012. A pre-hearing conference was held at the Springfield State Building on December 12, 2012. A full hearing was held at the Springfield State Building on January 23, 2013. The hearing was digitally recorded and copies of the recording were sent to the parties on CDs. The hearing was

declared to be private as I received no requests for the hearing to be public. Following the close of the hearing, the parties submitted proposed decisions on March 8, 2013.

For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT:

Six (6) exhibits were entered into evidence at the hearing and/or shortly thereafter, as requested at the hearing, of which Exhibit 3 is the Commission's decision in Puza v. Westfield Police Commission, 23 MCSR 348 (2012)(hereinafter "Puza I") Based on these exhibits, the testimony of the following witnesses:

Called by the Appointing Authority:

- David Medoff, Ph.D.
- Julia M. Reade, M.D.

Called by the Appellant:

- Michael Puza, Appellant;

and taking administrative notice of all matters filed in the case, including the parties' post-hearing submissions; and pertinent statutes, regulations, policies; and reasonable inferences from the credible evidence; a preponderance of the credible evidence establishes the following findings of fact:

1. The Appellant was approximately 37 years old at the time of the Commission's hearing in this case. He was raised in Westfield and in 1993 he graduated from high school, where he was good in sports and had no noteworthy problems. He earned an Associate's Degree in Criminal Justice in 2000. (Exs. 1, 2) The Appellant has worked at a paper company, in retail sales, and at a manufacturing plant. (Ex. 1) He became a reserve Westfield police officer in 1996 and was appointed to full time in March 2000. (Ex. 1)

2. The Appellant's parents divorced when he was an adult. He was married for eleven years, divorcing in 2012 after he moved out of the marital home and lived with a girlfriend. The Appellant's relationship with his girlfriend ended in or about April 2011, causing him serious emotional difficulty. He has a young child from his marriage and he shares physical and legal custody of the young child with his ex-wife. (Exs. 1, 2, Appellant Testimony, Reade Testimony)
3. As a Westfield police officer in 2001 and/or 2002, the Appellant received two letters from the office of the District Attorney recognizing the Appellant for reports the Appellant prepared and regarding his testimony in a criminal case. (Appellant Testimony)
4. In September 2002, as a Westfield police officer, the Appellant was counseled for damaging two city vehicles when backing out of a parking space. (Exs. 2, 3)
5. In 2004, the Appellant was promoted to the rank of detective but he was demoted to patrol duty the following year after a disciplinary infraction. (Ex. 2)
6. In 2004, the Appellant damaged a police car while driving to an accident scene. (Ex.2)
7. In 2004 or 2005, the Appellant received a commendation for throwing stinger spikes on to the road to stop a high speed chase vehicle. (Appellant Testimony)
8. In 2005 and on one other occasion, the Respondent's Police Chief selected the Appellant, among a few other officers, to receive special voice recognition training for the Detective Bureau. (Appellant Testimony)
9. In April 2005, the Appellant received a written reprimand after he was drinking off duty with another officer and friends. They were discussing the other officer's marital

separation and the Appellant phoned the other officer's wife, called her a disparaging name and made other negative comments to her. (Exs. 2, 3)

10. In September¹ 2005, the WPD issued the Appellant a written reprimand for an off-duty incident at a bar in which the Appellant had a verbal argument with a bouncer about a friend's parked car and someone at the bar called the WPD. Thereafter, the Appellant called the WPD and indicated that their presence was not needed at the bar. (Ex. 2) As a result, the Appellant was also referred to the Employee Assistance Program ("EAP") by the Police Chief for stress and alcohol related problems. (Exs. 2, 3)
11. In November 2007, the Appellant received a counseling report for failing to appear in court as required and was working a paid road detail instead. (Exs. 2, 3)
12. In April 2009, the Appellant received a one-day suspension for making a couple of phone calls totaling more than two hours over a couple of days on a city-issued phone. (Exs. 2, 3)
13. In April 2011, the Appellant received a written reprimand for giving confidential Registry of Motor Vehicles information to a non-authorized civilian, which information was given to another person, who used it to go to the driver's residence to confront them about a disputed matter and to speak to the school attended by the driver's child. (Exs. 2, 3)
14. In or about July 2011, the Appellant was, "... involved in an off-duty high speed chase and an effort to evade the police[]," after drinking an alcohol beverage, with two passengers in the car. (Ex. 2)

¹ Exhibit 2, Dr. Reade's report states that this matter occurred in June 2005 but Puza I and the Respondent's recommended decision state that the matter occurred in September 2005.

15. Also in or about July 2011, the WPD ordered the Appellant to undergo a fitness for duty evaluation. Dr. Polizoti is a licensed psychologist with decades of experience who has completed a few hundred fitness for duty evaluations. He met with the Appellant in early August 2011 and prepared an evaluation report for the WPD. At that time, the Appellant was on paid administrative leave. (Ex. 3)
16. Shortly after the fitness for duty evaluation performed by Dr. Polizoti in August, 2011, the Appellant was suspended for thirteen days for calling in sick for a shift so that he could attend a close friend's 30th birthday party. At that time, WPD Chief Camerota urged the Appellant to take some vacation time and think about whether he wanted to continue being a police officer. The Appellant took a four-week vacation. (Exs. 2, 3)
17. Dr. Polizoti issued a report on the Appellant on August 29, 2011 finding the Appellant not fit for duty, stating in part that "Because of his depression, alcohol abuse, child abuse complaint and long-standing personality issues and their negative impact on job functioning, it is my opinion that he is not fit for duty as a police officer."² (Ex. 3)
18. The Respondent subsequently terminated the Appellant's employment based on the results of the psychological evaluation, allegations of child abuse, the speeding incident involving the State Police, on-going alcohol abuse and his disciplinary history. (Ex. 3)
19. The Appellant appealed the termination to this Commission. The Commission found that the only reason for termination supported by a preponderance of the evidence was the speeding incident involving the State Police and modified the Appellant's employment termination to a one-year suspension. The Commission's decision also permitted the

² In the summer of 2011, the Respondent's then-wife reported to the WPD that the Appellant had abused their son. However, a Court Clerk found there was no probable cause in that regard and, through divorce proceedings the following year, as noted above, the Appellant was granted joint physical and legal custody with this ex-wife of their child. In Puza I, the Commission found that Dr. Polizoti's reporting and testimony that relied upon the child abuse allegation undermined Dr. Polizoti's evaluation.

