

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

SANDRA ENCARNACION,
Appellant

v.

D1-07-236

MERIT RATING BOARD,
Respondent

Appellant's Attorney:

John J. Mackin, Jr., Esq.
National Association of
Government Employees
159 Burgin Parkway
Quincy, MA 02169

Respondent's Attorney:

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Commissioner:

John E. Taylor

DECISION

Pursuant to the provisions of G.L. c. 31, §§ 42 and 43, the Appellant, Sandra Encarnacion (hereinafter "Encarnacion" or "Appellant"), is appealing the decision of the Merit Rating Board (hereinafter "MRB" or "Appointing Authority") to terminate her from her position as an EDP Operator III. The appeal was timely filed with the Civil Service Commission (hereinafter "Commission") on July 5, 2007. A pre-hearing conference was conducted on September 20, 2007 and a full hearing was held over the course of two days on April 24, 2008 and May 22, 2008 at the offices of the Commission. As there was no request for this to be a public hearing,

the hearing was declared private. Four (4) tapes were made of the hearing. Both parties submitted post-hearing briefs.

FINDINGS OF FACT:

Twenty-nine (29) exhibits were accepted into evidence during the hearing. Exhibits 27-29 (submitted by the Appellant) are impounded as they relate to medical records of the Appellant.

Based upon the documents entered into evidence and the testimony of:

For the Merit Rating Board:

- Richard Hill, Assistant Director of Operations, Merit Relations Board;
- Denise LaChance, Team Leader, Citation Processing, Merit Relations Board;
- Florence MacQuarrie, Human Resources Manager, Merit Relations Board;

For the Appellant:

- Sandra Encarnacion, Appellant

I make the following findings of fact:

1. The Appellant, Sandra Encarnacion, was employed by the MRB from 1997 until her termination in 2007. She was an EDP Operator II until her promotion in 2001 to EDP Operator III. (Testimony of Appellant and Hill; Exhibit 3)
2. The Appellant's primary responsibility as an EDP Entry Operator III was to apply via a manual entry process, the information contained on 1,100 motor vehicle violation citation documents into a computer database, with a 1% or less weekly error rate. (Exhibit 14; Testimony of Hill)
3. From 1997 to 2003, the Appellant's work performance was excellent. (Testimony of Denise LaChance)

4. Denise LaChance testified that she is employed by the MRB as a Team Leader in the Citation Processing Unit. She has been employed by the MRB for approximately seventeen and a half (17.5) years. As a Team Leader, she, among other things, monitors the work flow and error rates of the Data Entry Operators. She was the Appellant's immediate supervisor since the Appellant was hired by the MRB. (Testimony LaChance; Exhibits 8–12)
5. On or about March 26, 2003, the Appellant started to exhibit what Ms. LaChance characterized as unusual behavior patterns, including an increase in her error rate and a distrust of her co-workers. (Testimony LaChance; Exhibit 14)
6. In March 2003, at a meeting with Director Mary Ann Mulhall, Richard Hill, Citation Processing Supervisor Linda Childs, and Denise LaChance, Ms. LaChance testified that the Appellant made a number of claims, including her belief that her co-workers knew her password, were talking about her, and did not want her on their team. She also claimed that her increased error rate was a result of her co-workers using her password. Denise LaChance assured the Appellant that her concerns were unfounded, but agreed to change the Appellant's password. Ms LaChance and an employee from the Quality Control Unit also reviewed the Appellant's errors with her. (Testimony of LaChance; Exhibit 14)
7. In May 2003, the Appellant claimed that someone had a key to her desk and was going through it and taking out papers. At another point that month, the Appellant also requested a printer on her desk because she thought people were throwing away items she had printed. She also requested that her seat be moved because it was too noisy. The MRB moved the Appellant's work location, but was unable to provide her with her own printer. (Testimony of LaChance; Exhibit 14)

