

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

RICKY SANTIAGO,
Appellant

v.

D-05-298

CITY OF LAWRENCE,
Respondent

Appellant's Attorney:

Stephen C. Pfaff, Esq.
Merrick, Louison & Costello, LLP
67 Batterymarch Street
Boston, MA 02110

Respondent's Attorney:

James M. Bowers, Esq.
Office of the City Attorney
Suite 306, City Hall
200 Common Street
Lawrence, MA 01840

Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, Ricky Santiago (hereafter "Santiago" or "Appellant"), is appealing the decision of the Respondent, the City of Lawrence (hereafter the "City") as Appointing Authority, terminating his employment as a Police Officer for the Lawrence Police Department (hereafter the "Department"). The appeal was timely filed. A hearing was held on December 21, 2006 at the offices of the Civil Service Commission. On motion by the Appellant, the hearing

was declared to be a public proceeding. Witnesses were not sequestered. One tape was made of the hearing. Proposed Decisions were submitted by the parties thereafter, as instructed.

FINDINGS OF FACT:

Based on the documents entered into evidence (Respondent's Exhibits 1-8C and Appellant's Exhibits 1-2) and the testimony of Police Captain Dennis Pierce and the Appellant, I make the following findings of fact:

1. The Appellant was employed from September 2001 through August 2005 in the tenured civil service position of Police Officer by the Department. In 2000, while training to join the police department, the Appellant was diagnosed with a medical condition called "aplastic anemia" that progressed to a pre-leukemia stage. The Appellant underwent treatment for this condition and completed his training in April 2001 to join the Lawrence Police Department. The Appellant continued, until approximately March 2005, to take numerous prescription medications after becoming a police officer. (Testimony of Appellant)
2. Throughout his employment with the Department, the Appellant had no disciplinary infractions prior to the present instance. In 2003, he received an Officer of the Year award for his participation in a fraud investigation. (Testimony of Appellant)
3. The Department's policy with regard to evidence or narcotics seized or acquired during an arrest is to turn it in to the Department. The Appellant

testified that he was familiar with this procedure, stating that evidence is to be put in an envelope, sealed, labeled and turned in. (Testimony of Appellant and Pierce)

4. Dennis Pierce, a member of the Department for over 20 years, has been a Police Captain in the detective division for the past two years. (Testimony of Pierce)

5. On March 8, 2005, the Appellant initiated a meeting with Pierce, informing him that he suspected the involvement of several of his own acquaintances in narcotics activity. Pierce testified that the Appellant wanted the Department to initiate an investigation of Mr. B¹, a friend/acquaintance, as the Appellant had attended a party the previous Saturday where Mr. B approached him with an offer that the Appellant take seized drugs and give them to Mr. B to sell them. Pierce told the Appellant that he wanted to meet with Captain Alfred Petralia to discuss beginning an investigation and the three met briefly. They agreed to meet again three days later. (Testimony of Pierce)

6. Following the meeting, Pierce contacted the New England High Intensity Drug Trafficking Area to determine if there was an open narcotics investigation into Mr. B. He determined that there was no ongoing investigation but obtained some background information on Mr. B. (Testimony of Pierce)

7. On March 14, 2005, Captains Pierce and Petralia met with the Appellant for approximately two hours in order to gather information to begin to investigate Mr. B. The Appellant stated that he had been friends with Mr. B since they met in high school and he had lived at Mr. B's home at times while in

¹ This individual will be referred to herein as "Mr. B" in order to protect his privacy rights.

college, but that his friendship with Mr. B had diminished over the years since he (the Appellant) became a police officer. The Appellant stated that he believed Mr. B and his family had been involved in drugs since the early 1990s. The Appellant explained that, at the party they had attended, Mr. B had asked him whether he ever took drugs from a drug bust and did not turn them in and the Appellant said he did not but that he could if he wanted to. The Appellant informed Pierce that Mr. B explained that he was selling drugs to “rich white people” and, if the Appellant could get some “stuff”, Mr. B would sell it and they could both profit. The Appellant also told Pierce that he had learned that another acquaintance, Mr. N², was upset with Mr. B because Mr. B had stolen some of Mr. N’s drug customers. (Testimony of Pierce)

8. After the Appellant provided this information, Pierce told the Appellant that he would start a criminal investigation but did not want to learn later that there was other information he should have known. The Appellant responded with the following information: that in the summer of 2004, in order for Mr. N to provide him with information about Mr. B (as Mr. N was friendlier with Mr. B than Appellant was), the Appellant had taken a small amount of “weed” (marijuana) from evidence he turned in following an arrest and given it to Mr. N. The Appellant also stated that in November 2004 he had given Mr. N two knives for the same reason; to earn Mr. N’s trust in order to get to Mr. B. Over the course of the meeting, Pierce composed a handwritten statement of what the Appellant relayed to him. The Appellant signed the statement and it was

² This individual will be referred to herein as “Mr. N” in order to protect his privacy rights.

subsequently reduced to typed form. (Testimony of Pierce and AA Exhibits 4 and 5)

9. On March 15, 2005, Pierce met with a Federal Drug Enforcement Agency (DEA) agent at the headquarters of the Cross Borders Initiative, an organization of law enforcement officers from Massachusetts and New Hampshire, and inquired whether the DEA were engaged in any active investigations involving Mr. B, Mr. N or the Appellant and two other people the Appellant had mentioned. Pierce made the same inquiries of a New Hampshire State Police Officer and a New Hampshire Drug Task Force Officer. He learned that there were no active investigations into any of the individuals. Pierce stated that Petralia made a similar inquiry with the Essex County Drug Task Force with the same negative responses. (Testimony of Pierce and AA Exhibit 6)