Respondent to obtain an evaluation of the Appellant's fitness, by someone other than Dr. Polizoti, prior to the Appellant's return to work at the Police Department. (Ex. 3) The Respondent did not appeal that decision. (Administrative Notice)

20. While the Appellant was under the one-year suspension pursuant to the Commission's decision in Puza I, the Appellant worked as a laborer for a local tree service and septic tank company and he applied for a position with a shipping company. (Ex. 2)
21. At or about the end of the one-year suspension, the Appellant was ordered to undergo another fitness for duty evaluation. Dr. Julia Reade, a psychiatrist, was asked to perform an evaluation of the Appellant. Dr. Reade asked Dr. David Medoff, a psychologist, to administer various tests to the Appellant. (Ex. 2)
22. Dr. David Medoff is a licensed Massachusetts Psychologist who was awarded a Ph.D. in Clinical Psychology in 1995 and was a post-Doctoral Fellow at Massachusetts General Hospital. He has been a Forensic and Clinical Psychologist in private practice since 1997 and he performs consulting services. Currently, he is also a Supervising Psychologist in the Children and the Law Program at Massachusetts General Hospital/Harvard Medical School. He is an Associate Professor of Psychology and Director of the Suffolk University Mental Health Counseling Program. He has also held other faculty, training, consulting and staff positions in the field of Psychology. He has written many articles, at least a couple of which directly relate to personality testing. He has conducted psychological examinations for approximately twenty years, and has tested police candidates for screening purposes and tested police officers for fitness for duty. (Ex. 6; Medoff Testimony) Dr. Medoff's testimony qualified as expert testimony. (Administrative Notice)

23. As a psychologist, Dr. Medoff administered and scored the tests and interpreted the test results. In preparing this report, Dr. Medoff did not have access to the Appellant's disciplinary record. (Medoff Testimony, Ex. 1) The only information Dr. Medoff had about the Appellant before testing him was that the Appellant had been suspended, that the Appellant had been tested before and terminated, and that the Appellant appealed his termination. Dr. Medoff suspected that the Respondent may terminate the Appellant again. Also, prior to testing the Appellant, Dr. Medoff discussed with Dr. Reade that this case involved a fitness for duty evaluation of the Appellant, that the Appellant had been tested previously and that the previous testing had been challenged. (Medoff Testimony)
24. Dr. Medoff administered the psychological tests to the Appellant on Oct. 10, 2012 and wrote a report thereon on October 22, 2012. Dr. Medoff's testing of the Appellant began with a pretest interview covering the Appellant's medical history, family history, current or prior symptoms and substance abuse. (Ex. 1)
25. The Appellant was, "... interpersonally cooperative throughout his contact with [Dr. Medoff] and was able to create and maintain adequate rapport. He was generally courteous and polite in response to inquiry and direct in his conversational style. His emotional display was of a full range and his mode appeared appropriate to the circumstances of the testing. [The Appellant's] speech was steady and stable in rate, rhythm, and volume, and his thought patterns appeared logical and fluent. He demonstrated no overt signs of bizarre or psychotic thinking during conversation and he appeared alert and oriented to person, place, and time. His verbal expression was average and his reasoning appeared intact. His vocabulary appeared to be in the average range

and his short-term and long-term memory was within normal limits. No deficits in attention or concentration were observed or reported.” (Ex. 1) The Appellant was in general good health at the time of these tests, although the app reported to Dr. Medoff that he lost 20 pounds a year earlier when going through the distress of a divorce. (Ex. 1)

26. The Appellant initially denied to Dr. Medoff that he had “significant sadness, helplessness, hopelessness, or anxiety or disturbances in memory” but then the Appellant reported taking Wellbutrin, an antidepressant, for two months in 2011 “with questionable effect.” (Ex. 1) The Appellant recalled that he had taken psychological tests for a previous evaluation at the Respondent’s request and that the test results stated that he had a personality disorder. (Ex. 1)
27. Dr. Medoff’s report concerning the Appellant’s alcohol consumption is based only on the Appellant’s statements. (Ex 1) The Appellant initially told Dr. Medoff that alcohol did not cause him any problems. He told Dr. Medoff that he currently drinks approximately five alcoholic beverages a week. However, the Appellant then told Dr. Medoff that his heaviest alcohol consumption occurred in 2011 when he was stressed about his separation from his wife, that his relationship with his girlfriend ended, that he would drink five to six drinks five days per week and that he used it “as a crutch” at that time, as self-medication. (Ex. 1) He did not drink on the job, nor was he drunk on the job. The Appellant told Dr. Medoff that he believed that his drinking did not affect his work but that the Police Captain told the Appellant that he was concerned about the Appellant’s drinking and his private life. Based on this information, Dr. Medoff concluded that the Appellant’s history of alcohol use is “consistent with a diagnosis of Alcohol Abuse, in

remission.” (Ex 1) However, Dr. Medoff did not conduct a thorough substance abuse evaluation of the Appellant. (Medoff Testimony)

28. After the pretest interview, Dr. Medoff administered the following tests to the Appellant, stating that the tests are widely recognized for their reliability:

Kaufman Brief Intelligence Test, Second Edition (KBIT-2). This test has several parts: a verbal test matching pictures with words; a visual test involving looking at pages with different images and trying to understand the relationship between them; verbal response to riddles read aloud. Dr. Medoff found that the Appellant operated in the average range, with no signs of deficits or impairments.

Minnesota Multiphasic Personality Inventory – Second Edition(MMPI2). This test involves responding to 567 true/false questions. Based on this test, Dr. Medoff found that the Appellant is highly defensive, he has superficial personal relationships, and he has a lack of self-understanding.

