

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

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

**DAVID AGUIAR,**  
Appellant

v.

**Case No. D1-12-19**

**CITY OF NEW BEDFORD,**  
Respondent

Appearance for Appellant:

William M. Straus, Esq.  
Law Office of William M. Straus  
15 Hamilton Street  
New Bedford, MA 02740

Appearance for Respondent:

Jane Medeiros Friedman, Esq.  
First Assistant City Solicitor  
City of New Bedford Law Department  
133 William Street  
New Bedford, MA 02740

Commissioner:

Paul M. Stein<sup>1</sup>

**DECISION**

**Procedural History**

Pursuant to G.L. c. 31, § 43, the Appellant, David Aguiar, duly appealed to the Civil Service Commission (Commission) from the decision of the Respondent, City of New Bedford (City) to terminate him from his employment as a Lieutenant with the New Bedford Fire Department (NBFD). A pre-hearing conference was held on February 10, 2012 at the UMass School of Law in Dartmouth, Massachusetts and six (6) days of full hearing were held at that location on: May 17, 2012; May 18, 2012; June 15, 2012; July 20, 2012; August 15, 2012; and August 17, 2012. The witnesses were sequestered. The hearing was digitally recorded. Each party submitted a post-hearing Proposed Decision on October 30, 2012.

---

<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Beverly J. Carey, Esq., in the drafting of this decision.

## **FINDINGS OF FACT**

Based on the thirty-three (33) exhibits entered into evidence, the stipulations of the parties, the testimony of the following nineteen (19) witnesses:

### *Called by the City:*

- Mr. David Jesus, Firefighter, NBFD;
- Mr. Brandon Silva, Firefighter, NBFD;
- Mr. Norman Luke Charbonneau, Lieutenant, NBFD, Fire Prevention Bureau;
- Mr. Robert Frates, District Chief, NBFD;
- Mr. Michael Coffey, Firefighter, NBFD;
- Mr. Scott Kruger, District Chief, NBFD;
- Mr. Scott Andrew Gomes, Captain, NBFD;
- Mr. Richard Spoor, Firefighter, NBFD;
- Mr. Paul Coderre, Deputy Chief, NBFD;
- Ms. Jennifer Carrita, Paramedic, City;
- Mr. Ralph Isherwood, Paramedic, City;
- Mr. Lionel Tetreault, Lieutenant, NBFD;
- Mr. Michael Gomes, Fire Chief, NBFD;

### *Called by Mr. Aguiar:*

- Mr. James Allen, Retired Lieutenant, NBFD;
- Mr. William Cabral, Firefighter, NBFD;
- Mr. Clinton Allen, Retired Firefighter, NBFD;
- Mr. Micheal Pimental, Firefighter, NBFD;
- Mr. Steven Sousa, Firefighter, NBFD;
- Mr. David Aguiar, Appellant;

and reasonable inferences therefrom, a preponderance of the evidence establishes these facts:

### *The Appellant's Employment History*

1. Mr. Aguiar was appointed to the civil service position of permanent firefighter with the NBFD on or about February 24, 1986. He was promoted to the rank of Lieutenant on or about March 15, 1998. (*Ex. 12*)
2. Prior to the incidents that give rise to the present appeal, Mr. Aguiar had been disciplined on four occasions, three of which arose after he had been promoted to Lieutenant.
  - a. In 1994, Firefighter Aguiar received a thirteen (13) hour suspension for using obscenities in refusing District Chief Ernest Oliviera's direct order to shave. (*Ex. 25*)

- b. In 2005, Lt. Aguiar was suspended for twenty-four (24) hours for his refusal to obey an order given to him by Acting Chief Leger during a hazardous materials (“haz-mat”) incident, and stating, in the presence of his crew and other members of the command staff that he was “not going to enter that f---ing building.” (*Ex. 26*)
    - c. On or about May 6, 2008, Mr. Aguiar received a written reprimand for failing to act on an order given to him by Dist. Chief Paul Coderre, Sr. on or about February 28, 2008. (*Ex. 27*)
  3. Another 2008 disciplinary proceeding had resulted in an order for involuntary transfer of assignment with Engine Co. 11, but that dispute was subsequently settled by mutual agreement of the parties, Lt Aguiar’s lost overtime was restored and he was permitted to return to his prior assignment. (*Exh.28ID; Testimony of Appellant & Ret. Lt. Allen*)
  4. During 2006 and 2007, Lt. Aguiar worked under then-Dist. Chief Michael Gomes, who would later become NBFD Fire Chief in January 2011. (*Testimony of Appellant & Chief Gomes*)
  5. As Dist. Chief, Michael Gomes had formed the opinion, which he expressed at least once to others, that the predecessor Fire Chiefs had been too lenient on Lt. Aguiar who “should have been fired a long time ago and made to fight get his job back.” Also, while serving as Dist. Chief, he had also told another firefighter that Lt. Aguiar had written a letter (which Lt. Aguiar placed in the June 2007 timeframe) which Dist. Chief Gomes believed could have “damaged my career.” (*Testimony of Appellant, Chief Gomes, Lt. Tetreault & FF Pimental*)
- The Training Event at Aviation Way
6. On or about August 5, 2011, a training exercise was being conducted at Aviation Way with Lt. Aguiar’s company, Engine 5, and two other fire companies The training officer was

Capt. Scott Gomes, who is Chief Gomes's brother. (*Testimony of Appellant, Capt. Gomes & Lt. Tetreault*)

