

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
617.727.2293

MICHAEL C. PUZA,
Appellant,

v.

D1-11-315

WESTFIELD POLICE COMMISSION,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Michael C. Puza (Mr. Puza), filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the Westfield Police Commission (Police Commission or City) to terminate him as a police officer from the Westfield Police Department (Department). The appeal was filed with the Commission on October 20, 2011. A pre-hearing conference was held at the Springfield State Building on November 23, 2011. A full hearing was held over two days on January 11, 2012 (Springfield) and January 20, 2012 (Boston). Digital recordings were created of the hearing and both parties were provided with CDs of the proceedings. The hearing was declared to be private. Following

the close of the hearing, proposed decisions were submitted by both parties on March 16, 2012. I subsequently re-opened the record and allowed the parties to submit briefs regarding an issue that was not addressed as part of the hearing, which they did.

SUMMARY

The City terminated Mr. Puza as a police officer for: 1) poor judgment related to speeding and evading a State Trooper on or about July 1, 2011; 2) a psychological evaluation that deemed Mr. Puza unfit for unrestricted duty; 3) an incident that occurred when Mr. Puza's son was in his care; and 4) longtime abuse of alcohol and Mr. Puza's prior disciplinary history. For the reasons cited below, I have concluded that only the first charge was supported by substantial evidence. In regard to the other allegations, the psychological evaluation was deeply flawed, the evidence did not show that Mr. Puza abused or lost control with his son; and the Police Chief himself testified that Mr. Puza's use of alcohol never interfered with his ability to do his job. For these reasons, the termination is modified to a twelve-month suspension. Nothing in this decision, however, prevents the City from requiring Mr. Puza to undergo a valid, objective fitness for duty evaluation prior to his reinstatement and using the results to determine whether further disciplinary action, up to and including termination, is necessary.

FINDINGS OF FACT

A series of stipulated facts and thirty-nine (39) exhibits were entered into evidence at the hearing. Based upon the documents admitted into evidence, the stipulated facts and the testimony of:

Called by the City:

- Leo F. Polizoti, Ph.D. (Dr. Polizoti), Consulting Psychologist for the City;
- Chief John Camerota (Chief Camerota), Westfield Police Department;
- Captain Michael McCabe (Captain McCabe), Westfield Police Department;

- Chairman Karl Hupfer (Chairman Hupfer), Westfield Police Commission;

Called by the Appellant:

- Trooper Jeffrey Roberts (Trooper Roberts), Massachusetts State Police;
- John Blascak (Mr. Blascak), President, Westfield Police Officer's Union;
- Appellant Michael Puza;

I make the following findings of fact:

1. Until his termination on October 12, 2011, Mr. Puza had been a permanent, full-time police officer with the City since March 2000. Mr. Puza was initially hired by the City as an auxiliary police officer in October 1996 and continued in that capacity until his full-time appointment in March 2000. (Testimony of Mr. Puza)
2. Mr. Puza is thirty-seven (37) years old. He grew up in Westfield, graduated from Westfield High School and received an Associates degree in criminal justice at Holyoke Community College. At the time of this hearing, he was separated from his wife and was undergoing divorce proceedings. Mr. Puza and his wife have a son who is four years old. (Testimony of Mr. Puza)

Prior Disciplinary History

3. In September 2002, Mr. Puza received a "counseling report" for an incident related to damaging his cruiser. (Stipulated Fact)
4. In April 2005, Mr. Puza received a written reprimand for making disparaging remarks. (Stipulated Fact)
5. In September 2005, Mr. Puza received a written reprimand for violation of professional conduct and responsibilities for an incident at a local bar. (Stipulated Fact)

6. As a result of the September 2005 incident, Mr. Puza was referred to the Employee Assistance Program (EAP) by Chief Camerota for stress and alcohol-related problems.
(Testimony of Mr. Puza)
7. In November 2007, Mr. Puza received a “counseling report” for failing to appear in court.
(Stipulated Fact)
8. In April 2009, Mr. Puza received a one (1)-day suspension for excessive phone use.
(Stipulated Fact)
9. In April 2011, Mr. Puza received a written reprimand for providing RMV information to a non-authorized person. (Stipulated Fact)
10. In August 2011, Mr. Puza received a thirteen (13)-day suspension for rule violations related to: uniforms / appearance; devotion to duty; feigning illness; fitness for duty; and sick leave.
(Stipulated Fact)

Findings Related to Chronology of Events That Resulted in Termination / Instant Appeal

11. As referenced above, Mr. Puza and his wife are separated. In March or April 2011, Mr. Puza’s girlfriend of two (2) years ended their relationship. Mr. Puza was “devastated” by this development, causing him to seek treatment for depression. In May 2011, he visited his primary care physician and was prescribed Welbrutin, an antidepressant. (Testimony of Mr. Puza)
12. On or around June 22, 2011, Mr. Puza was particularly depressed after seeing his now ex-girlfriend and decided to speak with an EAP representative for approximately one (1) hour.
(Testimony of Mr. Puza)

