

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MICHAEL R. CAGGIANO,
Appellant

Case No. D-13-196

v.
MARSHFIELD FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

J. Michael Conley, Esq.
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Braintree MA 02185

Appearance for Respondent:

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Commissioner:

Paul M. Stein

DECISION

The Appellant, Michael R. Caggiano, appealed to the Civil Service Commission (Commission), from the decision of the Fire Chief of the Marshfield Fire Department (MFD), as Appointing Authority, imposing a one-day (24 hour tour) suspension from his position as a MFD Firefighter/Paramedic. A pre-hearing conference was held September 24, 2013 at the offices of the Commission. A full hearing was held at the same location on November 6, 2013. Neither party requested a public hearing, so the hearing was deemed private. The witnesses were not sequestered. The Commission received eleven (11) exhibits in evidence. The hearing was digitally recorded and the parties were provided with copies of the hearing CD. Neither party elected to submit a post-hearing proposed decision.

FINDINGS OF FACT

Based on the exhibits, the stipulations of the parties, the testimony of the Appellant and MFD Fire Chief Kevin Robinson; and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, and policies, and reasonable inferences therefrom, the evidence I find credible establishes the following findings of fact:

1. The Appellant, Michael R. Caggiano, is a tenured civil service employee who has been employed in the position of Firefighter/Paramedic (FF/P) with the MFD since September 2006. Prior to his employment with the MFD, he held a similar position with the Ware Fire Department. (*Testimony of Appellant*)

2. FF/P Caggiano was injured on duty in September 2011 and returned in January 2012 on light duty status and was assigned as the Fire Alarm Officer (FAO), assigned to dispatch duty. He worked in that capacity until September 2012. (*Exh. 9; Testimony of Appellant & Chief Robinson*)

3. The FAO works a shift alone. The FAO monitors police and fire transmissions and is responsible to dispatch fire apparatus as needed in response to alarms, calls for service or as directed by an MFD incident commander on scene. (*Exh. 9; Testimony of Appellant & Chief Robinson*)

4. For about five years, the MFD had divided Marshfield into three districts, each with one fire station: District 1/Station 1 in the southern part with an ambulance and fire apparatus; District 2/ Station 2 in the northern part with an ambulance and fire apparatus; District 3 is in the middle of town, subdivided into District 3-1 and 3-2, where Station 3 serves as the Headquarters and houses the MFD ambulance, a fire engine and a multi-functional fire apparatus called the “quint”. (*Exhs. 9, 11; Testimony of Chief Robinson*)

5. The protocol for first response to a motor vehicle accident is to dispatch an ambulance and two engines, namely, the ambulance and fire apparatus from the district station where the incident is located and a second engine from the nearest other district station. The engines (and a specialized apparatus called the “quint”) all carry so-called “Jaws of Life” apparatus to extricate victims trapped in a vehicle. One of the key objectives of the rules was to provide a handy default process to expedite dispatch decisions. (*Exh. 9; Testimony of Chief Robinson*)

6. Regardless of rank, the first firefighter or officer on scene becomes the “incident command”. Incident command is authorized to make all on-scene decisions (including ordering additional resources) unless relieved of command by a more senior ranking officer who later arrives on scene. (*Exh. 10; Testimony of Chief Robinson*)

7. When additional responses are requested, the FAO is responsible to contact Plymouth County Control (PCC) to request mutual aid from one of the four communities adjoining Marshfield. PCC contacts the appropriate mutual aid community based on a list provided by the MFD which specifies the priority in which a mutual aid community will be contacted, based on proximity to Marshfield’s fire districts. PCC operates on its own radio frequency, so communications between PCC and the MFD requires pushing a button to switch frequencies on the MFD dispatch equipment. (*Exh. 9; Testimony of Appellant & Chief Robinson*)

8. On July 16, 2012, FF/P Caggiano received a written warning from Fire Chief Robinson for dispatching unnecessary department and mutual aid resources to an accident scene on June 16, 2012. Although the initial investigation of the incident included a failure to “give Plymouth County Control” the correct district, Fire Chief Robinson excused FF Caggiano from this error because “you were not at fault for the Castle Green dispatch and there was a general lack of

understanding of the Plymouth County Control system and Marshfield Districts.” (*Exh. 13; Testimony of Chief Robinson*)

9. In September 2012, FF/P Caggiano was removed from light duty status and placed on “administrative sick leave”. The parties dispute exactly why and whether the September 2012 change in FF Caggiano’s status was authorized or required and what, if any, impact it had on FF Caggiano and the MFD. That dispute is pending in Superior Court. The merits of the dispute were not elaborated. (*Testimony of Chief Robinson & Appellant*)

10. By letter dated April 22, 2013, FF/P Caggiano received a two shift (one day, 24 hour tour) suspension on FF Caggiano for failure to attend mandatory training exercises. (*Exh. 4*)