8. In January 2004, nineteen batch envelopes were missing. Denise LaChance looked for the missing batches until 5:15 p.m. that day. The next morning, the Appellant stated that she found the missing batches on her desk with a note that stated, "All Yours, with all ours Love or Hate D ..." The origin of the note was not determined because there were no witnesses. (Testimony of LaChance; Exhibit 14)
9. In August 2004, the Appellant began to have an extreme number of "error corrections." Specifically, the Appellant would enter the citation data, then post it to the ALARS database without first checking her work. She would then display the citation using the MRB's UMVI screen (a traffic citation inquiry-only screen, which displays the citation information that was applied to the violator's driving record), screen-print it, make a photocopy of the citation document, then bring it to Denise LaChance for correction. This is contrary to MRB policy which dictates that the citation data should be checked for errors before it is applied to the system. (Testimony of LaChance; Exhibit 14)
10. On December 6, 2004, the Appellant received a verbal warning for hoarding batches and concealing batches in a small safe she kept at her desk. (Testimony of LaChance; Exhibit 14)
11. In 2005, Ms. LaChance noted on the Appellant's performance evaluation that the Appellant had little or no confidence in her judgment when entering citations. Ms. LaChance also noted that the Appellant had been wasting time performing MVIs and photocopying citations. (Testimony of LaChance; Exhibit 10)
12. In November 2005, the appellant was again spoken to about checking the ALARS screen before hitting the "PF-12" key and entering the data onto the system. She was told that this

would allow her to stop doing MVIs after she posts the citations to a person's driving record.

(Testimony of LaChance; Exhibit 14)

13. On March 6, 2006, the Appellant met with Denise LaChance, Linda Childs and her Union Steward. At this meeting, the Appellant made a number of claims, some of which went back several years, including that her co-workers were talking about her, that someone switched the wires on her computer, and that three co-workers were plotting to kill her, prompting the Appellant to forego putting any food in the employee refrigerator. (Testimony of LaChance; Exhibit 14)
14. Ms. LaChance and Linda Childs offered to allow the Appellant to switch teams, to move her seat further away from, or closer to, her co-workers, but the Appellant felt that nothing would help. They all agreed to have follow-up meetings every two weeks. (Testimony LaChance; Exhibit 14)
15. At a follow-up meeting on March 28, 2006 with the Appellant, Denise LaChance, Linda Childs, and the Appellant's Union Steward, the Appellant stated that she felt better and that no one was talking about her. (Testimony of LaChance)
16. In April 2006, Ms. LaChance again spoke to the Appellant about having multiple in-house error corrections, 22 in all. According to Ms. LaChance, the Appellant stated that the coding on the citations had been awful and this was why she had so many corrections. Upon reviewing the matter, Ms. LaChance determined that there had only been one coding error. Ms. LaChance had to again speak to the appellant about the same issue a few days later and she again told the Appellant to check the screen before pressing PF12 to eliminate most of her error corrections. (Testimony of LaChance; Exhibit 14)

17. At a meeting in May 2006, the Appellant stated that she was still not comfortable putting food in the refrigerator, that her supervisors were watching her every move, and that the coders were deliberately making coding errors to cause her to make errors. At this meeting, Ms. Childs explained to the Appellant that it would be not be possible for coders to know which batch envelopes she would be working on. The Appellant was not convinced and said that she did not want to have anymore meetings. (Testimony of LaChance; Exhibit 14)
18. Also in May 2006, Ms. LaChance observed that the Appellant had recoded a citation in red ink with the wrong code. The Appellant was instructed not to recode citations and to bring any coding issues to her supervisor's attention. (Testimony of LaChance; Exhibit 14)
19. In May and June 2006, the Appellant received verbal warnings for numerous error corrections and not doing the necessary research to post a citation accurately to a person's driving history record, in addition to a verbal warning for hoarding batches. (Testimony of LaChance; Exhibit 14)
20. In December 2006, Ms. LaChance again observed that the Appellant had been recoding citations and that they were recoded incorrectly. Ms. LaChance told the Appellant not to recode and reminded her that she had been told not to do so previously. (Testimony of LaChance; Exhibit 14)
21. In January 2007, Ms. LaChance gave the Appellant another verbal warning about recoding citations. She also brought up the issue in the Appellant's performance evaluation meeting. (Testimony of LaChance; Exhibits 12 and 14)
22. On or about May 22, 2007, an MRB employee from the Citation Payments unit, was entering a request for a hearing into the MRB's ALARS database. The citation had already been entered into the ALARS database as a Chapter 89, Section 4A violation, but the employee's