13. After speaking with the EAP representative, Mr. Puza then went to speak with Chief Camerota. Since Chief Camerota was not in his office, Mr. Puza spoke with Captain McCabe. (Testimony of Mr. Puza)
14. Captain McCabe has been employed by the Westfield Police Department for twenty-seven (27) years and has been a Police Captain for four (4) of those years. As Police Captain, he oversees the Department's uniform personnel, internal affairs and budgetary matters. (Testimony of Captain McCabe)
15. Mr. Puza told Captain McCabe that he (Puza) was depressed, "not doing well, drinking" and "needed to talk to someone". Mr. Puza testified that, during this same meeting, he told Captain McCabe that he would need to take some time off for doctors' appointments and Captain McCabe responded by saying "not a problem; let me know". (Testimony of Mr. Puza)
16. Shortly after meeting with Captain McCabe, Mr. Puza began weekly counseling sessions with a psychotherapist by the name of Christina Dupre. (Testimony of Mr. Puza)
17. On or about July 21, 2011, Captain McCabe called Mr. Puza into his office regarding alleged misuse of sick time. (Testimony of Mr. Puza, Captain McCabe and Chief Camerota)
According to Mr. Puza, the sick time misuse related to him calling in sick the previous Saturday and being seen at a party the same day. (Testimony of Mr. Puza)
18. Chief Camerota entered Captain McCabe's office at some point during the July 21st meeting and the three of them agreed that, on a going-forward basis, Mr. Puza would be required to submit medical documentation for any sick time usage. (Testimony of Mr. Puza)
19. After leaving Captain McCabe's office, Mr. Puza met briefly with Chief Camerota one-on-one to apologize for calling out sick and to let Chief Camerota know about his issues with

depression, which he had conveyed to Chief McCabe one month earlier. Chief Camerota told him that he had “no idea” about Mr. Puza’s conversation with Captain McCabe about these issues one month prior. (Testimony of Mr. Puza)

20. Only minutes after he left the police station on July 21, 2011, Mr. Puza received a call from Captain McCabe, ordering him to undergo a fitness for duty evaluation. Further, Captain McCabe informed Mr. Puza that, in the interim, he was coming to retrieve Mr. Puza’s gun and badge. (Testimony of Mr. Puza)

21. When Captain McCabe arrived to retrieve Mr. Puza’s gun and badge on July 21st, he told Mr. Puza that he (McCabe) would be scheduling the fitness for duty evaluation. (Testimony of Mr. Puza)

22. The next day, July 22, 2011, Captain McCabe called Mr. Puza to let him know that a fitness for duty evaluation had been scheduled for August 1, 2011, but Mr. Puza would need to call and set up a specific time for the appointment. (Testimony of Mr. Puza)

23. On July 25, 2011, Chief Camerota sent a letter to Mr. Puza informing him that the Westfield Police Commission had scheduled a special meeting for August 3, 2011 to address an internal investigation concerning Mr. Puza conducted by Captain McCabe. It appears that this special meeting was related to Mr. Puza’s alleged misuse of sick time. (Exhibit 18)

24. On July 27, 2011, Mr. Puza’s wife brought their son to the Westfield Police Station and informed police about an incident that occurred that day. (Exhibit 11) Testimony and documentary evidence regarding this incident are referenced in more detail in later findings within the chronology of events and under the heading “*Findings Related to Incident Involving Mr. Puza’s Son.*”

25. On July 28, 2011, Captain McCabe contacted the State Police and asked them to investigate the incident involving Mr. Puza's son. (Exhibit 11)
26. On Friday, July 29, 2011, Mr. Puza went to the police station to speak with Chief Camerota. Chief Camerota, who was meeting with Westfield Police Commission Chairman Hupfer, told Mr. Puza that he would call him the following Monday. (Testimony of Mr. Puza)
27. Shortly after leaving the police station on Friday, July 29th, Mr. Puza received a phone call from Captain McCabe asking him to return to the station, which he did. (Testimony of Mr. Puza)
28. Captain McCabe then met with Mr. Puza and asked him if he was involved with any "driving issues" lately. (Testimony of Mr. Puza) Detailed testimony regarding this "driving issue" was given by Captain McCabe, Mr. Puza and State Trooper Jeffrey Roberts. That testimony is contained in later findings under the heading "*Findings Related to Incident Involving Speeding and Allegedly Evading a State Trooper.*" It is undisputed, however, that Captain McCabe and Mr. Puza discussed this driving issue during their meeting on July 29, 2011.
29. After talking about the driving issue during their July 29th meeting, Captain McCabe and Mr. Puza then talked about the complaint that had been filed by Mr. Puza's wife related to the alleged incident with their son. (Testimony of Mr. Puza)
30. On August 1, 2011, three (3) days after meeting with Captain McCabe, Mr. Puza met with Dr. Polizoti to undergo his fitness-for-duty evaluation. (Testimony of Mr. Puza and Exhibit 37)
31. Dr. Polizoti has a PhD in Psychology and has been a clinical psychologist for thirty-four (34) years. He has worked with police departments for thirty-three (33) years and has done pre-employment screenings for police officer candidates for thirty (30) to forty (40) police

departments. He has done pre-screenings for over 2,000 candidates and completed “a few hundred” fitness-for-duty evaluations. He testified before the Commission. (Testimony of Dr. Polizoti)