11. On or about June 4, 2013, FF/P Caggiano returned to light duty and resumed his assignment to dispatch duties. Another officer was assigned to assist or “shadow” FF Caggiano for the first shift upon his return. (*Exh. 5; Testimony of Appellant and Chief Robinson*)

12. During his June 4, 2013 shift, FF/P Caggiano made numerous errors of procedure, including:

- Failure to use standard radio terminology in dispatching to MVAs
- Temporarily losing track of the whereabouts of apparatus and an ambulance
- Failure to dispatch the standard response to a building fire
- Inaccurately reporting that police were “on scene” of a reported domestic dispute which put undue risk on fire personnel prematurely responding to the call before police had secured the scene.

These discrepancies, along with mistakes made in failing to “follow the established district lines when dispatching apparatus” and other errors made during shifts on June 9, 2013 and June 12, 2013, as well as examples of several incidents that he had “handled well”, were noted in letters

from Chief Robinson to FF/P Caggiano dated June 21, 2013 and June 25, 2013. Chief Robinson issued a written warning for the domestic dispute incident but imposed no further formal discipline as a result of any of the other incidents. (*Exhs. 5 & 6; Testimony of Chief Robinson*)

13. On June 25, 2013, the MPD conducted a staff training class on Fire Alarm Operations which FF/P Caggiano attended. (*Exhs. 8 & 9; Testimony of Appellant and Chief Robinson*)

14. The MFD Fire Alarm Operations training material states that the FAO is “expected” to use discretion and common sense in making decisions and “When in doubt ask the shift commander.” (*Exh. 9; Testimony of Chief Robinson*)

15. On August 20, 2013, FF/P Caggiano was on duty at Station 3 as the FAO. At approximately 10:15 pm, a call came over the police radio (which the FAO also monitors) from a Marshfield police officer who had been dispatched a few minutes earlier by the police dispatcher and was en route in his cruiser to a possible crime scene when he called in to police dispatch. The officer, who appeared to be breathing heavily, reported that he had just had an accident. He reported his location “Main . . . Ocean” and to “Send Fire ASAP.” Another transmission described the accident as “bad.” (*Exh. 7; Testimony of Appellant*)

16. FF/P Caggiano heard the police radio report and immediately contacted the Firefighter/EMT manning the ambulance at Station 3 over the intercom, telling him there was a “real bad accident” at the corner of Ocean & Main, which is in District 3 about a half-mile from Station 3. (*Exh. 7; Testimony of Appellant*)

17. A short time before the receipt of the accident report, the “quint” and fire engine from Station 3 had been dispatched to another emergency call a few miles away in District 3-2. FF/P Caggiano radioed the Captain commanding the “quint” to ask him if he “could break away for a call”. When the Captain asked “What’s the nature of the call?”, FF/P Caggiano said: “MVA,

Main & Ocean”, and the Captain said he would respond on a “delayed response.” (*Exh. 7; Testimony of Appellant and Chief Robinson*)

18. Another police radio transmission can be heard in which the police dispatcher asks the officer “Are you OK”, to which there is no response. It is not clear whether FF/P Caggiano actually heard this additional transmission or was distracted by his own efforts to contact the “quint” commander. (*Exh. 7; Testimony of Appellant*)

19. After confirming that the “quint” would respond, FF/P Caggiano then dispatched the Station 2 fire engine as the second apparatus required to respond to an MVA. (*Exh. 7; Testimony of Appellant*)

20. The choice of which second engine to send to an MVA in District 3 would depend on whether the accident was in District 3-1 (southern part), closer to District 1 – in which case the engine in Station 1 was the first choice to be dispatched – or in District 3-2 (northern part) – in which case the Station 2 engine would be the preferred apparatus to respond. (*Exhs. 9 & 11; Testimony of Appellant & Chief Robinson*)

21. The intersection of Ocean and Main lies on the dividing line between District 3-1 and 3-2. (*Exh. 9 & 11; Testimony of Appellant & Chief Robinson*)

22. Meanwhile, the Station 3 ambulance arrived on scene and the Firefighter/EMT radioed that they “might need the Jaws”. (*Exh. 7*)

23. The Captain commanding the “quint” heard the incident commander’s transmission indicating an occupant may be trapped in his vehicle and, as a result, immediately proceeded “back to the truck” and ordered FF/P Caggiano to “Start Engine 1”, meaning send the Station 1 engine to the scene immediately. (*Exh. 7; Testimony of Chief Robinson*)

24. Meanwhile, the on-scene Firefighter/EMT incident commander radioed FF/P Caggiano for a “second ambulance”. (*Exh. 7*)

25. Prior to initiating a mutual aid request for the second ambulance, FF/P Caggiano again contacted the “quint” Captain to ask “did you get the message”. The Captain responded that if “command” requested resources, “provide them”. (*Exh. 7*)