copy, which had been submitted by the violator with the request for a hearing, had Chapter 90, Section 14 written on it with a description of "Marked Lane Violation." It was determined that the Appellant had entered the citation into the system, so the employee brought the citation to the attention of Ms. LaChance. Ms. LaChance investigated the matter and determined that the Chapter and Section (MGL c. 90 s. 14) on the original, hard copy citation had been altered - in blue pen to match the blue ink on the original copy - to read MGL c. 89 s. 4A. Ms. LaChance inquired as to whether the employee who had coded the citation had altered it. The coder stated that she had not. (Testimony of LaChance; Exhibits 13A, 14, and 18)

23. The first two paragraphs of MRB's Procedures Manual provides as follows:

Before the information contained on a Massachusetts Uniform Citation received from a police department can be applied to the violators driving record, the information written by the issuing police officer in five (5) blocks on the citation must be screened and coded (a system of letter and/or numbers with meanings) using the procedures in Chapter 1 and the tables listed below.

A red felt tip pen must be used when writing information onto a citation and in some cases, the information must be circled. The purpose of circling the information clearly distinguishes the information written onto the citation by the issuing police officer versus the information written onto the citation during the screening and coding process. It is very important not to obliterate the information written by the police officer.
(*Emphasis in original*) (Exhibit 5; Test. of Hill)

24. Ms. LaChance then examined other citations from the same batch that had been entered by the Appellant and observed that several of the citations had been altered in some way. The alterations were made with the same color ink as the issuing officer, either black or blue.
(Testimony of LaChance; Exhibits 13A, 13B, 18)

25. Ms. LaChance asked the Appellant if she had written over the information written by the issuing police officers. The Appellant denied having done so. (Testimony of Denise LaChance)

26. Ms. LaChance then retrieved other citation batches that the Appellant had entered into the ALARS database, which had been prescreened and coded by various coders from the Citation Processing Unit. Ms. LaChance also pulled batches that had been entered into ALARS by Data Entry Operators other than the Appellant. (Testimony of LaChance)
27. Ms. LaChance found that the only citations that had been altered were contained within batches that the Appellant had entered into ALARS. Ms. LaChance then informed her supervisor, Citation Processing Supervisor Linda Childs, who informed the Assistant Director, Richard Hill. (Testimony of LaChance)
28. On or about May 23, 2007, Ms. Childs, and Ms. LaChance met with the Appellant to discuss the defacing of the handwritten information by police officers on the citations that the Appellant had entered into the system. The Appellant again denied that she had written over information by the police officers and stated that she did not know who was doing it. Ms. LaChance showed the Appellant examples of citations that had been altered. She explained to the Appellant that she had examined several batches and that it was only batches entered by the Appellant that had been altered. The Appellant stated that the alterations had been going on for a long time and she thought it had been the police officers who were doing it. She also stated that she did not know who was doing it. (Testimony of LaChance; Exhibit 14)
29. During the meeting on May 23, 2007, Ms. LaChance and Ms. Childs explained to the Appellant that this was a serious matter, amounting to a violation of agency policies. The Appellant was told that the MRB would conduct an investigation to determine who had been altering the citations. Ms. LaChance informed the Appellant that once they discovered who had been defacing the information written by the police officers, the MRB would proceed

with disciplinary action which could include suspension and termination. (Testimony of LaChance)

30. After the meeting on May 23, 2007 the MRB removed the Appellant from her duties as a Data Entry Operator pending an investigation and Richard Hill initiated an initial investigation. (Testimony of Hill)

31. On or about May 29, 2007, the Director of the MRB, Mary Ann Mulhall (hereinafter "Director Mulhall"), Richard Hill, Linda Childs, and Denise LaChance met with the Appellant. (Testimony of LaChance Exhibit 14)