10. The Appellant testified that he kept a small amount of marijuana from an arrest to give to Mr. N for his own use but also stated that he may have considered smoking the marijuana himself rather than giving it to Mr. N but could not recall. With regard to the knives, the Appellant testified that Mr. N was at his home, building a deck for him, when he admired a knife the Appellant had in his home. The Appellant gave it to him and offered him a second knife as well. The Appellant explained that he had taken the first knife from a suspect and had not had time to turn it in as evidence and found the other knife in a police cruiser. (Testimony of Appellant)

11. On June 22, 2005, the City charged the Appellant with violating G.L. c. 94C, s. 32C and rules and regulations of the Department. Specifically, the

Respondent charged the Appellant with 1) distributing a controlled Class D substance (marijuana), a criminal act, to a personal acquaintance, after having seized control of the substance in the performance of his duties as a patrolman; 2) distributing two knives, to a personal acquaintance, after having seized them in the performance of his duties as a patrolman; and 3) failing to turn in to the Department those items in violation of Department policy. The Appellant was notified that he was to be terminated for these activities, pending a July 8, 2005 hearing concerning the reasons for his termination. (AA Exhibit 1)

12. A hearing on the Appellant's termination was held on July 19, 2005 in accordance with G.L. c. 31, s. 41. The Hearing Officer recommended that there was just cause to terminate the Appellant. (AA Exhibits 7 and 8A)

13. A letter of termination from the Mayor of Lawrence to the Appellant, dated August 10, 2005, informed him that he was terminated as a police officer as a result of his conduct that compromised the integrity of the Lawrence Police Department. (AA Exhibit 8B)

14. The Appellant testified that he had never received training in how to conduct an undercover investigation. When asked by this hearing officer why he was prompted to undertake his own, unauthorized and clandestine investigation against Mr. B – critical aspects of which were illegal and/or contrary to Department rules and regulations - he stated unequivocally that it was because he suspected Mr. B was having an affair with his ex-wife. (Testimony of Appellant)

15. I find that the Appellant was polite, respectful and appeared to provide what he believed to be sincere testimony. By every measure, his demeanor was

that of a young gentleman. Additionally, a letter submitted by Appellant from the Criminal Justice Coordinator at Northern Essex Community College attested to the Appellant's being honorable, ethical, serious-minded, and being a man of integrity. However, waiting until virtually the last question asked of him – by a hearing officer at a Civil Service Commission Hearing – to reveal his true motivation for his inappropriate actions, destroys all credibility of his argument that he took those actions in the best interest of the Lawrence Police Department and the citizens of Lawrence. (A Exhibit 1 and Testimony and Demeanor of Appellant)

16. The Appellant submitted evidence in the form of a newspaper article concerning an officer who, in the course of his duties, confiscated an illegal firearm from a city councilor's house and kept it for two weeks before turning it into the Department but received only a twenty-day unpaid suspension. Pierce also admitted that the Department had not terminated two other officers charged in separate domestic violence incidents or one who was arrested for assault and battery. However, Pierce stated that he was aware of a patrolman having been charged with extortion and subsequently terminated. While I find that these events were authentic, I do not ascribe them any weight in determining if the Appellant was a victim of disparate treatment. I find he was not. The misdeeds leading to the Appellant's termination were unique in scope and circumstance to those he proffers as similar. (Testimony of Pierce and A Exhibit 2)

CONCLUSION

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when 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." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority's burden of proof is one of a preponderance of the evidence which is established "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). In reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just

cause for an action taken against an appellant, the Commission shall affirm the action of the appointing authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is "not whether it would have acted as the Appointing Authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In the present case, a review of the record reveals that reasonable justification exists for the action taken by the Department in terminating the Appellant's employment based on his giving items of contraband, a small amount of marijuana and two knives, confiscated in the performance of his duties, to an acquaintance in the summer of 2004 and in November 2004. The Respondent avers that the Appellant not only compromised a criminal case in which he was the arresting officer, by taking drugs from a defendant, but that the Appellant also committed a criminal act by possessing, and then distributing, narcotics to a friend/acquaintance.

The Appellant admits that he used bad judgment in his actions but asserts that his conduct did not warrant termination and that he was treated disparately in regard to being terminated. However, he did not submit sufficient evidence to support this contention as the circumstances he raised are distinguishable from his situation.

Further, it is well established that police officers must “comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into the public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” *See supra* Meaney v. City of Woburn, 18 MCSR 129, 133 (2005); citing Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986).

The Appellant asserted that he was an inexperienced police officer trying to employ his own initiative in setting up and taking down a bad character. He suggested that he had personally devised and effectuated an undercover plan to ensnare his one-time friend, Mr. B. According to the Appellant, his lack of training in such an operation only allowed him to proceed to a point in his “investigation” whereby he required and requested assistance from his superiors. He contends that his mishandling of evidence and distribution of drugs and other contraband are excusable given the noble nature of his mission. However, any reasonable person could not possibly conclude that revenge against a suspected nemesis is a pure-hearted motivation. His willingness to engage other, unwitting officers and law enforcement agencies in his plot against Mr. B by cloaking his true intentions renders his misconduct all the more reprehensible. The

Department has shown, by a preponderance of the evidence, that it was justified in terminating the Appellant.

For all of the above reasons, the appeal under Docket No. D-05-298 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Henderson, Chairman; Bowman, Taylor, Marquis and Guerin, Commissioners) on June 21, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Stephen C. Pfaff, Esq.

James M. Bowers, Esq.