Rorschach–(Comprehensive Scoring System). This is an inkblot test requiring the person being tested to describe inkblots. Dr. Medoff found that since the Appellant described the inkblots only by their form, rather than providing other information (such as color, action or shading), the test shows that the Appellant’s responses were highly constricted, limiting the test results. This showed that the Appellant is very defensive, which is unusual for someone who does not have other limitations or disorders. This test cannot indicate the reason a person being tested was so constricted but it can indicate that the person being tested is intentionally withholding information, as well as self doubt, which typically lead to adaptive difficulties, including reacting disproportionately when challenged and superficial connections with others.
(Medoff Testimony, Ex. 1³)

29. Dr. Medoff noted a convergence of data in the test results. Convergence of data is when two test results overlap. This indicates that one test result supports and/or validates the other test result, indicating that the test results are accurate. Here, the MMPI and

³ Dr. Medoff’s report states, “ ... Although data itself cannot specifically determine the cause of such constriction, the limitations of this extremely unusual protocol [presumably the Rorschach test] render much of the information typically derived from this measure invalid, and this precludes the use of most data that stem from ratio or derivative scores.

Because ratio and derivative scores from the Rorschach provide detailed information regarding personality functions such as coping resources, tolerance for stress, emotional processing, interpersonal perception and information processing style, the lack of available data in this protocol precludes the description of these areas of functioning. However, there are several variables in the Comprehensive System that are useful and clinically meaningful even in constricted protocols such as this.” Ex. 1, pp. 5, 6 (regarding quotation and the other data to which Dr. Medoff refers, some of which is summarized in the Report’s “Summary and Impressions.”

Rorschach tests results showed that the Appellant is highly constricted and/or rigid and lacks insight. (Medoff Testimony, Reade Testimony)

30. The test results also showed that the Appellant has intact reality testing, which is an asset.

Reality testing allows a person to take in information and process it and to accurately engage in the world. However, intact reality test results can be undermined by the Appellant's preference to assert his individualism, acting on his own needs more than the average person. The Appellant can adjust and/or adapt himself a good deal of the time but at other times the Appellant is at risk of having problems and he could react aggressively. (Ex 1 and Medoff Testimony) The Appellant is, " ... capable of recognizing social expectations and adhering to them, although he shows an inclination towards valuing his individuality and may therefore at times suppress his tendency to act autonomously and succumb to convention. This will typically occur, however, in situations where he believes that doing so is in his best interest." (Ex. 1)

31. Dr. Medoff did not diagnose the Appellant as having narcissistic disorder or obtain data in that regard because that is beyond his scope and he would need to consult others in this regard. However, the data Dr. Medoff obtained is consistent with a narcissistic disorder. (Medoff Testimony, Ex. 1)

32. Dr. Medoff did not determine the Appellant's fitness for duty, for which he would need to see the Appellant's disciplinary history and job description, speak to colleagues and supervisors, review the person's criminal record, interview the person about the allegations, review the person's family history and obtain information about his social life and other information. Rather, Dr. Medoff's testing was a small part of the evaluation to be prepared by Dr. Reade. (Medoff Testimony)

33. The WPD asked Dr. Reade, “ ... to perform an independent medical examination of Mr. Puza with respect to his current psychiatric functioning and his fitness for duty.” Ex. 2.

She is a forensic psychiatrist who graduated from medical school in 1984, she was a resident in Psychiatry at Massachusetts General Hospital (“MGH”) and she is Board certified in General and Forensic Psychiatry. She has been a Fellow and Instructor at MGH and is a Clinical Instructor and Staff Psychiatrist in Forensic Consultation Service there. She has been the Director of the Harvard Forensic Psychiatry Fellowship and has been involved in writing several professional articles. She is licensed to practice medicine in Massachusetts. She is also self-employed and has been performing fitness for duty evaluations since 1996, performing between 150 and 200 of them. More often than not, she has found employees can return to work, sometimes with accommodations and/or treatment as appropriate and as agreed to by the parties. She has found approximately 20 instances in which an employee was not fit for duty, in that they were suffering from “dementing illnesses or weren’t able to understand information and learn or who were suffering from a major mental illness that was refractory to treatment”

(Reade Testimony, Exs. 2, 5) Dr. Reade was deemed a qualified expert. (Administrative Notice)

34. In preparing an evaluation, it is not enough to find that an employee has an illness; it must be understood in the context of the employee’s job functions. To perform such an evaluation, Dr. Reade gathers and assesses information from various sources, including the person’s family, his job history, his job description, supervisors who have direct contact with the employee, professionals who are treating the employee, the employee’s history and current condition, how the person responds to treatment, any legal

proceedings involving the person and psychological testing. She also conducts a lengthy and detailed interview with the employee. (Reade Testimony)

35. In conducting the Appellant's evaluation, Dr. Reade reviewed records provided by counsel for the Respondent including the Westfield Police Department Officer Receipt of Rules and Regulations. She also reviewed the Appellant's disciplinary record, which she discussed with the Appellant. Dr. Reade was not given a police officer job description but she has a list of police officer functions.⁴ (Ex. 2)
36. Dr. Reade conducted phone interviews with WPD Chief Camarota, Captain McCabe and retired Lieutenant Paul Kousch. Retired Lieutenant Kousch was the Appellant's supervisor for many years. Since the Chief, the Captain and the retired Lieutenant did not testify here, they were not subject to cross-examination and I was not able to assess their credibility, I give Dr. Reade's description of their phone statements noted in her report no weight other than to note that the Chief and the Captain spoke against the Appellant and the retired Lieutenant spoke in his favor, while acknowledging that other superiors said they had difficulties with the Appellant.⁵ Dr. Reade also conducted phone interviews with Dr. Breitner (a psychologist) and Ms. Dinardo-Dupre, a licensed social worker ("LICSW"), Appellant's former therapists, but she did not interview anyone in the Appellant's family. (Ex. 2)
37. Dr. Reade reviewed medical records from Dr. Basheer Bashirudding, the Appellant's primary care physician. With respect to the medical records, Dr. Reade noted, "At a

⁴ Dr. Reade directly referenced Dr. Polizoti's evaluation of the Appellant at the request of the WPD in 2011 as follows: "Mr. Puza underwent a fitness for duty evaluation with a psychologist, Dr. Polizoti, who reportedly determined that Mr. Puza was 'unfit for unrestricted duty as a police officer' based upon alcohol abuse, psychological problems and personality disorder." "Additional concerns were raised regarding Mr. Puza's recent conduct with his young son and an allegation that he had physically abused him." (Ex. 2, p. 4)

⁵ In addition, Dr. Reade's report states that Chief Camarota told her that the Appellant makes poor decisions when drinking. (Ex. 2) This is contradicted by Chief Camarota's testimony in Puza I that he was not aware that the Appellant had a drinking problem. (Ex. 3)

physical exam in 2011, Mr. Puza complained of significant fatigue lasting ‘for years,’ accompanied by difficulty falling asleep and staying asleep. He complained of intermittent panic attacks lasting up to 20 minutes, and reported a history of possible sleep apnea. He characterized his alcohol use as ‘every few days.’ His treater diagnosed him with ‘depression, anxiety’ and prescribed a course of the antidepressant, Wellbutrin, recommended a sleep study” (Ex. 2 and p. 8 thereof) Since Dr. Bashirudding did not testify at the Commission hearing and his medical records were not produced for the record, I give this information limited weight.