7. The training began at approximately 10:30 AM. The first round of training drills was completed sometime between 11:30 and 11:45 AM. At this point, FF Souza had asked Lt. Aguiar if they were going to break for lunch. Lt. Aguiar asked Capt. Gomes if the drill was complete, and when he was told that it was not complete yet, Lt. Aguiar then asked if they were going to break for lunch, to which Capt. Gomes replied that they were not going to break for lunch because he wanted the company to stay another forty-five (45) minutes or so and he had another drill scheduled for 1:00 PM that day with another company. (*Testimony of Appellant, Capt. Gomes & FF Souza*)
8. At this point, Capt. Gomes got annoyed and leaned into Lt. Aguiar and said: "You got to be shitting me, you are going to bitch about lunch? What if this was a fire?" Lt. Aguiar responded: "It's not a fire, it's a drill. Your brother used to say the same kind of thing." This last remark set off Capt. Gomes and who said: "Don't you ever f—ing mention my brother" and the argument "went down the tubes from there". At one point, Capt. Gomes told Lt. Aguiar that he could take a test to get to a level where he could make the changes he wanted in the department, he could quit, or he could "shut the f—k up." Cpt. Gomes relieved Lt. Aguiar from duty and radioed to fire alarm that Engine 5 was returning and had refused to participate in the drill. Capt. Gomes then walked away, towards the area where Engine 8 was setting up for the drill. (*Testimony of Appellant & Capt. Gomes*)
9. Lt. Aguiar walked back over to Captain Gomes, who then was standing alongside Lt. Tetreault, and made a hand gesture and another profane comment about Capt. Gomes and his brother, Chief Gomes. Capt. Gomes turned to Lt. Tetreault and said: "Did you hear that. You are my witness" to which Lt. Tetreault responded: "Yes, unfortunately I did." Lt.

Tetreault found the behavior of both Capt. Gomes and Lt. Aguiar inappropriate. (*Exh. 24; Testimony of Capt. Gomes & Lt. Tetreault*)

10. Dep. Chief Frates responded to the scene of the training exercise to find Engine 5 at the top of the street, with Lt. Aguiar and FF Jesus outside the apparatus. Lt. Aguiar reported that FF Jesus was being insubordinate by refusing to drive Engine 5. FF Jesus had told Lt. Aguiar that “nobody wants to work with you” and “you are not as smart as you think you are.” Lt. Aguiar admitted he had “disrespected” FF Jesus but then offered to “put the incident behind him and forget it ever happened if you are.” FF Jesus responded: “I don’t kiss anyone’s ass, write me up.” Dist. Chief Frates then transported FF Jesus back to the fire house. As a result of this incident, FF Jesus was transferred from Lt. Aguiar’s crew to another temporary assignment. (*Exhs. 16 & 18; Testimony of Appellant, Dist. Chief Frates & FF Jesus*)

11. Capt. Gomes acknowledged that, as the senior ranking of the two officers involved, he took more responsibility for the altercation getting out of hand because it was his duty to “diffuse” the situation. He also acknowledged his prior departmental history of verbal altercations and discipline following arguments with a superior officer. For his failure to act appropriately in the August 5, 2011 verbal altercation with Lt. Aguiar, Capt. Gomes was docked eight hours pay. (*Testimony of Chief Gomes & Capt. Gomes*)

12. On August 11, 2011, at the direction of Chief Gomes, both Dist. Chief Frates and Lt. Tetreault submitted a memorandum of the events of August 5, 2011. Neither Lt. Aguiar nor FF Souza were interviewed or asked to file a report, although FF Souza had told Capt. Gomes at the scene that he was the one who had asked about lunch and Lt. Aguiar had been following up on his behalf. (*Exhs. 18 & 24; Testimony of FF Souza*)

### Wearing Unauthorized Attire On Duty

13. Acting Dep. Chief Coderre had issued a memorandum to all NBFD members, on or about May 23, 2011, to inform them that only uniform shirts with the NBFD logo that are approved by the Fire Chief shall be worn on duty. The main concern was the use of polyester/nylon shirts that could present a safety issue, with a secondary desire to promote uniformity in attire. (*Testimony of Dep. Chief Coderre; Exh. 21*)
14. On May 31, 2011, Acting Dep. Chief Coderre ordered Dist. Chief Kruger to determine if Lt. Aguiar was in proper fire department attire while on duty. That morning, he went to Station 5 where Lt. Aguiar was working and observed him to be appropriately attired, save that he was wearing an unapproved plain blue “T-shirt” such as available in a “3 pak at Walmart.” Dist. Chief Kruger ordered Lt. Aguiar to arrive for duty wearing the proper uniform. On June 2, 2011, Dist. Chief Kruger observed that Lt. Aguiar had complied with the order and was properly attired that day. Acting Dep. Chief Coderre considered the matter closed “at that point.” (*Exh.22; Testimony of Dep. Chief Coderre, Dist. Chief Kruger*)
15. On August 10, 2011, at the direction of Chief Gomes, Dist. Chief Kruger submitted a memorandum describing his above-described visits to Station 5 on May 31, 2011 and June 2, 2011 to observe Lt. Aguiar’s attire. (*Exh. 22*)

### The Leroy Street “No Signal” Fire

16. According to Chief Gomes, a “no signal” fire is used in the NBFD to describe “a fire or an incident where we do not receive an alarm or a request for aid until after the fire has been extinguished.” No specific written SOP, training or other policy clearly prescribes the procedure to be followed by fire company officers regarding a citizen who comes to a fire station to obtain paperwork needed to file an insurance claim about a “no signal” fire that they report had already been put out on their own. Each case requires a judgment call by the

officer in charge of the station. (*Exhs. 3 through 8 & 32; Testimony of Chief Gomes, Dep. Chief Coderre, Dist. Chief Frates, Dist. Chief Kruger, Lt. Charbonneau, Ret. Lt. Allen*).