26. FF/P Caggiano was in the process of contacting Plymouth County Control (PCC), when the on-scene incident commander repeated his request for a “second ambulance”. FF/P Caggiano acknowledged the message and continued with his transmission to PCC for a mutual aid ambulance for Marshfield “District 3-1”. This request triggered a priority call to the Pembroke Fire Department which responded and dispatched an ambulance. (*Exh. 7; Testimony of Appellant*)

27. Had FF/P Caggiano called out “District 3-2” to PCC, that would have meant PCC would have called Norwell Fire Department instead. (*Exh. 7 & 11; Testimony of Chief Robinson*)

28. Without further contact from the scene, FF/P Caggiano contacted PCC and requested a “second mutual aid ambulance.” As Pembroke was already responding, PCC called for an ambulance from Duxbury, the next town on the priority list for District 3-1. (*Exh. 7*)

29. FF/P Caggiano had failed to switch his radio from the PCC frequency back to the MFD radio frequency. He attempted to contact the on-scene commander and was told three times by PCC that “you are contacting scene on County”, before he switched back and was able to resume contact with the MFD personnel on scene. (*Exh.7; Testimony of Appellant & Chief Robinson*)

30. When FF/P Caggiano finally connected with incident command on scene, the Captain had arrived with the “quint” and had assumed command. FF/P Caggiano reported that a

Pembroke ambulance was en route as was a Duxbury ambulance. The Captain responded that the accident was a two car MVA with two patients and the Duxbury ambulance was not needed. FF/P Caggiano radioed PCC and cancelled the Duxbury ambulance. Eventually, both patients were transported to South Shore Hospital. (*Exh. 7: Testimony of Appellant & Chief Robinson*)

31. Chief Robinson had been monitoring the MFD dispatch radio from home and heard these transmissions. Chief Robinson explained that under the “incident command” rules, FF/P Caggiano didn’t need to check with the Captain before radioing PCC for a second ambulance. Chief Robinson also knew that the “District 3-2” mutual aid priority choice, i.e., the Norwell Fire Department, was closer in miles and travel time to the scene of the accident. He also knew that, of the four adjoining towns, only Scituate had more resources; Norwell, Pembroke and Duxbury were much smaller. (*Testimony of Chief Robinson*)

32. By letter dated August 28, 2014, Chief Robinson notified FF/P Caggiano that he was imposing a one day, 24-hour suspension for his failure to follow proper dispatch procedures in handling the August 20, 2014 MVA incident. (*Exh. 2*)

33. FF/P Caggiano appealed the suspension to the Marshfield Town Administrator who, after hearing, upheld the suspension on October 9, 2013. This appeal duly ensued. (*Exh. 1*)

CONCLUSION

Applicable Legal Standard

Pursuant to G.L. c. 31, § 43, a tenured civil service employee may appeal to the Commission from discipline imposed by an appointing authority:

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 the 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 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." Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 304, *rev. den.*, 426 Mass. 1102 (1997); Comm'rs of Civil Serv. v. Mun. Ct. of Bos., 359 Mass. 211, 214 (1971); 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. of Brockton v. Civil Serv. Comm'n, 43 Mass. App. Ct. 486, 488 (citing Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983)).

Absent significant differences between the Commission's findings of fact and those found by the appointing authority, or a substantially different interpretation of the relevant law, "the commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation." Town of Falmouth, 447 Mass. 814 at 824 (citing Police Comm'r of Bos. v. Civil Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (1996)).

Analysis

Based on the applicable legal standards and the facts of this case, Marshfield has met its burden to establish just cause for imposing the one-day suspension for FF/P Caggiano's performance deficiencies in his dispatch duties on August 20, 2013. In particular, FF/P Caggiano failed to effectively communicate the severity of the incident in a timely fashion, failed to act immediately on the incident commander's order for a second ambulance, and

caused a third ambulance to be dispatched without need. In view of the prior history of discipline, the suspension ordered by Chief Robinson was an appropriate remedial, progressive measure to instill the necessary degree of vigilance necessary to improve his performance as a Fire Alarm Officer.

The facts established that FF/P Caggiano committed at least three misteps during the August 20, 2014 call.

First, FF/P Caggiano knew the incident involved a crash of a police officer in a “really bad accident”, and communicated that fact to the EMT sent to the scene. Yet, FF/P Caggiano was circumspect in describing the accident simply as an “MVA” when he asked the Captain to “break away”. The Captain was roughly a mile from the accident with the two pieces of fire apparatus closest to the scene. When the Captain learned – by hearing cross-talk from the scene – about how serious the accident was, he decided to proceed to the scene immediately and also ordered another engine to respond as well. Although the difference in response time was only minutes, those few minutes of delay could have been avoided if FF/P Caggiano had been clearer about the “nature of the call” when originally asked. The police dispatch had had already transmitted over its frequency (which FF/P Caggiano was monitoring) the fact that one of its cruisers had been in a bad accident, but fire personnel, other than the FAO, or Chief Robinson who happened to be monitoring, would not be privy to that information.