38. Dr. Reade reviewed Dr. Breitner’s treatment records of the Appellant. (Exs. 2, 4) In or about November 2005, the Appellant contacted Dr. Breitner through the Employee Assistance Program because Police Chief Camerota told him to do so. This occurred after the incident in the summer of 2005 event in which the Appellant and other off-duty officers were in a conflict with a bouncer at a bar. The Appellant met with Dr. Breitner once early in November, 2005, and again on November 18, 2005, December 2, 2005 and December 16, 2005. The Appellant also met with Dr. Breitner on October 28, 2010 and November 19, 2010. Dr. Breitner’s records indicate that he also met with the Appellant when the Appellant was 13 years old after a house fire. (Ex. 2) Dr. Breitner’s records from 2005 indicate that:

- some members of the Appellant’s family have problems with alcohol and anxiety,
- a number people in the Appellant’s family have been police officers,
- the Appellant went out drinking after work on Thursdays, Fridays and Saturdays and consumed as much as seven to eight beers and three or four shots of alcohol each time,
- the Appellant is sociable and loves being a police officer,
- the Appellant had reportedly turned down a State Police job,
- he drinks and drives (off-duty),
- he has a high alcohol tolerance,

- he drinks with other off-duty police officers,
 - he experienced stress on the job involving a deceased child and the stress affected his marriage,
 - there was concern about the Appellant's off-duty activities,
 - his insight was good,
 - his bosses were only concerned with the Police Department image (though he did see their point),
 - in December 2005, the Appellant reported consuming less alcohol and said that he planned to further reduce his alcohol consumption but around the same time he also ranked himself as a "heavy social drinker/at risk drinker, which put him very high on the percentile ranking for male drinkers, and
 - the Appellant told Dr. Breitner that he would meet with him again on December 30, 2005 but there is nothing in Dr. Breitner's records indicating that the Appellant met with Dr. Breitner on that date.
- (Exhibits 2, 4)

39. The next entries in Dr. Breitner's records are for his two meetings with the Appellant in the fall of 2010. Dr. Breitner's records from 2010 indicate that:

- the Appellant discussed separating from his wife,
 - he told Dr. Breitner that he was very angry and lost his temper at work,
 - he had a girlfriend who was a bartender,
 - his drinking had increased,
 - he had been having panic attacks for several weeks,
 - he needed to stop drinking,
 - he reported no life/death traumas at work at that time,
 - he felt like he had no control on important matters, and
 - he subsequently reduced his alcohol consumption and wanted to stop drinking and agreed to take Antabuse, a medication to treat alcoholism.
- (Exs. 2, 4)

40. Dr. Breitner filled out a Treatment Request Form in October 2010 indicating that the Appellant had risk indicators for aggression, active alcohol abuse, had been treated for alcohol abuse in 2005, that he had anxiety/panic symptoms, and that the anticipated discharge from treatment date was "unknown at present". (Ex. 4) Dr. Breitner's records do not indicate that the Appellant took Antabuse and/or that he had a personality disorder (narcissistic or otherwise), nor do his records reflect the Appellant's employment disciplinary history. (Administrative Notice)

41. Dr. Reade interviewed Ms. Dinardo-Dupre, LICSW, by phone, but did not review any of her records, nor were Ms. Dinardo-Dupre's records were produced here. Ms. Dinardo-Dupre did not testify at the Commission hearing and, as a result, she was not subject to cross-examination. For these reasons, I ascribe weight only to Dr. Reade's recounting in her report that Ms. Dinardo-Dupre met with the Appellant three times in June and July of 2011, with which the Appellant concurs. (Ex. 2, Appellant Testimony)

42. Dr. Reade interviewed the Appellant on October 9, 2012 for approximately four and one-half hours, noting that he arrived late for the appointment, apologized for his tardiness, that he was neatly dressed and appropriately groomed. Further, she noted generally,

"He greeted [me] politely and was cooperative with the examination. He made good eye contact and spoke with normal rate and volume. He was a likable man who appeared earnest in his declarations. Despite this apparent forthrightness, Mr. Puza was evasive when asked about his drinking, and he changed his answers when pressed. For example, Mr. Puza told me at first that he never had beer in the house. Then he mentioned a few beers in his refrigerator, assigned responsibility to his girlfriend and then acknowledged that he 'occasionally' buys a six-pack of beer and brings it home.

Mr. Puza's mood was 'fine,' and his affect was upbeat, confident and appropriate to mood. He denied neurovegetative symptoms of depression or mania. ... He denied other symptoms of psychiatric illness.

His thought process was logical and without evidence of psychotic process. His thought content was somewhat self-serving and his account of his behavior seemed sanitized. He was pre-occupied with his own comfort and feelings, for example stressing that it was fine for him to go the (sic) bar where his ex-girlfriend worked, despite her express wishes, because he was not bothered by seeing her. He repeatedly characterized his problematic behavior as a common practice within the department.

Cognitively, Mr. Puza was alert and oriented. On a cognitive screening test for attention, memory, naming, executive function and delayed recall, Mr. Puza responded impulsively, with little attention to the directions, and performed poorly on tests related to executive functioning and planning. His judgment was fair and his insight poor."