17. Firefighters are trained to detect whether a fire has been extinguished and not to rely on the word of a civilian that a fire has been extinguished. As a matter of common sense, when a lay member of the public has reported a fire that has been extinguished, it should not be assumed that it was, in fact, totally extinguished until proven otherwise by NBFD personnel qualified to ensure that the fire is, in fact, out and does not pose a risk of reigniting. (*Testimony of Chief Gomes, Dist. Chief Frates & Lt. Charbonneau*)

18. Under NBFD's Standard Operating Procedures ("SOP") number 28.11, upon "notification of an emergency from the public", the member on Desk Patrol at the station must notify the signal room and the OIC (officer in charge). (*Exh. 6; Testimony of Chief Gomes & Dep. Chief Coderre*)

19. In the early morning of August 11, 2011, a kitchen fire occurred at 1027 Leroy Street. The homeowner and his son extinguished the fire and then drove to Station 5. The homeowner's sole purpose for visiting Station 5 was to procure a fire report for insurance purposes. The homeowner had not called the fire department to respond. Lt. Aguiar directed the homeowner to the Fire Prevention Bureau and gave the homeowner the phone number to call. (*Exhs. 1B, 10, 11, 14, 17; Testimony of Appellant & Lt. Charbonneau*)

20. At approximately 9:30 AM the same morning, immediately after speaking with Lt. Aguiar, the homeowner contacted the Fire Prevention Bureau, which is the bureau that investigates fires and handles the preparation of reports for insurance purposes. Four hours later, at approximately 1:30 PM, Lt. Charbonneau, the officer on duty at Fire Prevention, responded to the call. Lt. Charbonneau did not alert the signal room about the no signal fire. He inspected the premises and took photographs to document the damage caused by the fire and

smoke. Due to the extent of the damage, Lt. Charbonneau contacted Lieutenant Marques, who had more experience with the Fire Prevention Bureau. Upon his arrival at the scene, Lt. Marques decided that the district chief should be contacted. Lt. Charbonneau prepared a report of the incident. (*Exhs.1B, 10, 11, 14 & 17; Testimony of Lt. Charbonneau*)

21. The homeowner found Lt. Aguiar and the other firefighters at the station to be helpful and noted that Lt. Aguiar also took down his name and number in case he needed to be contacted later for any reason. The homeowner was upset, however, that it took Fire Prevention four hours to respond to his home after having contacted them on August 5, 2011. (*Exh.14*)
22. When asked at the Commission hearing why Lt. Aguiar took a civilian's word that he had only a small "surface" fire that had been extinguished, Mr. Aguiar said he didn't have "a good answer" but, at the time, it seemed like the right decision. (*Testimony of Appellant*)
23. After learning about the Aviation Way incident and the Leroy Street no signal fire, Chief Gomes personally conducted a departmental investigation of Lt. Aguiar's performance. In addition to speaking to Lt. Charbonneau and requesting the reports from Dist. Chief Kruger and Capt. Eugenio described above, Chief Gomes personally solicited further reports from Dep. Chief Frates, FF Coffey and FF Jesus and, which he received on August 19, 2011, August 26, 2011 and August 28, 2011, respectively. He spoke with several firefighters and members of the New Bedford Emergency Medical Services (EMS) department. On or about September 13, 2011, he personally interviewed the homeowner involved in the no signal fire. (*Exhs.16, 19, 20, 29; Testimony of Appellant, Chief Gomes, FF Jesus & FF Coffey*)
24. Chief Gomes gave Lt. Charbonneau a verbal reprimand for failing to dispatch fire apparatus to the scene after receiving the call from the homeowner. (*Testimony of Dep. Chief Coderre*)

25. On or about September 12, 2011, Chief Gomes relieved Lt. Aguiar of duty and ordered him placed on administrative leave pending further investigation of his performance. (*Exh.12; Testimony of Chief Gomes*)

The Fire at 188 Sawyer Street

26. The memoranda submitted by FF Jesus and FF Coffey made reference to a prior incident that they identified as the fire on “Bonneau Ct” in the “area of Bellevue Ave and Bentley Street”. The incident to which these comments referred was a structure fire at 188 Sawyer Street (Incident No.11-4071). (*Exhs. 13a & 13b, 16 & 20*)

27. Lt. Aguiar’s company, Engine 5, was one of the companies dispatched to the fire scene, but was not one of the initial companies called. Lt. Aguiar was initially directed to position his apparatus at the intersection of “Bellevue and Beetle”, which was one block away from the fire to hook up to a hydrant and supply water to support Ladder 4. While en-route, Lt. Aguiar encountered traffic while proceeding on Bellevue Ave. which delayed his arrival. Lt. Aguiar was informed that the fire had been “knocked down” and that he was authorized (for safety reasons) to slow down to a “code yellow” (as opposed to proceeding at full speed) and “never mind to hook up to the hydrant, come up here to Engine 1”. When Engine 5 arrived at the corner of Bellevue and Sawyer, the crew and Lt. Aguiar exited the apparatus, without his “airpak”, and sought out the incident commander on-scene to get orders on what his crew should do. FF Sousa positioned the apparatus a block further, at Bellevue and Beetle, as originally ordered. The senior incident commander on scene (Dist. Chief Frates) testified from his personal knowledge that Lt. Aguiar had been in direct face-to-face contact with him (as opposed to over the radio) for instructions as to where he and his company were needed and had done what was expected of him. (*Exhs 13a & .13b; Testimony of Appellant, Dist. Chief Frates & FF Sousa*)

28. On-scene orders are common at a fire scene to adjust to change rapidly and the full picture of what transpired is not always, and in the Bonneau fire situation is not, discerned solely in the transcript of radio transmissions, in part, because many decisions are made face-to-face by the incident commanders on scene and the radio is reserved for use only when essential. *(Testimony of Appellant, Dep. Chief Coddere, Dist. Chief Frates & FF Souza)*

Poor Recordkeeping

29. Among the other matters raised during Chief Gomes's investigation of Lt. Aguiar was the alleged neglect in supervising the "desk man's duty to make accurate entries in the incidentals book" (concerning supply deliveries and other sundry administrative matters that occurred during a shift) and reporting the required company training on the department's weekly training report. *(Exhs. 9 & 30; Testimony of Dist. Chief Frates)*

30. Capt. Eugenio had ultimate responsibility to ensure that the required paperwork was duly completed by the groups under his command, including Lt. Aguiar's company. He acknowledged that, for personal reasons, he had not paid careful attention to that duty which had led to excessive incomplete submissions and errors by a number of the groups. He reported in an e-mail on or about August 23, 2011 to Chief Gomes that he was "on the Lt. Aguiar situation", had met for over an hour with Lt. Aguiar and was "extremely encouraged" that the recordkeeping problems had been rectified. *(Exhs. 15 & 31; Testimony of Chief Gomes)*

31. For some reason, Capt. Eugenio's e-mail did not make it to Chief Gomes. When Capt. Eugenio discovered this oversight, on or about September 24, 2011, he wrote a letter to Chief Gomes explaining the snafu and stating that "before his [Lt. Aguiar's] current 'leave', he as well as all officers have been complying with my wishes and I have seen a great

improvement in the paperwork here at Station 5 as well as the reports that are submitted.”