32. Dr. Polizoti confirmed that Captain McCabe had referred the Appellant to him for this fitness-for-duty evaluation. (Testimony of Dr. Polizoti)
33. Dr. Polizoti’s notes from the August 1, 2011 meeting reference Mr. Puza’s problem with his girlfriend, his use of alcohol when he is stressed out, a prescription for Wellbutrin and the fact that his therapist could not help him with his alcohol issues. Dr. Polizoti then had Mr. Puza take two (2) written psychological tests: the Minnesota Multiphasic Personality Inventory – 2 (MMPI – 2) and the Millon Clinical Multiaxial Inventory III (MCMI III). (Exhibit 37) Although Dr. Polizoti testified that Mr. Puza brought up the issue regarding the recent incident with his son during their initial meeting, there is no mention of this in Dr. Polizoti’s notes. (Testimony of Dr. Polizoti and Exhibit 37)
34. On August 2, 2011, Dr. Polizoti met with Mr. Puza again to go over the results of the written psychological tests. This interview, along with the results from the written tests, would ultimately form the basis of Dr. Polizoti’s conclusion that Mr. Puza was not fit for duty. Testimony and documentary evidence related to the fitness for duty evaluation are referenced in later findings within the chronology of events and under the heading “*Findings Related to Fitness for Duty Evaluation.*”
35. Dr. Polizoti and Mr. Puza offered conflicting testimony regarding who initiated the conversation regarding the recent incident with Mr. Puza’s son. As referenced above, Dr. Polizoti testified that Mr. Puza initiated the conversation and voluntarily disclosed information about the incident. (Testimony of Dr. Polizoti) Mr. Puza testified that it was *Dr.*

Polizoti, during their *second* meeting on August 2nd, who initiated the conversation regarding the incident with his son. (Testimony of Mr. Puza)

36. According to Mr. Puza, Dr. *Polizoti*, at the outset of the August 2nd meeting, told Mr. Puza that he (Dr. *Polizoti*) had talked with Captain McCabe and then said to Mr. Puza, “you apparently abused your son.” Mr. Puza then provided information which is referenced later in this decision. I credit Mr. Puza’s testimony regarding how this issue surfaced as part of the fitness for duty evaluation. His testimony on this issue was far more plausible than Dr. *Polizoti*’s who struggled to explain why he never even included this conversation in his written notes. (Testimony of Mr. Puza and Dr. *Polizoti*)

37. At the time of this fitness for duty evaluation, Mr. Puza was on paid administrative leave. (Testimony of Mr. Puza and Chief *Camerota*)

38. On August 4, 2011, two (2) days after the fitness-for-duty evaluation interview, the Westfield Police Commission held a disciplinary hearing to review the matter related to Mr. Puza’s sick time abuse. Mr. Puza accepted – and did not appeal – the issuance of a thirteen (13) day suspension related to the sick time abuse. (Testimony of Mr. Puza)

39. During the August 4th Police Commission meeting, Chief *Camerota* urged Mr. Puza to also take some vacation time and think about whether he (Mr. Puza) wanted to continue being a police officer. Mr. Puza did take a four (4)-week vacation in addition to the thirteen (13)-day suspension, meaning he would not be returning to work until mid-September 2011. (Testimony of Mr. Puza)

40. On August 15, 2011, Mr. Puza met with Dr. *Polizoti* and asked him to complete and sign a document that would allow Mr. Puza’s *mother* to utilize time under the Family and Medical Leave Act (FMLA) to care for Mr. Puza. (Testimony of Dr. *Polizoti* and Exhibit 9)

41. Question 4 of this FMLA-related form asks: “Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ___ No ___ Yes.” Dr. Polizoti checked “Yes”. The next sentence on the form says: “Estimate the beginning and ending dates for the period of incapacity.” Dr. Polizoti wrote: “8/10/11 – 9/17/11”. (Exhibit 9)
42. I credit Dr. Polizoti’s testimony that the only reason he put an end date of 9/17/11 on the FMLA-related form was because Mr. Puza told Dr. Polizoti that was how long Mr. Puza’s mother planned on staying with her son and not going to work. (Testimony of Dr. Polizoti) For that reason, I give this form no weight as it relates to Dr. Polizoti’s fitness-for-duty evaluation of Mr. Puza, referenced later.
43. On August 29, 2011, Dr. Polizoti issued a fitness-for-duty evaluation in which he concluded that Mr. Puza was not fit for duty as a police officer 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.” (emphasis added) (Exhibit 7)
44. On or about September 13, 2011, Chief Camerota sent a letter to Mr. Puza stating that the Police Commission had scheduled a special meeting for September 26, 2011 to discuss: 1) the incident involving the State Trooper; 2) the fitness-for-duty evaluation; and 3) the “child abuse complaint set for a show cause hearing in Westfield District Court.” (Exhibit 3)
45. On September 26, 2011, the Police Commission conducted a hearing regarding the above-referenced charges at which time they heard from Chief Camerota, Captain McCabe and Mr. Puza. Dr. Polizoti did not testify at this hearing. As part of this hearing, there was a dispute regarding how Dr. Polizoti became aware of the child abuse allegations – from Captain