(Ex. 2)

43. With regard to alcohol consumption, at Dr. Reade's interview with the Appellant told her that he rarely drank alcohol at that time. When asked for details, the Appellant told Dr. Reade that he did not have more than five drinks a week. The Appellant told Dr. Reade about his heavy drinking in 2011 at about the time of a discipline and the break-up with his girlfriend, and that his heavy drinking consisted of four to five drinks nightly, the occasional beer and perhaps one or two shots. However, the Appellant denied that his drinking had been a problem before then and denied any other alcohol abuse, notwithstanding the reports of his alcohol consumption at other times noted in Dr. Breitner's records. (Exs. 2 and 4)

44. With regard to psychological testing, Dr. Reade relies on Dr. Medoff's report and notes, in accord with Dr. Medoff,

"In summary, the testing indicated that Mr. Puza's cognitive functioning is in the Average range. He responded with extreme defensiveness to the personality testing, suggesting an effort to 'place himself in a favorable light by minimizing his faults and denying problems.' His results indicate a psychological rigidity and a 'conscious intentional distortion of responses in a favorable direction, a lack of awareness and insight, or some combination of both.' The testing suggested that he maintains only superficial relationships with others.

His defensiveness on a second personality measure was also notable and may be a marker for 'an oppositional attempt ... to intentionally limit available test data.' On this measure, Mr. Puza's protocol indicated a narcissistic pre-occupation with himself and a lack of regard for other people's needs. Individuals with these results tend to externalize blame, display entitlement, and are 'at chronic risk' for 'engaging in a host of maladaptive coping mechanisms if their received self-value is not regularly reinforced by those around them.' Although he has an adaptive ability to recognize reality, Mr. Puza places significant value on his individuality while preferring to conduct himself as he pleases His behavior will ... comply with convention when he believes this is in his best interest, but he will also display a preference towards individualism.'"(Ex. 2)(the quotations in Dr. Reade's report appear to be from Ex. 1 (Dr. Medoff's report))

45. Dr. Reade reviewed the Appellant's disciplinary history as a police officer. Dr.

Reade was not too concerned about the guardrail incident involving the Appellant in 2002. However, she *was* concerned about the incident in April 2005 when the Appellant was off-duty and having drinks with friends including a fellow officer. The fellow officer was having marital difficulties and the Appellant phoned the officer's wife and called her a highly offensive name. Dr. Reade was concerned about this incident in 2005 because the Appellant had been drinking at the time and because he said the reason he did this was that he did not like his fellow officer's wife. The Appellant admitted to Dr. Reade that what he did was childish but stated that he had been hurt by this woman. A police officer must contain his or her feelings, think about others, and use good judgment. Dr. Reade found that the Appellant's remorse was "superficial." (Reade Testimony, Ex. 2)

46. In September 2005, the Appellant was involved in an incident at a bar. This time, the Appellant had a verbal altercation with a bouncer and someone called the WPD. The Appellant admitted to Dr. Reade that he called the police but said that it was just to tell them not to bother sending a cruiser to the bar. As a result, the WPD demoted the Appellant from Detective to Patrolman. According to Dr. Reade, this shows that the Appellant was again drinking and exercising poor judgment. (Reade Testimony, Ex. 2)
47. In November 2007, the Appellant failed to appear in court in a case to which he was assigned and he was working a paid detail instead. The Appellant told Dr. Reade that police forget to appear in court all the time; that it's a simple mistake. According to Dr. Reade, this again shows the Appellant's poor judgment, as well as his inability to accept responsibility. (Reade Testimony, Ex. 2))
48. In 2009, the Appellant was suspended for making a couple of calls lasting a couple of

hours on a Department phone while he was stationed at the airport. The Appellant told Dr. Reade that he was making the calls to the daughter of a friend in the construction business, that the Appellant's cell phone had poor reception, that he disagreed that it was irresponsible of him to do this, and asserted that he wasn't shirking his duty during the lengthy calls because he was writing a report while he was on the phone. According to Dr. Reade, this again reflects the Appellant's poor judgment. (Reade Testimony)

49. Another disciplinary matter arose in April 2011 when the Appellant gave confidential registry information to his friend in the construction business, whose wife apparently used the information to harass someone and their child. The Appellant told Dr. Reade that other officers give out confidential information like this and, incredibly, that his only error in this regard was that he should have told his friend not to use the confidential information. This again reflects the Appellant's poor judgment, according to Dr. Reade. (Reade Testimony)

50. A few months later, in July 2011, the Appellant was involved in an off-duty high-speed chase with passengers in his car and evading the State Police. The Appellant told Dr. Reade that he had had only one drink that night and that he was just horsing around, that other police do the same and that it was just a joke. The Appellant told Dr. Reade that in hindsight, it was poor judgment and not funny, that he could have put people in jeopardy, and it was a mistake. Dr. Reade indicated that this shows that the Appellant engaged in behavior fueled by alcohol, he recklessly endangered himself and his passengers, exceeded the speed limit, and evaded detection to avoid responsibility for his actions, again showing poor judgment. (Reade Testimony, Ex. 2)

51. A month later, in August 2011, the Appellant called in sick and went to his friend's

birthday party. The Appellant said that he tried to get someone to cover his shift but he could not find anyone to do so and that the party was important because his friend was turning 30. According to Dr. Reade, this again shows that the Appellant chose his own interest over the job and welfare of his colleagues and, again, exhibited poor judgment. (Reade Testimony, Ex. 2)

52. Dr. Reade's report states that in August 2011, there were concerns that the Appellant had physically abused his young son. She also reports that the related criminal charges were "reportedly withdrawn." (Ex. 2, p. 5) In Puza I, the Commission found the allegations unreliable, credited the Appellant's testimony in this regard and found that his testimony "was consistent with the magistrate's decision that Mr. Puza's actions constituted nothing more than 'classic spanking' of his child." (Ex. 3, p. 21) Therefore, the Commission found that the Respondent had failed to prove, by a preponderance of the evidence, the allegations relating to the Appellant's son. (*Id.*) Further, after the allegations were made, the Court awarded the Appellant joint custody of his son with his ex-wife. (Appellant Testimony)

53. Dr. Reade's report includes her own formal assessment of the Appellant, including:

"In my opinion, ... Mr. Puza has a long history of problematic alcohol use, a history of poor judgment related to and independent of the alcohol abuse and several maladaptive personality traits. He meets diagnostic criteria for Alcohol Abuse, in Remission; and Personality Disorder, NOS⁶, with Narcissistic and Antisocial Traits.

Mr. Puza was unforthcoming and evasive regarding his history of alcohol abuse, his pattern of use, the severity and history of his problem. To me, he denied any family history of alcohol abuse, but revealed an extensive and concerning family history to his former therapist Although his attorney indicated at a City hearing in 2011 that Mr. Puza had a problem with alcohol, Mr. Puza told me that his attorney had overstated the severity of his condition and assured me that he had taken care of the problem

⁶ I take Administrative Notice that, according to the DSMIV-TR, "NOS" indicates "not otherwise specified."