*(Exhs.15 & 31; Testimony of Chief Gomes )*

32. The paperwork deficiency was not disputed. Although all training may have not occurred weekly as required, the evidence does not establish how much or how little training Lt. Aguiar’s company did conduct during 2011 or the extent to which such training was just improperly documented as compared to other NBFD companies. *(Exh. 30; Testimony of Appellant, Chief Gomes, Dist. Chief Frates, FF Spoor, FF Sousa, FF Coffey & FF Jesus)*

Failure to Provide Proper Care On Medical Calls

33. Unlike many municipalities that provide fire and emergency medical services through an integrated department staffed with certified Paramedics, New Bedford maintains a separate EMS Department, distinct from the NBFD. When Lt. Aguiar began his employment with the NBFD, the department rarely responded to medical calls. Fire apparatus were first regularly dispatched on medical calls approximately ten (10) to twelve (12) years into Lt. Aguiar’s career. The police department also responds to some medical emergency calls. There have been recurring inter-department issues and conflicts between EMS and fire department personnel who respond to medical emergencies. New Bedford provides no specific city-wide policies that provide guidance for sorting out these recurring issues.

*(Testimony of Appellant, FF Silva, FF Jesus, FF Coffey & Ret. Lt. Allen; Ret. FF Allen)*

34. On medical calls, the firefighter first responder is responsible to assess the patient and provides minimal treatment of the patient at a “first responder” level, which is a lesser level of expertise than a certified EMT or Paramedic provides. The fire apparatus often arrived on scene of a medical emergency before the EMS Ambulance, because the fire station was usually closer to the scene than the centrally dispatched ambulance. *(Exh.7; Testimony of Appellant, FF Silva & Ret. Lt. Allen)*

35. Once the ambulance crew arrives on scene, the EMS Department Paramedic assumes responsibility for all aspects of medical care. The fire department crew remains on scene as needed to assist with moving or transporting a patient. The senior fire officer is “incident commander” and responsible to provide direction, as needed, to the crew and give the order for his crew to clear the scene after consultation with the EMS personnel to determine what is in the best interest of the patient. (*Exh.7; Testimony of Appellant, Chief Gomes, FF Silva, FF Coffey, Paramedic Isherwood &, Ret. Lt. Allen*)
36. When responding to a medical call, there is no exemption for lieutenants participating in the role of a first responder. However, a lieutenant may have a crew member, such as FF Coffey, with an EMT/Intermediate certification, and it is often smart to defer to that firefighter for direct patient care, as they have been specifically trained to respond to medical emergency situations. (*Testimony of Appellant, FF Silva, FF Coffey, Ret. Lt. James Allen, Ret. FF Allen*)
37. When responding to medical calls, some lieutenants are “hands on”, while others take a more supervisory approach. Some lieutenants participate directly in patient care and others do not. Lt. Aguiar generally did “what he needed to do”, which included assessment of the scene, assigning the crew to responsibilities as required, interacting with the patient’s family and the public. Direct patient care usually called for two, and, occasionally, all three crew members. While Lt. Aguiar assisted in providing “hands on” care when needed, he did so rarely, more typically standing nearby or conferring with family members, while the crew administered the required care. (*Testimony of Appellant, FF Silva, FF Coffey, FF Pimental, FF Cabral, FF Souza, Paramedic Isherwood, Ret. Lt. Allen, Ret. FF Allen*)
38. On May 4, 2006, New Bedford EMS Department Paramedic Carrita responded to a call involving a patient with chest pain to find Lt. Aguiar walking the patient out the door of the

house and down the steps. She approached the patient and assisted him onto a stretcher. The next day, Paramedic Carrita prepared an Incident Report on this call because she believed Lt. Aguiar's behavior had been the "opposite of helpful". Her report does not cite any more specific concern, no action was taken as a result of the report and the full circumstances were not disclosed that would be necessary to know whether Lt. Aguiar's action would be considered inappropriate. This is the only documented report concerning Lt. Aguiar's performance at medical calls introduced into evidence. (*Exh. 23; Testimony of Paramedic Carrita & Ret. Lt. Allen*)

39. Anecdotal evidence of examples of Lt. Aguiar's conduct at medical calls over the years was proffered through Chief Gomes, FF Jesus, FF Coffey and another New Bedford EMS Department Paramedic Ralph Isherwood. The date(s) of these other incidents was not established and, save for the 2006 incident described above, no authenticated documentary evidence was produced to support the oral testimony which involved recollections that, at times, Lt. Aguiar was anxious to get apparatus and crew back to the station, would leave the crew with a patient and would not watch them, or would require all of the crew (even the "chauffer", or driver) to participate directly in the hands-on care of the patient but not do so himself. This evidence did not prove that any of these incidents resulted in any breach of treatment SOPs or first responder protocols or that Lt. Aguiar had failed to duly exercise his responsibility and authority as the first responder "incident commander." (*Exhs. 7, 16 & 20; Testimony of Appellant, Chief Gomes, Dist. Chief Frates, FF Silva, FF Jesus, FF Pimental, FF Coffey, FF Souza, Paramedic Isherwood & Ret. Lt. Allen, Ret. FF Allen*)

#### Other Infractions

40. Another incident of alleged misconduct by Lt. Aguiar that was raised by FF Coffey's memorandum to Chief Gomes involved Lt. Aguiar's use of personal leave to avoid

responding to a General Alarm Fire that occurred during the afternoon of July 10, 2011. This situation was based on discrepancies found in the department's personnel records and information provided by FF Coffey that Lt. Aguiar was not seen that day until after the company had returned from the fire. (*Exh.33; Testimony of FF Coffey*)