FF/P Caggiano seemed to believe that it would be best not to be too pushy with the Captain, a superior officer, who would resent getting too many details as going beyond protocol and “being told what to do”. This incident provides a good “teachable moment” that the MFD considered that the efficient delivery of service must always take precedence, and rightly so.

Second, FF/P Caggiano's self-initiated request for a third ambulance reflected a serious lapse of judgment, not just because of the misunderstanding that caused the Duxbury Fire Department to deploy its equipment unnecessarily, but because this mistake was a symptom of FF/P Caggiano's more significant distraction during the call. The clearest illustration of this distraction was FF/P Caggiano's failure to switch from the PCC frequency back to the MFD frequency, which resulted in not less than three reminders from PCC that he was "talking to scene on County 1", before FF/P Caggiano corrected the mistake. Again, while that caused only a brief delay in reaching his incident commander, FF/P Caggiano's delay contributed to his mix-up that resulted in calling for a Duxbury ambulance and then cancelling it, presumably after Duxbury had already put its response in motion. Chief Robinson had good reason to be concerned for the consequences of both the specific misuse of mutual aid resources as well as the more general inattention that led to that specific mistake.

Third, FF/P Caggiano was aware of the protocol about "incident command" and did not need to check in with the Captain before calling for a mutual aid ambulance. Again, while the delay in getting the mutual aid was momentary, the incident commander had requested the "Jaws" and FF/P Caggiano had no reason to question the call for the mutual aid resources. While the primary responsibility for assessing the scene rests with the incident commander, if FF/P Caggiano wanted more information to confirm the need for the additional resource, he could have asked the incident commander for further detail. Clearly time is of the essence in this type of emergency response situation. Ironically, while FF/P Caggiano took extra (unnecessary) measures to confirm the need for the second ambulance, he initiated the call for the third ambulance without any confirmation at all.

Fourth, although FF/P Caggiano did use a different designation of the fire district (3-1) when calling for a mutual aid ambulance from the fire district (3-2) he attributed as the location of the accident when initially dispatching apparatus from Station 2, I credit his testimony that he did so in the honest belief that, based on the developing information he had about the location, that District 3-1 was an appropriately designated district under the MFD rules and that, therefore, it was in order to call out District 3-1 when contacting PCC for mutual aid.

The district line rules, as drawn on the map and in the training materials introduced in evidence, describe the lines by street address. Thus, the rules do make it clear in which district a particular building is located. In the case of a street accident, however, there is some ambiguity about how to interpret the boundary, especially a case such as the line between District 3-1 and District 3-2 around the intersection of Main Street and Ocean Street. Depending on the precise location of the accident, or on which side of the street it occurred, the location could be spotted either at the extreme southern end of District 3-2 or the extreme northern end of District 3-1 or, depending on where the vehicles collided and came to rest, the accident could, theoretically, straddle both districts. While a Norwell ambulance would be closer in distance and travel time to the intersection, if the collision had occurred just a few feet further south, there would have been no question that the Pembroke ambulance, not the Norwell one, was the proper default choice under the rules (although, presumably, Norwell was still closer). Given the “general lack of understanding of the Plymouth County Control system and Marshfield Districts” that appears to have existed in the MFD as recently as two months earlier, FF/P Caggiano’s decision to call for a District 3-1 mutual aid response deserved the benefit of the doubt and did not rise to the level of misconduct that “substantially impaired the efficiency of the public service” to warrant a suspension.

Had FF/P Caggiano's judgment call on the mutual aid request been the only reason for imposing discipline, or had a more lengthy suspension been imposed, the Commission might consider entertaining a modification of the discipline in the exercise of its discretion. However, a modification is not warranted here, when the evidence proved he had committed a sufficient number of other serious mistakes to fully justified the one-day suspension imposed as appropriate remedial action.

Finally, I have fully considered FF/P Caggiano's contention that he was singled out for discipline because of the on-going civil lawsuit that he brought against Marshfield that is pending in Superior Court. I am not persuaded that this dispute played any role in Marshfield's decision to take remedial action against FF/P Caggiano which was fully justified on its facts as appropriate progressive discipline.

Accordingly, for the reasons stated, the MFD had just cause to suspend the Appellant for one-day (24 hour tour). Therefore, the appeal of Michael Caggiano, filed under Docket Number D-13-196, is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on December 11, 2014.

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:

J. Michael Conley, Esq. (for the Appellant)

Jamie Kenny, Esq. (for the Respondent)