McCabe or from Mr. Puza himself? The hearing was adjourned, to reconvene on a later date, so that the Police Commission could get clarification on that issue. (Exhibit 5)

46. On October 1, 2011, the Westfield District Court Clerk Magistrate issued a decision denying the application for a criminal complaint against Mr. Puza and dismissed the case. (Exhibit 6)
47. On October 10, 2011, Dr. Polizoti penned a clarification letter to the Police Commission explaining why he did not include the child abuse allegations in his notes of the interview with Mr. Puza. He further clarified that his conclusion that Mr. Puza was not fit for duty was not based on the child abuse allegation. Although his written statement references comments made by Mr. Puza about the child abuse allegation, he does not specifically address who first told him about this allegation. (Exhibit 8)
48. Four days after Dr. Polizoti's final report, the Police Commission terminated the Appellant for: 1) poor judgment related to speeding and evading a State Trooper on or about July 1, 2011; 2) a psychological evaluation that deemed Mr. Puza unfit for unrestricted duty; 3) an incident that occurred when Mr. Puza's son was in his care; and 4) longtime abuse of alcohol and Mr. Puza's prior disciplinary history.

Findings Related to Incident Involving Speeding and Allegedly Evading a State Trooper

49. Captain McCabe met with Mr. Puza about an alleged driving incident involving a state trooper. (Testimony of Captain McCabe) The matter had been brought to his attention by Chief Camerota, who was told about the incident by a police officer. (Testimony of Chief Camerota).
50. The allegation, as relayed to Captain McCabe, was that Mr. Puza, while off-duty, had been traveling at a speed of 100 MPH in an automobile and sought to evade a state trooper by pulling into the driveway of someone's house. (Testimony of Captain McCabe)

51. Captain McCabe called the State Police and State Trooper Jeffrey Roberts, the trooper who was allegedly involved with the incident, relayed the following information to him:

- Trooper Roberts was engaged in a traffic stop;
- An automobile passed by him at a speed of 80 to 85 MPH;
- Trooper Roberts got into his cruiser and attempted to locate the automobile;
- Trooper Roberts eventually spotted the automobile, with its tail lights on, parked in a driveway in a residential neighborhood;
- Trooper Roberts activated his spot light, and, at some point, realized the driver of the vehicle was Mr. Puza, who Trooper Roberts knew personally.
- No citation was issued.

(Testimony of Captain McCabe)

52. Captain McCabe met with Mr. Puza (on Friday, July 29th) about this incident, Mr. Puza told him that:

- His speed was closer to 50 to 55 MPH;
- There were two women in the car,
- He saw the State Trooper and pulled into the driveway of a friend's house.
- He pulled into the driveway because he didn't want any trouble and wanted to hide.

(Testimony of Captain McCabe)

53. As part of his written report to Chief Camerota on July 29th, Captain McCabe wrote, in part that: “[Mr. Puza] told me that he was driving home from Louis B's in Southwick going to Whip City Brew on North Elm Street ...” (Exhibit 10)

54. Mr. Puza testified that when he met with Captain McCabe on Friday, July 29th, he told Captain McCabe the following about the speeding incident:

- He was driving from Southwick to Westfield;
- At some point, he saw a police cruiser which he thought was a Westfield police cruiser;
- To play a joke, he increased his speed and sped past the cruiser;
- At some point, he realized it was not a Westfield police cruiser, but a State Trooper;
- While he was trying to think about what to do, he pulled into the driveway of a friend's house;
- He was not trying to evade the State Trooper;
- When Trooper Roberts realized it was him, he told Mr. Puza, “no harm, no foul, don't worry about it.”

(Testimony of Mr. Puza)

55. State Trooper Jeffrey Roberts has been a State Trooper for approximately eleven (11) years.

Trooper Roberts testified that sometime in July 2011, while he was on duty, he answered an incoming call from Captain McCabe about this speeding incident. Trooper Roberts told Captain McCabe that he happened to be the Trooper involved. According to Trooper Roberts:

- Sometime during the first week of July 2011 around 11:00 P.M., Trooper Roberts was driving his cruiser on Southwick Road in Westfield, while on his way home, coming from the state police barracks.
- Trooper Roberts pulled over a motorist for a traffic stop.
- While he was finishing up the traffic stop, a vehicle drove by him that caught his attention because it was going “greater than the limit”.
- The speed limit on that stretch of Southwick Road is 30 or 35 MPH and Trooper Roberts visually estimated that Mr. Puza was travelling at a speed of 70 to 75 MPH.
- Trooper Roberts returned to his cruiser, shut the overhead lights and headlights off and attempted to “catch the vehicle” that had passed him;
- At some point, Trooper Roberts got to the intersection of Southwick Road, South Maple Street and Mill Street.
- Trooper Roberts decided to take a left onto Mill Street.
- As he drove down Mill Street, he saw the tail lights of a vehicle taking a left onto a road near a market named Leonard Ave.
- Trooper Roberts accelerated his vehicle, turned down Leonard Ave. and didn’t see any vehicle on Leonard Ave. Trooper Roberts still had all the lights of his cruiser off.
- Trooper Roberts then spotted the tail lights of the white vehicle parked in a residential driveway.
- Seeing people in the vehicle, Trooper Roberts activated his spotlight and got out of his cruiser.
- As Trooper Roberts was approaching the vehicle, Mr. Puza got out of the white vehicle.
- Trooper Roberts recognized Mr. Puza since the two men have known each other for approximately ten (10) years.
- Trooper Roberts and Mr. Puza socialized together many years ago.
- Mr. Puza said, “I’m glad it’s you” when he saw Trooper Roberts.
- Trooper Roberts then said to Mr. Puza, “Don’t worry about it; you’re all set; you’ll never hear another word about it”. Trooper Roberts then got back in his cruiser and left.
- Trooper Roberts did not ask Mr. Puza why he had pulled into the driveway.

Findings Related to Incident Involving Mr. Puza’s Son

56. As referenced in the above chronology, Mr. Puza's wife brought the couple's 4-year old son to the Westfield police station on July 27, 2011 and relayed information regarding an incident that had occurred that day. The matter was referred to the State Police for investigation. (Exhibit 11)
57. On August 17, 2011, State Trooper Jeffrey Cahill penned a six-page memorandum regarding the incident to the Detective Captain in charge of the Division of Investigative Services / West for the State Police. The memorandum was entered into the record and marked as Exhibit 11. (Exhibit 11)
58. As a result of his investigation, Trooper Cahill, on August 17, 2011, went to the Westfield District Court and sought a criminal complaint for either Assault and Battery Upon a Child Causing Bodily Injury or simple Assault and Battery. The Clerk granted a show cause hearing for the Assault and Battery charge. (Exhibit 11)
59. The Appellant testified before the Commission that, on July 27, 2011, his son was "out of control", that he was afraid his son would harm himself and that he spanked his son three times. (Testimony of Appellant)
60. On October 1, 2011, a Magistrate from the Springfield District Court, specially designated to the Westfield District Court, issued a decision denying the Application for Complaint for Assault and Battery stating, in part that, "there is an insufficient quantum of evidence supportive of the issuance of a criminal complaint." In his decision, the Magistrate, citing a doctor's report, found that Mr. Puza had engaged in "classic spanking" of his son. (Exhibit 6) punishment.

Findings Related to "Longtime Abuse of Alcohol"

61. As referenced in the Prior Disciplinary History section of this decision, Mr. Puza received a written reprimand in 2005 for violation of professional conduct and responsibilities for an incident at a local bar. (Stipulated Fact) As a result of this incident, Mr. Puza was referred to EAP by Chief Camerota for stress and alcohol-related problems. (Testimony of Mr. Puza)
62. Mr. Puza acknowledges that he was “self-medicating” with alcohol after his relationship with his girlfriend ended. (Testimony of Mr. Puza)
63. Captain McCabe was concerned about Mr. Puza’s behavior in the past, including on incident where Mr. Puza showed up to work in beer advertisement pajamas and flip-flops. (Testimony of Captain McCabe)
64. As part of the September 26, 2011 disciplinary hearing before the Westfield Police Commission, counsel for Mr. Puza stated that Mr. Puza had become an alcoholic. (Tape of 9/26/11 hearing played during Day 2 of Civil Service Commission hearing, beginning at the 1:42:48 mark.)
65. Notwithstanding the 2005 incident referenced above, Chief Camerota was surprised to hear, at the September 26th hearing, that Mr. Puza considered himself an alcoholic and could not recall any incident where alcohol had impeded Mr. Puza’s ability to do his job. His testimony was as follows:
- Commissioner: Did you have any independent knowledge of Mr. Puza having any problems with alcohol?
- Chief Camerota: Nope. That’s why I said I was surprised to hear that. I know he likes to drink as many of us do. I didn’t know he had a problem with it.
- Commissioner: Did you ever see, at any time, that the consumption of alcohol, impeded his ability to perform the functions of a police officer?
- Chief Camerota: No.

(Testimony of Chief Camerota)

66. Mr. Puza testified before the Commission that, while, at the time, he might have believed he was an alcoholic, he does not believe that now. (Testimony of Mr. Puza)

67. Mr. Puza told the Police Commission that he had stopped drinking just prior to their September 25, 2011 hearing. However, during the subsequent October 12, 2011 Police Commission hearing, Mr. Puza told the Police Commission that he had “one or two drinks” since the September 25th hearing. (Testimony of Chairman Hupfer)

68. Mr. Puza consumed “a couple of beers” during dinner the night before the second day of hearing before the Civil Service Commission on January 20, 2012. (Testimony of Mr. Puza)

Findings Related to Fitness for Duty Evaluation

69. As part of his fitness for duty evaluation, Mr. Puza was administered two written psychological examinations: the Minnesota Multiphasic Personality Inventory-2 (MMPI-2); and the Millon Clinical Multiaxial Inventory-III (MCMI III). Further, Dr. Polizoti conducted two clinical interviews with Mr. Puza and received information from Captain McCabe.