... Despite departmental and City support, Mr. Puza has engaged only fleetingly and superficially in treatment. ... Despite recommendations that he attend regular individual treatment, consider a trial of Antabuse – a medication used to treat alcohol abuse ... Mr. Puza maintains that he has solved his alcohol problems on his own, simply by exercising his judgment.

... There is no outside corroboration of his current assertions about his alcohol use, and his history indicates poor coping skills, with the misuse of alcohol to manage unpleasant feeling states. Without treatment to learn and internalize robust coping skills, Mr. Puza is at high risk for a return to active alcohol abuse, in particular when faced with external stressors.

Mr. Puza also reported a history of panic attacks, which he claims have remitted completely without treatment. He gave me an account of their onset and severity that was at odds with the available medical record, which indicated that they were occurring repeatedly and disturbingly in 2010 and 2011, as indicated in Dr. Breitner's records.⁷ It is not clear to what degree Mr. Puza's anxiety symptoms currently affect him or whether he will suffer recurrence of those symptoms. They do indicate, however, a particular vulnerability to anxiety.

... Mr. Puza ... has entrenched maladaptive personality traits that include psychological rigidity, difficulty taking responsibility for his own behavior and trouble reflecting on his contributions to a conflict. He is prone to blame others for his difficulties, to trivialize his problematic actions and to sanitize his account of his behavior

As indicated by the psychological testing; Mr. Puza's long and varied disciplinary history; ... and his clinical interview with me; there are convergent data that support the diagnosis of a personality disorder Personality disorders reflect entrenched and long-standing maladaptive traits that interfere with an individual's functioning at work, in intimate relationships and in other aspects of their lives (sic). ... Mr. Puza ... is pre-occupied with his own interests and feelings, and prone to impulsively disregard rules or other people's feelings These traits are ingrained and unlikely to change with treatment, especially given [his] inability to engage even superficially in psychological therapy.

... [these] interfere with his ability to perform the essential functions of a police officer's job. In particular, Mr. Puza will have difficulty following rules consistently – particularly when they run counter to his personal wishes, exercising good judgment reliably, submitting to the directions of superior, considering the impact of his actions on others and engaging in useful self-reflection. He also lacks ... adequate coping skills to manage the rigors of police work adaptively.

⁷ Dr. Reade's report also states that Dr. Bashirudding's records also indicate that the Appellant's panic attacks were more frequent and longer than the Appellant reported to her but Dr. Bashirudding's records are not in evidence.

...Mr. Puza is not currently fit for unrestricted duty as a police officer. It is unlikely, in my view, that he can be restored to fitness, even with specialized treatment, given his severe and problematic personality factors.”
(Ex. 2, pp. 13, 14)

54. Alcohol abuse and panic attacks are treatable but disorders are difficult to treat, requiring very intensive psychotherapy for many years and the outcome is not re-determined.

(Reade Testimony, Ex. 2)

55. The Appellant acknowledged that in 2011, he was depressed, upset, feeling horrible because he had just lost the girlfriend for whom he left his wife in or around April, 2011 and that he drank nightly around that time to forget about his sadness. He informed Captain McCabe (and the Chief later) that he was having problems at about that time and he was referred to the Employee Assistance Program (“EAP”). EAP referred him to Ms. Dinardo-Dupre for therapy and he met with her three times and was scheduled to meet with her again but that other things (his girlfriend leaving him) were more important. In addition, thereafter, he was terminated (which termination the Commission modified to a suspension) and he asserts that he did not always have health insurance to pay for therapy. (Appellant Testimony)

56. The Appellant later obtained health services through Mass. Health. He pursued weekly therapy with a therapist named Mr. Meiklejohn beginning mid-December 2012⁸ because he was told that he was still being affected by alcohol abuse and that he has narcissistic traits and anti-social traits, though the Appellant denies he has these traits and believes that he is very social, indicating that he has little understanding of his own behavior and

⁸ In other words, the Appellant began therapy approximately five weeks prior to the hearing in this case, although he provided no documentary evidence in this regard.

its effects. The Appellant denies that he is being treated for personality disorder.

(Appellant Testimony)

57. The Appellant believes that his life now is very different than it was in the spring of 2011. He only has alcoholic beverages a couple of times per week but is otherwise busy working and takes care of his son. He admits that, in hindsight, some of his actions showed poor judgment. He did not grieve the disciplinary actions taken against him, which he believes shows that he took responsibility for his actions. The Appellant denies that he abused his son in any manner. The only time that the Appellant has used his weapon was when he fired it to dispatch a raccoon.⁹ (Appellant Testimony)

60. The Appellant filed the instant appeal.

DISCUSSION

Applicable Law

A tenured civil service employee may be disciplined only for “just cause” after due notice and hearing, followed by a written decision “which shall state fully and specifically the reasons therefore.” G.L. c.31, § 41. An employee aggrieved such a decision may appeal to the Commission under G.L. c.31, § 43. Under Section 43, the role of the Commission is to determine, under a de novo “preponderance of the evidence” test, “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, *rev.den.*, 426 Mass. 1102 (1997).

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.” *E.g.*, Commissioners of Civil Service v. Municipal Ct. 359 Mass. 211,214 (1971);

⁹ There is no indication that the WPD suspended or revoked the Appellant’s license to carry a firearm.

Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, *rev.den.*, 426 Mass. 1102 (1997). 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.

An appointing authority, such as a Police Department, may require an employee to undergo a fitness for duty evaluation. In fact, the Supreme Judicial Court has found that a Police Commissioner has a public duty to oversee the performance of police officers. Nolan v. Police Commissioner of Boston, 383 Mass. 625, 630 (1981); *see also* City of Boston v. Boston Police Patrolmen’s Association, Inc., 8 Mass.App.Ct. 220 (1979). The Commission has upheld the authority of Police Departments to evaluate police officers and terminate their employment based on the evaluations under appropriate circumstances. *See, e.g.* Dalrymple v. Town of Winthrop, D-08-13; Melchionno v Somerville Police Department, D-03-195; Perry v. Town of Plymouth, D-4498 (1993); Freeman v City of Cambridge, D-4717 (1993). There is no question that police officers are held to a higher standard than others. McIsacc, v. Town of Pembroke, D-4354 (1992). G.L. c. 31, § 61A establishes fitness standards for police officers for officers appointed

after November 1, 1996. Since the Appellant was appointed prior to that time, § 61A does not apply to the Appellant.