41. Lt. Aguiar had, in fact, taken ten hours of personal leave on July 10, 2011, commencing at 8:00 am and reported to duty at the station at approximately 6 pm. His "senior man", FF Sousa had been left in charge and duly served as the acting company commander of Engine 5 during the fire incident. No witness remembered when the fire was extinguished. No evidence established that Lt. Aguiar knowingly extended his the personal leave to avoid responding to a fire. The record discrepancy that seemed to imply otherwise turned out to be a scrivener's mistake on FF Sousa's part, for which both he and Lt. Aguiar acknowledged responsibility. (*Exh.33; Testimony of Appellant, Dist. Chief Frates & FF Sousa*)

42. In their memoranda to Chief Gomes, FF Coffey and FF Jesus further reported that Lt. Aguiar had, on one or more occasions, left duty before the replacement officer had reported, leaving the station out of service with only two firefighters on duty. FF Silva remembered one occasion but could not recall the specifics. Dep. Chief Frates remembered that two other firefighters had made a similar complaint to him. Neither the date(s) of the incident(s) nor the particular circumstances were provided. (*Exhs. 16 & 20; Testimony of Dep. Chief Frates, FF Coffey, FF Jesus & FF Silva*)

#### Interpersonal Conflict with Subordinates

43. Station 5 is the northern most station in the NBFD and is known as a "quiet" assignment, with fewer calls for service than other stations located in the more populated inner city area of New Bedford. In fact, during Lt. Aguiar's final tenure there in 2010-2011, the Sawyer Street fire was the only major fire to which Lt. Aguiar's company at Station 5 was called to

respond, and that was as a back-up. Thus, the assignment is coveted by senior firefighters to finish out one's career, while junior firefighters tend to prefer assignments that provide more activity. In particular, FF Jesus waited years before he was able to successfully bid to get assigned to Station 5, only to be 'bumped' to another station in 2009 by another senior firefighter in a reduction in force, and win back what FF Jesus considered "his slot" at Station 5 in September 2010. (*Testimony of Appellant, FF Jesus, FF Silva & FF Cabral*)

44. Both FF Coffey and FF Jesus expressed a clear disdain for working under Lt. Aguiar. FF Coffey did not believe that Lt. Aguiar had the "ability to lead his crew at medical or fire calls." FF Jesus had no "respect" for Lt. Aguiar and "did not trust him." (*Exh. 16; Testimony of FF Coffey & FF Jesus*)

45. Both FF Coffey and FF Jesus "bid" onto the work group (Group A) at Station 5 and knew that Lt. Aguiar was the commanding officer of that work group at Station 5. (*Testimony of FF Jesus, FF Coffey & FF Cabral*)

46. During the period that FF Jesus served as a member of Lt. Aguiar's crew (from approximately September 2010 until his temporary transfer in August 2011), FF Jesus joined the marine unit along with three (3) other members of the crew: Lt. Aguiar, FF Silva, and FF Souza. Lt. Aguiar and FF Souza later quit the unit. When FF Jesus thereafter attended marine unit training, which was required every few weeks, Lt. Aguiar complained to FF Jesus that the company was being left short-handed when he went "boating". FF Coffey also heard Lt. Aguiar making such comments about leaving the company shorthanded when FF Jesus left for marine duty. (*Exhs. 16 & 19; Testimony of Appellant, FF Jesus & FF Coffey*)

47. Lt. Aguiar also commented to FF Silva about taking time to attend to marine duty and leaving the crew short and FF Silva heard Lt. Aguiar's similar comments to FF Jesus, but FF Silva never took any of the comments as derogatory in nature. (*Testimony of FF Silva*)
48. At some time during 2010 or 2011, Lt. Aguiar expressed, while in the presence of FF Coffey and FF Jesus in the kitchen of Station 5, that he was uncomfortable about responding to "haz-mat" incidents, indicating that he had declined to respond in the past when he believed the risk was unacceptable and, in the future, he had would "have to assess the situation before he responded". Both firefighters took offense to this remark as it implied to them that he would send his crew to the scene "on their own" without him, but FF Coffey acknowledged that the comment could equally have implied that Lt. Aguiar meant he would be especially careful as a commanding officer before ordering others into a dangerous situation. (*Exh. 20; Testimony of FF Coffey & FF Jesus*)
49. The criticism expressed by FF Coffey and FF Jesus about Lt. Aguiar's abilities as an company commander were not shared by most of the other twenty or so other firefighters who worked under Lt. Aguiar. FF Souza, who worked under Lt. Aguiar during his last tour at Engine 5, held him in high esteem as an "intelligent, aggressive" officer and said he found it "insulting" that Lt. Aguiar was accused of such tactics as intentionally delaying a response to a fire scene. FF Cabral and FF Silva, who had worked under Lt. Aguiar when assigned to Engine 5 and prior, also complimented Lt. Aguiar's work ethic. (*Testimony of Appellant, FF Souza, FF Cabral, FF Silva & Ret. FF Allen*)

#### Termination Proceedings

50. In a letter dated December 12, 2011, to which were attached 236 pages of documents dating back to 2003, Chief Gomes provided written notice to Lt. Aguiar that he was contemplating his termination for Lt. Aguiar's failure to conduct himself in a manner consistent with the

expectations of an officer of the NBFD and for violations of the Standard Operating Procedures and Rules and Regulations of the Department. Lt. Aguiar was informed that a hearing on these charges would take place on December 19, 2011. (*Exhs.1A, 1B, 1C[ID] through 1J[ID]*)

51. At no time prior to writing the December 12, 2011 letter, did Chief Gomes notify Lt. Aguiar of the specific charges against him or seek to obtain his explanation for any of the incidents either by interviewing him or requesting that he submit a written response to any of the charges alleged against him. (*Testimony of Appellant & Chief Gomes*)

52. On January 3, 2012, Chief Gomes conducted the hearing to consider Lt. Aguiar's contemplated termination. On advice of counsel, Lt. Aguiar did not testify. (*Exh.2; Representation of Appellant's Counsel; Testimony of Chief Gomes*)