32. During the May 29, 2007 meeting, Director Mulhall showed the Appellant scanned copies of the original citations and the original, altered citations and asked her if she had been writing over the police officers' writing. The Appellant denied altering the citations and stated that she did not know who had been doing it. The Appellant acknowledged, however, that the altering had been going on for a long time. (Testimony of LaChance; Exhibit 14)

33. During the May 29, 2007 meeting, the Appellant then stated that she thought the police officers had been making the changes, but then also said that people at the MRB did not like her and that someone was doing it to get her in trouble. When asked why she did not bring this to her supervisor's attention, the appellant stated that she did not trust Denise LaChance, Linda Childs, or Richard Hill. (Testimony of LaChance; Exhibit 14)

34. During the May 29, 2007 meeting, Director Mulhall told the Appellant that an investigation was being conducted and that all the evidence pointed to her. The Director further stated that altering citations was a very serious offense. The Appellant was given several opportunities to explain what may have happened, but she continued to adamantly deny that she had altered any citations. (Testimony of LaChance; Exhibit 14)

35. During the her testimony before the Commission, the Appellant corroborated Ms. LaChance's account of the above-referenced discussion, including that fact that she denied writing over the police officer's writing on citations; that the alterations had been going on for a long time; and that the police were altering the citations.(Testimony of Appellant)
36. The MRB conducted an investigation to determine the extent of the problem with the altered citations and who was responsible. The investigation lasted four and a half (4.5) weeks. In addition to the Assistant Director of Operations, 5 other people were involved in the investigation, four people from the Administration and one person from Quality Control. (Testimony of Hill)
37. In order to determine whether or not the Appellant was responsible for the alterations found on citation documents, a sample of citation batches entered by the Appellant in 2004, 2005, 2006 and 2007 was examined. Citations entered by other employees that fell immediately before and after the batches entered by the Appellant also were examined to determine if other coders or data entry operators were altering information. (Testimony of Hill; Exhibits 14 and 15)
38. All citations received by the MRB are scanned prior to being sent to the Citation Processing Unit for coding and data entry. As a result, it is possible to compare the actual citations, used for data entry, to the scanned image of the original citation in order to identify documents that had been altered. (Testimony of Hill; Exhibits 14 and 15)
39. In all, a total of 11,731 citation documents were reviewed. Of these, 5,593 citation documents entered by the Appellant were examined. One thousand four hundred and twenty-one (1,421) of the citations entered by the Appellant had been altered, with 81 of the citations containing what Mr. Hill described as "egregious alterations". The remaining 6,138 citation

documents – which were entered by other employees and which fell directly before and after the ones entered by the Appellant – contained no alterations. (Testimony of Hill; Exhibits 14, 15, 16 and 17)

40. An alteration was considered egregious if the information in the field was scribbled out or changed to something other than what had been written by the issuing police officer or court employee. (Testimony of Hill; Exhibit 15)
41. To ensure consistency in the findings, Mr. Hill reviewed each citation that was determined to contain an egregious alteration. If there was a question, he testified that he erred in favor of the Appellant. (Testimony of Hill)
42. Mr. Hill concluded that no handwriting analysis or interviews were necessary in the investigation because the only citations that were altered were citations handled by the Appellant. (Testimony of Hill)
43. After the investigation was completed, Mr. Hill reported the findings to Director Mulhall and prepared a Summary of Investigation. (Testimony of Hill; Exhibit 15)
44. On or about June 13, 2007, Director Mulhall prepared a report summarizing an overview of the MRB's Citation Processing, the Appellant's work history and performance, and the investigation. (Test. of ; Exhibits 14)
45. Mr. Hill testified that the unauthorized altering of citation documents is a serious offense because of the significant adverse impact this has on the MRB and its operations. Specifically, the MRB loses its ability to conduct accurate Quality Control. Alterations compromise the integrity of the information on the citations which can result in inaccuracies on people's driving records, unnecessary or inaccurate driver license suspension action, and unnecessary increases in driver insurance premiums. In addition, if violations codes are

altered, this can skew the MRB's statistics regarding what types of violations it has processed. (Testimony of Hill)