Experts' conclusions are not binding on the trier of fact, who may decline to adopt them in whole or in part. *See, e.g., Turners Falls Ltd. Partnership v. Board of Assessors*, 54 Mass.App.Ct. 732, 737-38, *rev.den.*, 437 Mass (2002). As a corollary, when the fact-finder is presented with conflicting expert evidence, the fact-finder may accept or reject all or parts of the opinions offered. *See, e.g., Ward v. Commonwealth*, 407 Mass. 434, 438 (1990); *New Boston Garden Corp. v. Board of Assessors*, 383 Mass. 456, 467-73 (1891); *Dewan v. Dewan*, 30 Mass.App.Ct. 133, 135, *rev.den.*, 409 Mass. 1104 (1991).

Analysis

The Respondent has proved, by a preponderance of the evidence, that the Appellant is unfit for duty as a police officer. The sole issue here is whether the Respondent had just cause to terminate the Appellant's employment based on a psychological evaluation deeming him unfit to perform the functions of a police officer. Dr. Reade, a psychiatrist, was asked to prepare an evaluation of the Appellant. To prepare the evaluation, Dr. Reade was informed by interviews of the Appellant and some of his supervisors at WPD, his primary care physician, and therapists, Dr. Medoff's test report, medical records from the Appellant's primary care physician and one of his therapists, and WPD's Rules and Regulations, the Appellant's disciplinary record, each of which source of information was given appropriate weight as noted above.

Throughout his testimony, Dr. Medoff testified in an open, direct and responsive manner, making regular eye contact with the person to whom he was responding, noting the strengths, as well as weaknesses, of the testing performed with the Appellant as well as what his report found

and did not find.¹⁰ When asked how often the Appellant could be expected to adjust to circumstances he would face as a police officer, Dr. Medoff reported that the Appellant would be able to do so “a good deal of the time” but Dr. Medoff could not specify with certainty what percentage of the time the Appellant could do so. (Ex. 1, Medoff Testimony) Dr. Medoff exhibited no bias toward the Appellant. In view of the foregoing, I find that Dr. Medoff’s testimony was generally credible. (Administrative Notice)

Dr. Reade testified in a straight forward, detailed and responsive manner, with no indication of bias toward the Appellant. Her testimony was supported by those sections of her report credited above as well as the report and testimony of Dr. Medoff. For these reasons, I find Dr. Reade’s testimony generally credible.

Based on the Appellant’s conflicting statements to Dr. Reade regarding his alcohol use, the lack of information corroborating his statements to Dr. Medoff that he has reduced his alcohol consumption, the unacceptable purported reasons he gave for the conduct for which he was disciplined, and that he made few attempts to obtain and participate in on-going therapy¹¹, I find that the Appellant’s credibility was limited. *See also* Testimony of Appellant and Dr. Reade, and Ex. 2)

Dr. Reade’s findings and testimony were supported by Dr. Medoff’s testimony, the information provided by Dr. Breitner and, to some extent, the Appellant’s primary care physician’s notes from 2011 indicating that the Appellant complained of intermittent panic attacks, that the Appellant reported using alcohol every few days, and that the Appellant had

¹⁰ However, it is not clear in how many instances Dr. Medoff has found police officers unfit for duty, though he recalled one case in which he was hired by a Police Department to conduct a fitness evaluation but he wound up testifying in favor of the police officer, who was awarded back pay. In addition, when asked how often the Appellant could be expected to adjust to circumstances he would face as a police officer, Dr. Medoff reported that the Appellant would be able to do so “a good deal of the time”. (Ex. 1).

¹¹ At a minimum, the Appellant could have availed himself of therapy beginning in 2005 when the Police Chief first referred the Appellant to the Employee Assistance Program for stress and alcohol related problems but he did not.

been prescribed Wellbutrin. Although Dr. Reade found, based on the Appellant's self-reporting to Dr. Medoff, that the Appellant meets the criteria for Alcohol Abuse in Remission, I note that there was no corroboration of the Appellant's self-report, which would suggest that the Appellant has not overcome his abuse of alcohol. Dr. Reade found credibly opined that alcohol abuse and anxiety can be addressed with treatment but that the Appellant has not engaged in effective treatment, as evidenced by the two or three meetings he had with a therapist on the couple of occasions when the WPD told him to seek treatment.

Further, Dr. Reade found that the psychological testing of the Appellant by Dr. Medoff provided convergent validity, meaning that the test results were consistent, showing that the Appellant has narcissistic features, which lead to problems effectively adapting to various situations and lead to superficial connections with other people. On a positive note, she indicated that the Appellant has "intact reality", which assists the Appellant in adequately adapting "a good deal of the time" but not all the time. She further found that although the Appellant appears to be able to recognize social expectations and adhere to them, he is inclined to do so when he believes it suits his own purpose.

The Appellant's disciplinary record provides evidence of Dr. Reade's findings. Time and again, the Appellant disregarded his duties and appropriate conduct of a police officer, for example, by phoning a fellow officer's spouse while at a bar and calling her an offensive name, using a WPD phone for hours to talk to the daughter of a friend while on duty, calling the WPD to tell them not to send police to a bar where he got into a verbal altercation with a bouncer, damaging police cruisers, giving confidential Registry information to someone outside of WPD

which information was used to accost someone else¹², failing to report to work so that he could attend a friend's birthday party, and engaging in a high speed road chase and evading the State Police while he had two passengers in his car and after he had had a drink. The Appellant minimized and/or blamed someone else for his actions, failing to take responsibility therefor.¹³ That the Appellant did not grieve the discipline that he received following his conduct is not tantamount to taking responsibility for his conduct. The Appellant's participation in therapy only for a couple of appointments when the WPD told him to do so and within weeks of the Commission's hearing is further evidence that the Appellant values places his own desires above his duties as a police officer.