53. By letter dated January 4, 2012, Chief Gomes informed Lt. Aguiar that he was terminated from his position with the NBFD, effective January 5, 2012. (*Exh.2*)

54. The reasons for termination included:

- (1) "failure to use proper judgment" when presented with the no signal fire on Leroy Street on or about August 11, 2011;
- (2) failure to be "an active participant in providing care and assistance during medical calls";
- (3) "at many emergency scenes you allow your company to operate with minimal participation [from you] . . . "you have delayed your companies' participation or withdrawn it . . . and are compounded by your failure to comply with orders at emergency scenes" and "also have been conspicuously absent during major fires and Haz-Mat incidents";
- (4) failure to "ensure that the Department rules and regulations are followed" and "to ensure good order" and to "lead their company by setting an example", including, in particular, completing accurate reports and paperwork, and failure to conduct drills and inspections, and "you have abandoned your post without proper relief"; and
- (5) "conducted yourself in a disrespectful manner to superior officers on multiple occasions" and "inappropriate actions with subordinate members of your crew have resulted in a hostile work environment".

(*Ex. 2*)

## **CONCLUSION**

### **Summary**

The City of New Bedford has chosen a few minor ministerial errors and one isolated incident of intemperate behavior by Lt. Aguiar as the grounds to terminate his career as a NBFD fire officer without just cause. Chief Gomes's decision to discharge Lt. Aguiar was based, in significant part, on misinformation and, more troubling, upon his personal dislike for, and his subjective, unfavorable opinion of Lt. Aguiar, formed over a period of years which, despite Chief Gomes's assurances to the contrary, materially clouded his judgment about the severity of the relatively minor charges properly proved against Lt. Aguiar, none of which implicated core public safety concerns or involved conduct that could not have been remediated by lesser or no discipline, as was meted out to other officers similarly situated in most of the incidents in question. The termination will be modified to a suspension of 5 tours (110 hours) and Lt. Aguiar shall be entitled to reinstatement to his position as a NBFD Lieutenant.

### **Applicable Legal Standards**

A tenured civil service employee may be discharged for "just cause" after due notice and hearing upon written decision "which shall state fully and specifically the reasons therefore." G.L.c.31, §41. An employee aggrieved by the decision may appeal to the Commission. G.L.c.31, §43. Under Section 43, the appointing authority carries burden to prove to the Commission by a "preponderance of the evidence" that there was "just cause" for the action taken. *Id.* See, e.g., Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823 (2006); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., 726 N.E.2d 417 (2000). In performing its function:

. . .the commission does not view a snapshot of what was before the appointing authority . . . the commission hears evidence and finds facts anew. . . . [after] a hearing de novo upon all material evidence and . . . [t]here is no limitation of the evidence to that which was before the appointing officer. . . . For the commission, the question is . . . "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.”

Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003) (quoting Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983) (*emphasis added*)). See also Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823; Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 303-05, rev.den., 428 Mass.1102 (1997). See generally Villare v. North Reading, 8 MCSR 44, recons’d, 8 MCSR 53(1995) (de novo review by “disinterested” Commission in context of procedural due process).

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. It is also a basic tenet of the “merit principle” which governs Civil Service Law that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “separating employees whose inadequate performance cannot be corrected.” G.L.c.31,§1. G.L.c.31,

An action is “justified” if “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 must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003) (where live witnesses gave conflicting testimony at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing)

Section 43 also vests the Commission with authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated with “considerable discretion” in this regard, albeit “not without bounds”, so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. E.g., Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 600 (1996) and cases cited; Falmouth v. Civil Service Comm’n, 61 Mass.App.Ct. 796, 800 (2004); Faria v. Third Bristol Div., 14 Mass.App.Ct. 985, 987 (1982) (remanded for findings to support modification)

Applying these principles to this appeal, I conclude that the City has not met its burden of proof and did not have just cause to terminate Lt. Aguiar. A preponderance of the evidence shows that while a few of Lt. Aguiar’s mistakes can justify some level of discipline, due to the predisposition against him, the City did not have reasonable justification to terminate his employment.

### No Signal Fire

The first reason provided by the City for Lt. Aguiar's termination was failure to use proper judgment on August 11, 2011 when presented with the report of a "no signal" fire on Leroy Street. This incident led to Chief Gomes placing Lt. Aguiar on administrative leave where he remained for four (4) months until terminated without ever having been interviewed. After Lt. Aguiar directed the homeowner to the Fire Prevention Bureau, the homeowner spoke with Lt. Charbonneau and provided the same account of the kitchen fire and requested a report to submit his insurance claim. As Lt. Aguiar had done, Lt. Charbonneau saw no urgency that required call to the Signal Room and an apparatus dispatched. Instead, Lieutenant Charbonneau delayed until 1:30 PM to visit the scene of the kitchen fire.

No Nbfd policy or protocol specifically covers the situation, and all witnesses acknowledged that a "no signal" fire situation needed to be assessed on a case-by-case basis. Lt. Aguiar's instincts in handling the situation turned out to be correct. Nevertheless, Chief Gomes clearly has authority to determine, even in retrospect, that a fire apparatus should have been dispatched to Leroy Street as a matter of common sense and good judgment in that particular situation (although reasonable minds could differ, as dispatching a fire engine and crew of three or four officers is a judgment call). I find significant that the other equally culpable officer, Lt. Charbonneau, received only a written warning. I am persuaded that Chief Gomes pre-formed opinion about Lt. Aguiar prevented him from objectively considering that similar discipline also would be sufficient to remediate Lt. Aguiar's behavior as well, and insure it was not repeated.