46. The Appellant testified before the Commission that she never altered a citation in any way and that there would be no reason to do so. She testified that there would be no benefit or gain of any kind for her to do what the MRB alleges she has done. (Testimony of Appellant)

47. The Appellant testified that after her promotion to EDP Operator III, the climate at work changed and she felt unwelcome at work. (Testimony of Appellant)

48. The Appellant provided medical documentation to demonstrate that she was affected to the point of having to undergo treatment for depression. (Exhibits 27 and 28)

49. Ms. MacQuarrie testified on rebuttal that the MRB had not seen these medical documents regarding mental illness until after the Appellant had been terminated and that the Appellant did not ask her supervisors for assistance with mental health issues. (Testimony of MacQuarrie)

50. Ms. MacQuarrie testified that the MRB has an employee assistance program, but the HIPPA laws require that the employee ask for assistance; employers are prevented from inquiring as to whether such assistance is needed. (Testimony of MacQuarrie)

Section 42 Appeal Issues

51. Florence MacQuarrie testified that she has been employed by the MRB since 1997, and has served as the Director of Human Resources since May of 2005. She was not involved in the investigation process, but was informed of the results of the investigation after it was completed. (Testimony of MacQuarrie)

52. On June 20, 2007, Director Mulhall wrote a letter to the Appellant which stated, in part, as follows:

Please be advised that a pre-disciplinary hearing will be held on Monday, June 25, 2007, at 10:00 a.m. in the Causeway Conference room regarding my decision to terminate your employment with the MRB. This hearing is being held to present the results of an investigation into the altering of citation documents by you. This hearing will also afford you with the opportunity to respond to these charges.

The letter also described the investigation into the altering of citations and the results of the investigation. (Exhibit 18).

53. Ms. MacQuarrie hand delivered the June 20, 2007 letter from Director Mulhall to the Appellant on June 21, 2007. (Testimony of MacQuarrie; Exhibits 18 and 23)
54. On the morning of Monday, June 25, 2007, the Appellant called her supervisor, Ms. LaChance, and asked if she could take her flex day on Monday instead of another day. Ms. LaChance forwarded the call to Ms. MacQuarrie. Ms. MacQuarrie told the Appellant that she could not change her flex day because there was a pre-disciplinary hearing scheduled for that morning. The Appellant then stated that she was sick and would not be coming in. Ms. MacQuarrie told the Appellant that she needed to attend the meeting because it related to her being terminated. The Appellant then stated that she was not coming in. (Testimony of MacQuarrie; Exhibits 19 and 23)
55. Ms. MacQuarrie subsequently called the Appellant back and verbally informed her that she was being terminated for altering citations. (Testimony of MacQuarrie; Exhibit 19)
56. That same day on June 15, 2007, Director Mulhall sent a letter – via UPS Next Day Delivery – to the Appellant informing her that her employment with the MRB was terminated effective that day. The Appellant did not accept receipt of the letter and it was later returned to the MRB. (Testimony of MacQuarrie; Exhibits 20 and 23)

57. All three Appointing Authority witnesses testified that progressive discipline in this case was not an option given what they described as the egregious nature of the Appellant's conduct.

(Testimony of Hill, LaChance and MacQuarrie)

58. In the past, the MRB terminated another employee for altering the *address* information on an individual's driver's license record. (Testimony of Hill and MacQuarrie)

59. The MRB has not terminated another employee for altering citations documents because no other employees, to their knowledge, have engaged in such conduct. (Testimony of Hill and MacQuarrie).

CONCLUSION:

Section 42 Appeal

Before terminating a tenured civil service employee, G.L. c. 31, § 41 requires that the employee be given “a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority.”

If the Commission finds that the Appointing Authority failed to follow the above-referenced Section 41 procedural requirements and that the rights of said person have been prejudiced thereby, the Commission “shall order the Appointing Authority to restore said person to his employment immediately without loss of compensation or other rights.” G.L. c. 31, §42.

In the instant appeal, the Appellant alleges that the MRB did not hold a timely hearing, did not provide proper notice and did not provide her with a copy of G.L. c. 31, §§ 41-45.