(Exhibit 7 and Testimony of Dr. Polizoti)

70. As referenced above, Dr. Polizoti penned two reports to the Police Commission regarding Mr. Puza. (Exhibits 7 & 8 and Testimony of Dr. Polizoti)

71. In his first report, dated August 29, 2011, Dr. Polizoti wrote, in relevant part that:

“Officer Puza has self-medicated with alcohol in an attempt to deal with his psychological problems. He has not appeared to have had 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. He stated that he was attempting to punish a child and admitted that he overdid it. 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 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. (emphasis added)

Recommendations:

1. Unfit for unrestricted duty as a police officer.” (Exhibit 7)

72. In his second report, dated October 10, 2011, Dr. Polizoti wrote, in relevant part that:

“I do not have notes in my records of these statements [related to the child abuse issue] he [Mr. Puza] made to me. I did not make notes regarding them since he was already being investigated for abuse, according to him.”

In this second report, Dr. Polizoti then provides a detailed account of what Mr. Puza purportedly told him during the clinical interview conducted several weeks earlier including, “He [Mr. Puza] also stated that he apparently overdid it since the marks were there and were discernable a number of hours later.”

The report also states:

“I did not include these details in my report since a complaint of alleged abuse had already been filed by his ex-wife. I also did not file a 51A myself since one had reportedly been filed already. My determination of his fitness for duty status was not based upon the abuse issue.” (emphasis added)

73. During his testimony before the Commission, Mr. Puza vehemently denied ever telling Dr.

Polizoti that he “overdid it”. Further, as referenced in earlier findings, Mr. Puza testified credibly that it was *Dr. Polizoti* who raised the child abuse allegation during the clinical interview. (Testimony of Mr. Puza)

74. Dr. Polizoti testified that Mr. Puza had a personality disorder consisting of: narcissism, obsessive compulsive issues, alcoholism, depression and histrionic dynamics. (Testimony of Dr. Polizoti)

75. Asked during his testimony whether Mr. Puza could be fit for duty in the future, Dr. Polizoti stated that he had “no idea”, but that the chance of remediation “is small”. (Testimony of Dr. Polizoti)

Disparate Treatment Allegation

76. The Appellant, as part of his appeal, alleged that the decision to terminate him represented disparate treatment and introduced documents and testimony related to the disciplinary history of other police officers. The circumstances related to two other officers are sufficiently similar for comparison. In 2009, a police officer had been speeding past a state trooper at 96 mph, traveled approximately four miles before being pulled over, cited for operating to endanger, and was already on suspension at the time, but ultimately received only a 90-day suspension. Also in 2009, another police officer, passed out at a bar, had alcohol on his breath at work, and used a firearm while intoxicated, but received only a 2-day suspension. (Testimony of Captain McCabe and Exhibits 27-33)

LEGAL STANDARD

G.L. c. 31, § 50 provides:

“No person habitually using intoxicating liquors to excess shall be appointed to or employed or retained in any civil service position ...”

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).

Under Section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. The role of the 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." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, rev.den.,

426 Mass. 1102, (1997). See also Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den. (2000); McIsaac v. Civil Service Comm'n, 38 Mass App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, 390 Mass. 1102 (1983).

CONCLUSION

The City relied on four (4) reasons to discipline Mr. Puza that included: 1) poor judgment related to speeding and evading a State Trooper on or about July 1, 2011; 2) a psychological evaluation that deemed Mr. Puza unfit for unrestricted duty; 3) an incident that occurred when Mr. Puza's son was in his care; and 4) longtime abuse of alcohol and Mr. Puza's prior disciplinary history.

Alleged Child Abuse

As part of the de novo hearing before the Commission, the most relevant evidence and testimony presented regarding this issue was a report compiled by a State Trooper who investigated the matter, a magistrate's decision not to allow a Complaint for Assault and Battery; and the testimony of Mr. Puza and Dr. Polizoti.

Based on this evidence and testimony, the City did not show, by a preponderance of the evidence, that Mr. Puza abused his child or lost his temper with his child. As part of this de novo hearing, I did not hear from, nor did the Police Commission, the State Trooper who conducted the investigation or Mr. Puza's wife.

The State Trooper's report, while thorough, relies heavily on hearsay statements from a Westfield Police Officer (who also did not testify before the Commission) who interviewed Mr. Puza's wife on July 27th as well as a written statement from Mr. Puza's wife that was not included with the report submitted to the Commission. The State Trooper's report also

references medical documentation that was held by the State Police and not attached to the report. Finally, the report indicates that an attempt to hear directly from Mr. Puza's son, through a trained counselor at a medical center, was not successful. For these reasons, I gave this report little weight in reaching my conclusion on this charge.

Thus, for this charge, relied heavily on the testimony of Mr. Puza, the only remaining percipient witness to the events in question and Dr. Polizoti, who testified that Mr. Puza admitted that he "overdid it" with his son. For reasons already discussed, and discussed in more detail below, I do not credit Dr. Polizoti's testimony in this regard.