### Failure to be an Active Participant on Medical Calls

The second reason provided by the City for Lt. Aguiar's termination was his alleged failure to be an active participant in providing care and assistance during medical calls. The City's argument implies that as a commander, Lt. Aguiar neglected his duties to provide direct patient

care and was too anxious to return with his crew and apparatus to the fire station after the New Bedford EMS Paramedics were on scene. The preponderance of the evidence does not establish these charges. Most of the evidence was anecdotal and related to matters that had occurred months, and in some cases, years in the past, and were not documented. The credible evidence established that Lt. Aguiar tended to follow a “supervisory” role, as opposed to “hands-on” role on medical calls adopted by other incident commanders, but no credible evidence showed that either approach was a violation of any known NBFD rule or practice. Indeed, most witnesses testified that other lieutenants have followed the same practice for years with full concurrence of NBFD command staff. Especially when a member of the fire crew happened to have specialized medical training, it is not fair to judge the performance of an incident commander in handling the role of first responder without a much clearer picture of the facts and circumstances of each particular situation, especially when the incidents were never presented as an issue at the time they occurred, than NBFD showed in this case.

The charge of alleged premature departure from the scene of a medical emergency was, also, largely based on anecdotal recollections over a two year period, mainly those of FFs Coffey and Jesus, with no clear reference as to timeframe and no record that the matter was ever documented as an issue at the time. According to Standard Operating Procedure (“SOP”) #30 – Responding to Medical Emergencies, 30.05: “The decision for Fire Dept. personnel to clear the scene remains with the highest-ranking fire officer after consulting with EMS to determine if [their] assistance is still necessary.” (Ex. 8). Under SOP 30.07, “[u]nder normal circumstances it is the responsibility of EMS to remove the patient,” though fire department personnel may be required to assist in carrying obese patients or when the patient’s condition is rapidly deteriorating. If the situation requires, fire personnel will also assist in transporting the patient to the hospital. (Ex. 8, SOP 30.08) The credible evidence from Lt. Aguiar, corroborated by

testimony from several of his crew persuades me that, while Lt. Aguiar may have been rightly anxious to get his equipment and crew back to the fire station to be ready to respond to another call for service, he never violated any specific SOP or left a medical scene without clearing with the EMS personnel.

### *Lack of Leadership*

The third reason provided by the City for Lt. Aguiar's termination is his alleged lack of leadership at fire scenes that "allowed your company to operate with minimal participation from its Officer", that he "delayed" the company's participation "compounded by your failure to comply with orders" and by being "conspicuously absent during major fires". This charge became problematic when it became clear that, save for the Sawyer Street fire, all of the other "numerous" incidents involved alleged issues at fire scenes some years in the past. Even if there were some truth to these stale charges, which I cannot find to be the case based on the little detail provided (mainly by the only two firefighters, Coffey and Jesus, whose particular disdain for Lt. Aguiar was not shared by others) and the clear and convincing testimony of several witnesses that Lt. Aguiar was never known to shirk his duties as company commander. Indeed, a company commander is one of the two men (the other being the "pipe man") required to lead the fire hose into a burning structure and there was not one case in which it was alleged he did not do so. One other firefighter on Lt. Aguiar's crew was "insulted" that Lt. Aguiar would be accused of delaying his company's response to an emergency, and, it not credible that he did so, even once, let alone repeatedly, without ever having been called on it before this investigation.

As to the Sawyer Street fire, the "orders" that Lt. Aguiar disobeyed related to the alleged placement of Engine 5 one block away from where he was told to go and apparently not leading his crew in fighting the fire, conclusions based on a mistaken interpretation of the radio transmission of the incident and the nature of the crew's change in assignment (reporting after

the fire had been “knocked down”), all as proved by the clear and consistent testimony of the on-scene witnesses – Dep. Frates, FF Souza (the chauffer) and Lt. Aguiar. Neither incident commander made any contemporaneous reports of misconduct during the Sawyer Street fire.

The evidence offered on Lt. Aguiar’s “absence” from a fire was testimony from FF Coffey that Lt. Aguiar was on personal leave when a mill fire and that he did not see Lt. Aguiar until the company returned from the fire. In July 2011, a such a mill fire did occur that began in the afternoon of a day that Lt. Aguiar was on personal leave from 8:00 am to 6:00 pm and returned to the station two hours before the end of his shift. FF Souza assumed the role of senior man in Lt. Aguiar’s place during his allowed personal leave and had completed the paperwork for the day in a way that suggested that Lt. Aguiar had taken off the full shift that implied he was waiting at the station while Engine 5 was still fighting the fire, but that turned out to be a mistake on FF Souza’s part in filling out the paperwork which Lt. Aguiar (or, apparently, his Captain) failed to catch. They both acknowledged the administrative error when brought to their attention at the Commission hearing. The weight of the evidence does not suggest that there was anything improper about Lt. Aguiar’s personal leave. It should also be mentioned that at no point during his investigation did Chief Gomes question Lt. Aguiar or FF Souza about the issue.

Similarly, FF Jesus’s claims that Lt. Aguiar had bragged about having avoided having to respond to a “haz-mat” situation in the past and would consider doing it again, are based on sketchy information and characterization of a casual conversation that allegedly took place on some unspecified date and related to the “Aerovox” and/or ABC “haz-mat” incidents, both of which had been addressed by former Chief Leger and were closed long ago. As noted above, there was no evidence that Lt. Aguiar had subsequently delayed, avoided or neglected his duty at any incident scene under Chief Gomes while the company commander of Engine 5. Accordingly, the City showed no justification to reopen these prior matters.

### *Failure to Perform Administrative Duties As Company Commander*

The fourth reason provided by the City for Lt. Aguiar's termination is his alleged failure to properly perform his administrative duties as the Engine 5 company commander. This charge principally concerned a lack of "incidental" reports and training records. During 2010 and 2011, Dist. Chief Frates was notified of deficiencies in paperwork from Lt. Aguiar's company by then-Dist. Chief Gomes. Certain information was not being recorded and training logs were not being completed. As to the "incidental reports", Capt. Eugenio was directed to address the matter and worked with Lt. Aguiar to rectify the deficiencies. Captain Eugenio acknowledged that his own lack of oversight or review of the paperwork submitted by Lt. Aguiar was well as other lieutenants under his command) had been lacking recently due to personal problems he was experiencing and contributed to the problem. As of September 2011, he had rectified the situation. The City did not rebut this evidence and there was no basis to impose discipline on Lt. Aguiar for his administrative deficiencies which, by the time he was placed on administrative leave, had been fully rectified through the initiative of Capt. Eugenio.