The evidence shows that the Appellant did receive notice of a disciplinary hearing at least three days prior to the scheduled hearing notifying her of the specific allegations and the date and

time of the hearing, which was scheduled for June 25, 2007. Based on the credible testimony of the MRB witnesses, I conclude that, instead of attending the hearing, the Appellant, called into work and requested to take a “flex” day. When this requests was denied, specifically because of the scheduled disciplinary hearing that required her attendance, she called in sick. The MRB apparently proceeded to terminate the Appellant the same day without a hearing based on the internal investigation that had been completed. The Appellant was sent written notification of this decision. The MRB acknowledges that none of the notices included an attachment of the applicable service law outlining her appeal rights, which is a statutory requirement.

Notwithstanding that MRB failed to attached the applicable service law, the Appellant was able to file a timely appeal with the Commission where she was granted a de novo hearing.

Whether or not the MRB should have rescheduled the disciplinary hearing after the Appellant requested flex time on the day of the hearing, was denied, and then called in sick and failed to appear at the hearing, is a close call. While a more prudent course of action would have been to continue the disciplinary, at least once, to another day, I do not conclude that the MRB was required to do so given the circumstances in this particular case. However, based on the MRB’s failure to continue their disciplinary hearing, I refuse to draw any negative inference in regard to the Appellant not testifying before the MRB.

In regard to the MRB’s failure to attach the applicable civil service law to the various notices sent to the Appellant, one of the primary reasons for this requirement is for the Appellant to be aware of his / her right to appeal the Appointing Authority’s determination to the Appointing Authority. In this case, the Appellant was still able to file a timely appeal with the Commission and, as such, I do not find that her rights were prejudiced by this error on the part of the MRB.

For all of these reasons, the Appellant’s appeal under Section 42 is hereby *denied*.

Section 43 Appeal

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.”

Under Section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” Falmouth v. Civ. Serv. 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. Civ. Serv. 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 (2003); Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den.(2000); McIsaac v. Civ. Serv. Comm’n, 38 Mass App.Ct. 473, 477 (1995); Watertown v. Arria, 16 Mass.App.Ct. 331, rev.den., 390 Mass. 1102 (1983).

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 Civ. Serv. v. Mun. Ct. of Boston, 359 Mass. 211, 214 (1971); City of 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. Civ. Serv. 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).

"The commission's task...is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision'", which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth at 823. *See* Watertown at 334, rev.den., 390 Mass. 1102 (1983) and cases cited.

For all of the reasons stated in the findings, I conclude that the MRB demonstrated, by a preponderance of the evidence, that it had just cause to terminate the Appellant. I find that the testimony of all three MRB witnesses was credible and I do not believe that they had any ulterior motive in determining that the Appellant altered over a thousand citations in violation of MRB rules and regulations. I did not find the Appellant's denials credible, partly because she at first blamed the police officers, then also blamed other MRB employees for the alterations. Her lack of credibility also was shown by the fact that she acknowledged that she purportedly knew

citations were being altered for a long time, but did not tell her supervisors. The Appellant was well aware of the MRB's Standards of Conduct and Policies and Procedures

I conclude that the MRB's investigation was fair and impartial and that it revealed that the Appellant had altered over one thousand citations, eighty-one of which contained egregious alterations.

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 at 823 and cases cited.

“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. Civ. Serv. Comm’n, 447 Mass. 814, 823 (2006).

As referenced above, the Commission, if it reaches the same findings as the Appointing Authority, as it has in this case, can not modify the penalty imposed without an adequate explanation. Given the seriousness and magnitude of the violations in question, I find that progressive discipline for the appellant's altering of citations was not an option for the MRB in this. Moreover, there was no evidence of political or personal bias or any other ulterior motives

on the part of the Appointing Authority that would warrant the Commission's intervention in terms of a reduced penalty.

For all of the above reasons, the Appellant's appeal filed under Docket No. D1-07-236 is hereby *dismissed*.

Civil Service Commission

John E. Taylor

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on January 15, 2009.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

John J. Mackin, Jr., Esq. (for Appellant)

Heather E. Hall, Esq. (for Appointing Authority)