Although alcohol abuse and panic attacks are treatable, Dr. Reade opined that personality disorders are difficult to treat, they require very intensive psychotherapy for many years and the outcome is not "pre-determined." Over a period of years, the Appellant attended the minimal number of therapy sessions whenever told by the WPD to obtain therapy, on one occasion saying that he had more important things to do, and again just weeks prior to the Commission's hearing in this case. Moreover, the Appellant denies Dr. Reade's findings. Thus, the Appellant does not recognize that he has a disorder and has clearly not engaged in the extended, intensive therapy needed to address it.

In Puza I, the Appellant was terminated for poor judgment related to speeding and evading the State Police in July 2011, a psychological evaluation that deemed the Appellant unfit for unrestricted duty, an incident that occurred when the Appellant's son was in his care,

¹² Attempting to justify his actions, the Appellant testified that it was acceptable for him to give the Registry information to someone outside of the WPD and that problems arose only when the recipient's wife used the information to confront someone.

¹³ The Appellant avers that discipline does not constitute a lack of fitness and that this evaluation is, in effect, further discipline for conduct for which he has already been disciplined. Rather, the Appellant's disciplinary record is a factor to be considered as may be appropriate in a valid psychological evaluation, just as the Appellant's relevant medical history, history of psychological assessment and treatment and any history of substance abuse may be considered in such an evaluation.

longtime abuse of alcohol and the Appellant's disciplinary history. In that case, the Appellant had been evaluated by Dr. Polizoti, a psychologist, only. Dr. Polizoti conducted the MMPI-2 exam, like Dr. Medoff in the instant case, but not other exams that Dr. Medoff conducted. Dr. Polizoti also administered the Millon Clinical Multiaxial Inventory-III exam to the Appellant and interviewed Captain McCabe. It is unclear if Dr. Polizoti reviewed the Appellant's medical and therapy notes reviewed by Dr. Reade or whether he spoke to other supervisors as Dr. Reade did. Dr. Polizoti concluded, *inter alia*, that the Appellant,

“... has self-medicated with alcohol in an attempt to deal with his psychological problems. He has not appeared to have adequate treatment from his health-care providers. His personality dynamics, which underlie his depression, are long-standing problems that have most probably impacted his functioning in a negative manner for a number of years. He has apparently been able to prevent them from manifesting themselves to a significant degree until recently i.e., the past few years. The child abuse issue is another matter. ... I do not know all of the circumstances related to this situation. It is apparent that Puza has functioned marginally for some years in the department. Because of the depression, alcohol abuse, child abuse complaint and long-standing personality issues and their negative impact on job functioning, it is my opinion that he is not fit for duty as a police officer.”

(Ex. 3, p. 17)

The Appellant appealed his termination in Puza I and the Commission granted the appeal in part, modifying the termination to a one-year suspension and permitting the Respondent to obtain a fitness for duty evaluation of the Appellant, to be performed by someone other than Dr. Polizoti, upon completion of the suspension. The Commission's decision was based on a finding that the Respondent had proved by a preponderance of the evidence only that the Appellant was speeding and evading the State Police. In reaching its decision, the Commission found that Dr. Polizoti's evaluation report and testimony were seriously flawed, including his reference to the child abuse complaint against the Appellant, the questionable manner in which Dr. Polizoti obtained this information and the way in which he testified about it. I note that Dr. Reade's report in the instant case is flawed for repeating the child abuse allegation in her report but at least she noted

that criminal charges against the Appellant in that regard were dismissed after Dr. Polizoti's report was written.¹⁴ Further, several of the Appellant's supervisors testified in Puza I, which testimony was the Commission found wanting in certain regards.

The evaluations in Puza I and the instant case have some similarities and some differences. In the instant case, a psychologist's report was prepared as part of an evaluation prepared by a psychiatrist whereas in Puza I the evaluation was prepared by one psychologist who administered the MMPI-2 to the Appellant, along with a test not conducted by Dr. Medoff and Dr. Medoff administered three tests. In addition, unlike Puza I, significant parts of the test results in the instant case were "divergent," adding to the validity of test results which, in turn, support the findings that the Appellant is rigid and that he has a personality disorder that inclines him to comport with rules when it suits him. Further, in Puza I, Dr. Polizoti found that the Appellant suffered from depression whereas in the instant case, Dr. Reade did not. However, this difference may be related to the fact that that Dr. Polizoti interviewed the Appellant not long after the Appellant's girlfriend left him but Dr. Reade interviewed the Appellant a year later. Both Dr. Polizoti, in Puza I, and Dr. Reade, in the instant case, conclude that the Appellant has had drinking and personality problems. In view of the additional supportive testing and analyses provided by the reports of Dr. Reade and Dr. Medoff and their generally credible expert testimony, a preponderance of the evidence establishes that the Appellant is unfit for duty.

Police Departments are para-military organizations which require officers to conduct themselves at all times pursuant to Department rules and regulations. In addition, as noted above, police are held to a higher standard than others. According to the fitness evaluation

¹⁴That said, in view of the fact that the Appellant was subsequently granted joint custody of his son with his ex-wife and there is no other evidence supporting the allegations, I do not rely on that part of Dr. Reade's report that mentions this issue and the matter should be put to rest.

prepared in the instant case, the Appellant is not able to conduct himself pursuant to Department rules and regulations at all times and does not uphold the higher standard to which police are held. Dr. Reade indicated that in the instances in which she found employees unfit for duty, they were suffering from “dementing illnesses or weren’t able to understand information and learn or who were suffering from a major mental illness that was refractory to treatment.” (Reade Testimony, Exs. 2, 5) Dr. Reade found that the Appellant has a personality disorder, which he denies and for which he has accepted only minimal therapy when it suits his purpose. While the Appellant’s condition certainly does not appear to be incapacitating, it renders him unable to follow the rules and high standards required of police officers at all times, which the Respondent is authorized to assess. In addition, the Appellant has had problems with alcohol and anxiety, which problems were, it appears, also inadequately treated. Therefore, the Respondent has proved, by a preponderance of the evidence, that the Appellant is unfit to perform the functions of a police officer, providing it just cause to terminate the Appellant’s employment.

Conclusion

Based upon the foregoing findings of fact and applicable law, the Appellant’s appeal, under Docket No. D1-12-318, is hereby *denied*.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on November 13, 2014.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten (10) 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 (30) 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:

John D. Connor, Esq.

Brian J. Pearly, Esq.