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NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

BRIAN SWEET vs. CIVIL SERVICE COMMISSION & another. [\[FN1\]](#)

←12-P-200→

*MEMORANDUM AND ORDER PURSUANT TO RULE 1:28*

The plaintiff appeals from a judgment of the Superior Court affirming a decision of the Civil Service Commission (commission). A Department of State Police trial board (trial board) held a hearing and found Trooper Brian Sweet, the plaintiff, guilty of untruthfulness and unsatisfactory performance. It imposed a suspension of five days, a forfeiture of ten days' accrued time off, and a transfer to Belchertown for six months. The plaintiff appealed to the commission, which, after a de novo factual hearing, upheld the suspension and the forfeiture of accrued time off, but rescinded the transfer. The plaintiff then appealed to Superior Court, which affirmed the commission's decision.

At a commission hearing, the hearing officer makes de novo findings of facts and decides 'whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.' *Falmouth v. Civil Serv. Commn.*, 447 Mass. 814, 824 (2006), quoting from *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). Following a commission hearing, an aggrieved party may further appeal to the Superior Court; on appeal to this court, we review 'the commission's decision to determine if it violates any of the standards set forth in G. L. c. 30A, § 14(7), and cases construing those standards.' *Plymouth v. Civil Serv. Commn.*, 426 Mass. 1, 5 (1997). [\[FN2\]](#) 'A court reviewing a decision made by the commission is 'bound to accept the findings of fact of the commission's hearing officer, if supported by substantial evidence.'" *Beverly v. Civil Serv. Commn.*, 78 Mass. App. Ct. 182, 188 (2010), quoting from *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003). The plaintiff contends that the commission exceeded the scope of its review because it found that the plaintiff's actions were retaliatory. According to the plaintiff, the trial board found him not guilty of retaliation on the conduct unbecoming charge, and thus the commission only could consider facts based on the appealed charges of untruthfulness and unsatisfactory performance. We conclude that, regardless of how the facts were cast, the commission's findings were supported by substantial evidence.

*Untruthfulness charge.* The plaintiff was found guilty of a violation of article 5.27.3 of the Department of State Police rules and regulations (DSPRR) for being untruthful when making his log note of a traffic stop. [\[FN3\]](#) The plaintiff argues that it was not shown that he knowingly had falsified the log note, because he believed that Trooper Gerardi did observe the exchange between the plaintiff and the motorist. Although she may have witnessed the stop, Gerardi did not witness the heated exchange. In fact, she testified credibly at the commission hearing that she informed the plaintiff that she had not witnessed the altercation, [\[FN4\]](#) and that, upon learning of the plaintiff's log note, she confronted him as to why her name was still on the entry. See *Andrews v. Civil Serv. Commn.*, 446 Mass. 611, 616 (2006) (hearing officer makes credibility determinations).

Despite this, the plaintiff never corrected the log note. The commission found that the plaintiff was untruthful in making the log note and failing to correct it once Gerardi confronted him. From this, the commission could conclude that there was 'reasonable justification' for the discipline imposed by the trial board. *Falmouth*, 447 Mass. at 824, quoting from *Watertown*, 16 Mass. App. Ct. at 334. Because the commission's factual findings were supported by substantial evidence, the judge correctly affirmed the commission's conclusion.

*Unsatisfactory performance charge.* The plaintiff was also found guilty of violating DSPRR article 5.8.2 for submitting a form to the Registry of Motor Vehicles (RMV) without a basis for concluding that the motorist's motorcycle was an immediate threat, and without obtaining his supervisor's signature. [\[FN5\]](#) The plaintiff argues that he had a sufficient basis to believe that the motorcycle was noncompliant and that he had his supervisor's permission. In addition, he reiterates his original challenge that the commission exceeded the scope of its authority by finding that the plaintiff was retaliating against the motorist.

First, the plaintiff did not have a basis to conclude that the motorcycle's noncompliance was an immediate threat to public safety. [\[FN6\]](#) Even if he did, the commission found that the true purpose for submitting the form was to retaliate against the motorist, due to the plaintiff's allegations that the motorist belonged to a motorcycle gang that routinely harassed the plaintiff. See *Beverly*, 78 Mass. App. Ct. at 188 (reviewing court bound by commission's findings if supported by substantial evidence). Second, it is uncontroverted that the plaintiff submitted the form without a supervisor's signature. These findings are sufficient to demonstrate a 'lack of knowledge of the application of laws,' which was the basis of the trial board's charge.

The commission's findings show sufficient reason for its conclusion that reasonable justification existed on the unsatisfactory performance charge, even if it may have focused heavily on retaliation. Because the commission's factual findings were supported by substantial evidence from the administrative record, the judge properly affirmed the commission's decision.

*Conclusion.* Nothing in the record suggests that the commission exceeded the scope of its review or otherwise prejudiced the substantial rights of the plaintiff under any of

the reasons set forth in G. L. c. 30A, § 14(7).

*Judgment affirmed.*

By the Court (Trainor, Katzmann & Sikora, JJ.),

Entered: March 22, 2013.

[FN1.](#) Department of State Police.

[FN2.](#) According to G. L. c. 30A, § 14(7), as appearing in St. 1114, § 3, 'the court may set aside or modify the decision . . . if it determines that the substantial rights of any party may have been prejudiced because the agency decision is . . . (c) Based upon an error of law; or . . . (e) Unsupported by substantial evidence; or . . . (g) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.'

[FN3.](#) Article 5.27.3 provides: 'No member or civilian employee shall, in the course of his/her official duties, execute, file or publish any false written report, minutes or statements, knowing the same to be false.'

[FN4.](#) She testified that she only witnessed flashing blue lights on the southbound side of Route 93 while she traveled northbound.

[FN5.](#) Article 5.8.2 provides: 'Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned

tasks; the failure to conform to work standards established for the member's rank, title, or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving State Police attention; or absent without leave.'

[FN6](#). At the RMV hearing, it was determined that the motorcycle did not constitute an immediate threat to the public safety, and thus the registration was not revoked.

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