Absent the ability to hear from any percipient witnesses other than Mr. Puza, and giving little weight to the State Trooper's report on this matter and not crediting Dr. Polizoti's testimony, Mr. Puza's testimony on this subject, standing alone, was plausible. His testimony was consistent with the magistrate's decision that Mr. Puza's actions constituted nothing more than "classic spanking" of his child.

Fitness for Duty Evaluation

Several issues related to the fitness for duty evaluation, including the testimony of Dr. Polizoti, have resulted in me giving that examination little weight.

Dr. Polizoti submitted two reports, at different times, to the Westfield Police Commission. The first report stated unequivocally that his conclusion that Mr. Puza was not fit for duty was based, in part, on a child abuse allegation pending against Mr. Puza at the time. Later, as part of a response to an inquiry from the Police Commission regarding how he came to learn of the child abuse allegation, Dr. Polizoti submitted another report stating that his fitness for duty conclusion was not based on the child abuse allegation. This is astonishing.

While Dr. Polizoti retracted this key portion of his prior report, he then went on to provide a detailed description of what Mr. Puza allegedly said to him regarding the child abuse allegation during an interview several weeks prior. Yet, Dr. Polizoti's detailed notes of the interviews with Mr. Puza make no mention of this conversation – at all. Dr. Polizoti, without being asked, then explained in writing why, as a “mandatory reporter”, he did not file a “51A” report, stating that he knew the matter was already being investigated.

Finally, Dr. Polizoti, as part of his second report, did not address the other critical question posed to him by the Police Commission – was Mr. Puza permanently unfit for duty?

In summary, Dr. Polizoti's reports raised more questions than they answered and were not the type of information that I could rely on to determine if the City had just cause to terminate Mr. Puza as a police officer. For these reasons, the City did not show by a preponderance of the evidence, that Dr. Polizoti's evaluation provided just cause for disciplining the Mr. Puza.

When an Appointing Authority relies on scientific evidence provided through expert witnesses, the Commission is mindful of the responsibility to ensure: (a) the scientific principles and methodology on which an expert's opinion is based are grounded on an adequate foundation, either by establishing “general acceptance in the scientific community” or by showing that the evidence is “reliable or valid” through an alternative means, *e.g.*, Canavan's Case, 432 Mass. 304, 311, 733 N.E.2d 1042, 1048 (2000) *citing* Commonwealth v. Lanigan, 419 Mass. 15, 641 N.E.2d 1342 (1994); (b) the witness is qualified by “education, training, experience and familiarity” with special knowledge bearing on the subject matter of the testimony, *e.g.*, Letch v. Daniels, 401 Mass. 65, 69-69, 514 N.E.2d 675, 677 (1987); and (c) the witness has sufficient knowledge of the particular facts from personal observation or other evidence, *e.g.*, Sacco v. Roupenian, 409 Mass. 25, 28-29, 564 N.E.2d 386, 388 (1990).

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, 767 N.E.2d 629, 634, rev. den., 437 Mass 1109, 747 N.E.2d 1099 (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, 554 N.E.2d 25, 27 (1990); New Boston Garden Corp. v. Board of Assessors, 383 Mass. 456, 467-73, 420 n.E.2d 298, 305-308 (1891); Dewan v. Dewan, 30 Mass.App.Ct. 133, 135, 566 N.E.2d 1132, 1133, rev.den., 409 Mass. 1104, 569 N.E.2d 832 (1991).

State Trooper Incident

In July 2011, Mr. Puza exercised wildly poor judgment for which the consequences could have been deadly. Sometime shortly after 11:00 P.M., while en route between two local establishments (Louis B's and Whip City Brew respectively) and with two female companions in the car, Mr. Puza was driving at a rate of speed of at least 75 MPH on a road with a posted speed limit of either 30 or 35 MPH.

His excessive rate was dangerous enough to trigger a pursuit by a State Trooper who would have otherwise headed home after completing a routine traffic stop on the same road. While Mr. Puza insists he did not "evade" the trooper, he testified that "while thinking about what to do", he pulled into the driveway of a friend's house. That explanation is incredulous and defies common sense.

His actions that night were reckless and paint the picture of an individual who was either unaware or unconcerned about his own personal safety, his passengers and any other citizen who may have been driving along this route on the night in question.¹

For these reasons, the City has shown, by a preponderance of the evidence that Mr. Puza's actions, described above, provide just cause for discipline.

Abuse of Alcohol

As stated above, the civil service law explicitly provides that "no person habitually using intoxicating liquors to excess shall be appointed to or employed or retained in any civil service position."

Mr. Puza was disciplined in 2005 for an incident at a local bar for which he was given a written reprimand and, according to his own testimony, was referred to EAP for stress and alcohol-related problems.

Mr. Puza acknowledges "self-medicating" by consuming alcohol.