The training records are a bit more problematic. Companies are expected to conduct training exercises, which may involve either hands-on drills or study, on a regular basis, except Sundays, unless prevented by weather or a call for service. The evidence demonstrated that the training records for Lt. Aguiar's work group "A" reported little, if any, training had been conducted over a substantial period of time that Lt. Aguiar was in charge. I do infer that, in part, the lack of a record of training did not necessarily prove that training did not actually occur. However, accurate training records are important for their own sake, in that the insurance rates that insurance companies charge takes into account the level of training that the fire department personnel have completed. Some responsibility can be laid at the feet of the company fire Captain who signs off on the training reports, as well as his superiors to whom the

reports are submitted, all of whom apparently did not pick up the discrepancy until Chief Gomes personally went through Engine 5's training logs line by line during his investigation of Lt. Aguiar. While the evidence is not sufficient to conclude that Lt. Aguiar failed to conduct training on a regular basis, he plainly was neglectful in completing the paperwork required of him. Since the records are critical for insurance reporting purposes and cannot be reconstructed after the fact, some discipline was warranted for this neglect.

As to the charge of abandoning his post without proper relief, leaving the company short of the required three-man minimum and, therefore, "out of service", the City provided little proof of any specific instance of doing so. The evidence of this alleged misconduct was far too vague as to substance or timeframe to be credited or to afford Lt. Aguiar any reasonable basis on which to defend the charge. Lt. Aguiar denied ever having left the station shorthanded and I find no reason to conclude otherwise.

#### *Disrespectful Conduct*

The final reason provided by the City for Lt. Aguiar's termination was his alleged disrespectful conduct towards superior officers and inappropriate behavior towards subordinate members of his crew. This charge is based primarily on the Aviation Way altercation with Chief Gomes's brother, Capt. Gomes, on August 5, 2011 and alleged on-going harassment of FF Jesus on that same day and prior disrespectful conduct over FF Jesus's absences for marine training. Lt. Aguiar's behavior toward Capt. Gomes was clearly insubordinate. While I credit Lt. Aguiar's version of the incident and find that he was initially merely seeking to secure a lunch break for his crew and was provoked to anger by Capt. Gomes's initial epithets directed to Lt. Aguiar, both men acted unprofessionally and deserved to be disciplined. The discipline meted out, however, was not even-handed. Captain Gomes was docked one day's pay, whereas Mr. Aguiar was placed on administrative leave, put under the microscope in a wide ranging

investigation personally handled by Chief Gomes, and eventually terminated. I do not find that Lt. Aguiar's criticism of FF Jesus' leaving the crew short-handed by taking time for marine training, which Lt. Aguiar referred to as "going boating", was disrespectful conduct. I find that such remarks were benign expressions of Lt. Aguiar's frustration about the circumstances. I can find no justification to conclude that his behavior in this regard was intended to give offense or crossed the line into disrespect. No one, other than FF Jesus, seemed to take offense to these remarks. In fact, FF Jesus' conduct at the Aviation Way incident, which resulted in Dep. Chief Frates taking him back to Station 5 and temporarily transferring him to another assignment implies that FF Jesus "disrespected" Lt. Aguiar far more than vice-versa.

#### Modification of Discipline

Having found some basis for discipline of Lt. Aguiar, but also having found that the facts established at the Commission hearing differ from those upon which the City relied in reaching the decision to terminate Lt. Aguiar from his position, the Commission must consider whether to modify the discipline imposed in the exercise of the Commission's discretion. This case presents a compelling reason to do so. Only minor infractions were proved and the disparate treatment of other similarly situated personnel, together with the clear evidence that Chief Gomes's investigation and decision was improperly influenced by his own predisposition to see Lt. Aguiar terminated for perceptions that reach back years in time and that he blended with current events in such a way as to make it impossible to conduct an impartial assessment of the relevant current evidence of fitness to perform his duties or provide Lt. Aguiar a fair opportunity to defend himself against them. In the circumstances of this case, the City has strayed so far from the accepted rules of progressive discipline under basic merit principles of civil service law that a modification to no discipline would be warranted. However, in order to assure proper remediation of the obligation to keep and maintain proper administrative records

of all required training, and to emphasize the importance of this particular administrative requirement, a four-tour (96 hour) suspension is appropriate for that offense. A one-tour (24 hour) suspension will be imposed for Lt. Aguiar's insubordinate behavior at the Aviation Way training incident. In reaching this conclusion, I have considered Lt. Aguiar's prior discipline and I have not overlooked the fact that Lt. Aguiar did not testify at the appointing authority level hearing. While done on advice of counsel and understandable given the hundreds of pages of material covering a decade of his career that made it virtually impossible to mount a full defense against what he clearly perceived was a deck stacked against him, the law requires that an adverse inference may be drawn from that failure to testify. Lt. Aguiar did testify at the Commission hearing, however, and his demeanor and testimony carried the ring of truth and honesty. I conclude, therefore, that, in the circumstances of this case, while I have taken his failure to testify at the hearing before Chief Gomes into account as the law requires, that fact does not warrant a different decision in this case.

For the foregoing reasons, the appeal of David Aguiar, under Docket Number D1-12-19 is hereby *allowed in part*. His termination is modified to suspension as set forth above and he otherwise shall be reinstated to his position as Fire Lieutenant without loss of pay or benefits.

Civil Service Commission

---

Paul M. Stein  
Commissioner

By 3-1 vote of the Civil Service Commission (Bowman, Chairman [AYE]; Ittleman [NO]\*, McDowell [AYE], and Stein [AYE], Commissioners) on March 20, 2014.

\*Commissioner Ittleman voted NO because, although she believed that modified discipline was appropriate, a 5-tour suspension was not severe enough.

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:

William M. Straus, Esq. (for the Appellant)

Jane Medeiros Friedman, Esq. (for the Respondent)