During the disciplinary hearing before the Westfield Police Commission, his counsel stated that Mr. Puza had become an alcoholic. During the same hearing, Mr. Puza told the Police Commission that he had stopped drinking alcohol. Yet, at the next hearing, conducted approximately two weeks later, Mr. Puza acknowledged that he had consumed alcohol since the first day of hearing.

¹ While this appeal involves the actions of Mr. Puza, I was deeply troubled by the testimony of State Trooper Jeffrey Roberts. After seeing a vehicle pass by him at a dangerous rate of speed, he pursued the vehicle and, after navigating several roads, finally spotted the vehicle and activated his spotlight. After realizing it was his personal acquaintance, who is a Westfield Police Officer, Trooper Roberts failed to ask even a perfunctory set of questions of Mr. Puza, let alone cite him for speeding. Instead, he quickly told Mr. Puza "no harm, no foul"; assured him that nobody would ever hear about the incident and then left the scene, after which Mr. Puza presumably made his way to his next destination, the Whip City Brew.)

During his testimony before the Civil Service Commission, Mr. Puza stated that he had consumed “a couple of beers” the night prior to the second day of hearing before the Commission.

Chief Camerota, however, testified that he was surprised to hear, at the Police Commission hearing, that Mr. Puza considered himself an alcoholic. Chief Camerota testified that he knew that Mr. Puza liked to drink, but he didn’t know he had a problem with it. When asked if the consumption of alcohol ever impeded Mr. Puza’s ability to perform the functions of a police officer, Chief Camerota answered, “no”.

Mr. Puza’s alcohol-related issues were also referenced in Dr. Polizoti’s fitness for duty evaluation in which Dr. Polizoti wrote, “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. (emphasis added) For many of the reasons previously referenced, I have given little weight to Dr. Polizoti’s report and I did not hear anything in his testimony that provided me with more insight into whether Mr. Puza was “habitually using intoxicating liquors to excess”.

Finally, it is noteworthy that the Police Commission’s September 13, 2011 notice of hearing to Mr. Puza made no mention of alcohol abuse being a potential reason for discipline, although, as already noted, the issue was raised in the fitness for duty evaluation, which was referenced in the September 13th letter.

In summary, while Mr. Puza’s own testimony paints the picture of an individual that appears to be struggling with alcoholism, Chief Camerota testified unequivocally that he was unaware of any such problem and that the consumption of alcohol never impeded Mr. Puza’s ability to function as a police officer.

A legitimate fitness for duty evaluations may have provided a clearer picture as to whether alcohol-related issues warranted disciplinary action being taken against Mr. Puza.

Summary regarding whether there was just cause for discipline

In summary, the City did not show, by a preponderance of the evidence, that Mr. Puza abused his child or lost control of his temper with his child. Further, the fitness for duty evaluation presented here was deeply flawed and insufficient to show that Mr. Puza was unfit for duty.

In regard to the incident with the State Trooper, the evidence shows that Mr. Puza exercised wildly poor judgment and acted in a dangerous manner, providing just cause for discipline.

The allegation related to alleged alcohol abuse, and whether it provides just cause for discipline, is a closer call. Here, however, I believe the Police Commission got it right when, as part of the charge letter, this allegation was included as part of the fitness for duty evaluation and not as a stand-alone issue. That evaluation, as referenced above, was flawed and does not provide just cause for discipline.

Modification of Penalty

G.L. c. 31, § 43 provides that:

“The commission may also modify any penalty imposed by the appointing authority.”

Having determined that it was appropriate to discipline Mr. Puza for the incident with the State Trooper, the Commission must determine if the City was justified in the level of discipline imposed, which, in this case, was termination.

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

Comm'n, 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 Comm'n, 447 Mass. 814, 823 (2006).

I have, based on the testimony of credible witnesses and the documentary evidence submitted, reached findings and conclusions that differ significantly from those reported by the City and have interpreted the relevant law (Section 61A) in a substantively different way. While the City found that Mr. Puza abused his child and lost his temper, the evidence did not support that conclusion. Likewise, while the City found that Mr. Puza was unfit for duty and abused alcohol, the evidence did not support those conclusions.

Finally, Mr. Puza has sufficiently shown that individuals engaging in similar conduct were treated differently than Mr. Puza and were not terminated.

Mr. Puza, however, engaged in serious misconduct in regard to the incident with the State Trooper and he has a significant disciplinary history, including a recent 13-day suspension.

In consideration of all of the above and being mindful that the City has a duty to ensure that all of its police officers are fit for duty, Mr. Puza's appeal under Docket No. D1-11-315 is hereby *allowed in part*; his termination is rescinded and replaced by the following relief and orders:

- Mr. Puza is suspended for twelve (12) months, beginning October 14, 2011 and ending October 14, 2012;
- Nothing in this decision prevents the City from ordering Mr. Puza, prior to his reinstatement, to undergo a valid fitness for duty evaluation and, based upon those results, determining if further disciplinary action is warranted, up to and including termination. That fitness for duty evaluation shall be conducted by someone other than Dr. Polizoti.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis and McDowell, Commissioners [Stein – Absent]) on August 9, 2012.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of

this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

John D. Connor, Esq. (for Appellant)

Brian Pearly, Esq. (for Respondent)