

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

DORIAN LAPWORTH,
The Appellant

v.

D-03-341

TOWN OF CARVER,
Respondent

The Appellant's Attorney:

Austin M. Joyce, Esq.
Reardon, Joyce & Akerson, P.C.
397 Grove Street
Worcester, MA 01605

Respondent's Attorney:

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Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, Dorian Lapworth (hereinafter "The Appellant"), is appealing the decision of the Appointing Authority, Town of Carver (hereinafter "the Town" or "Respondent"), in terminating his employment as a police sergeant with the Town of Carver Police Department ("the Department") for the following reasons:

- a. The Appellant failed to respond or to make proper arrangements to respond to an abandoned 911 call from [REDACTED] on January 23, 2003 in violation of the policies and procedures of the Carver Police Department;

- b. The Appellant falsely responded that the reason for his failure was because he had a prisoner in custody in his cruiser when he was interviewed as part of an internal investigation regarding his failure to respond to the January 23, 2003 abandoned 911 call from [REDACTED]; and
- c. The Appellant failed to arrange for the immediate booking of a prisoner and instead placed the prisoner in the rear of his patrol car for approximately one and one-half hours (while he investigated a non-emergency call in a neighboring town), in violation of the policies and procedures of the Carver Police Department.

The appeal was timely filed. A full hearing was held over three days at the offices of the Civil Service Commission on January 30, 2006, April 7, 2006 and April 21, 2006. Five (5) tapes were made of the hearing. Both parties submitted post-hearing briefs. As no notice was received from either party, the hearing was declared private. Thirty-two (32) exhibits were stipulated by the parties and were entered into the record.

FINDINGS OF FACT:

Based upon the documents entered into evidence (Exhibits 1-32), and the testimony of the Appellant and sequestered witnesses Lawrence Page, Anthony Luca, Heidi Bassett, William Punchard, Robert Akin and Gordon Plant, I make the following findings of fact:

1. The Department had implemented and communicated to officers a series of explicit policies for response to both emergency and 911 calls. (Exhibits 17, 19 and 21)
2. On August 7, 1996, then Chief Skoog issued a "General Order" regarding the 911 calls. The Order required that "all state guidelines are to be followed as per your training." (Exhibit No. 19)

3. On August 8, 1996, Chief Skoog issued an e-mail to all department members regarding 911 calls. The e-mail stated: "Every single E911 call that comes in; a cruiser must respond to the location to check the well being of persons at that location." (Exhibit 21)
4. The Department had in place a general policy regarding "Emergency Calls" , which provided:

"Responding to calls for immediate police assistance and service is one of the most important functions of police patrol. To carry out this urgent responsibility it is necessary that the responding officers arrive at the scene where they are needed as quickly, and at the same time as safely, as possible. A speedy response can be the means of saving a life, reducing the extent of serious injury or apprehending a felon, but in order to be of assistance the officers must first arrive safely." (Exhibit 17)
5. The Department has in place a general policy regarding response to domestic violence calls. (Exhibit 22)
6. Sergeant Lapworth received a copy of the Domestic Violence Policy on October 16, 1997. (Exhibit 22)
7. The Domestic Violence Policy provided:

"3.0 PROCEDURES

The provisions of M.G.L. c. 209A impose specific responsibilities upon the police in regard to a domestic abuse situation. All officers are expected to be thoroughly familiar with the contents of this statute (as amended from time to time) and to act with discretion and competence in carrying out its provisions.

3.1 RESPONDING TO THE SCENE

- A. The high risk of injury associated with domestic violence situations requires that officers immediately proceed to the place of the dispute.
 1. Whenever possible, two officers should be dispatched to the scene.
 2. Officers should request and be provided with the following information, when dispatched to a suspected domestic call:
 - a. The existence of any warrants (by a check of LEAPS and the Warrant Management System);
 - b. The criminal history of the suspect (B.O.P. check);

- c. The existence of any protective orders against the suspect (B.O.P. check) (Include orders held by persons other than the victim in this case);
 - d. Any other relevant information the department is aware of, especially regarding a history of incidents involving the particular address, or the parties, and the likelihood of firearms being present;
 - e. Record of firearms identification cards and/or licenses to carry being issue to resident(s)” (Exhibit 22)
- 8. On or about July 26, 1996, the Appellant completed 16 hours of mandatory training conducted by the Statewide Emergency Telecommunications Board. (Exhibit 20)
- 9. The Appellant was trained that all 911 calls, including abandoned calls, must be responded to.
- 10. The Department had implemented and communicated to officers a policy on “Transportation and Custody of Arrestees.” (Exhibit No. 18)
- 11. That policy provided, among other things, the following:
 - “11. Immediately upon commencing the trip, the officer shall communicate the following information to the Dispatcher:
 - a. designate number and sex of arrestees, and whether arrestee is a juvenile;
 - b. the reason for the arrest;
 - c. the present location of the police unit and the mileage registering on the vehicle’s odometer;
 - d. the destination.
- 12. While transporting an arrestee, officers shall remain vigilant and take every precaution to assure the safety of the arrestee.

- a. officers shall proceed directly to the place of booking and custody without unnecessary delay. However, all traffic regulations should be observed, unless an emergency (i.e., medical problem) exists;
- b. the police unit should not participate in other police activities (for example, a high speed chase) when transporting arrestees.”
(Id.)

I. The Incidents of January 23, 2003

12. On January 23, 2003 at 7:41:41a.m., the Department received an abandoned 911 call (where the caller is no longer on the line or has hung up by the time the call is received by the police department) [REDACTED]. [REDACTED] was well-known throughout the Department as the home of [REDACTED], an individual who had been involved in several prior domestic violence incidents requiring police intervention. As such, there was a high probability that the abandoned 911 call received pertained to violent conduct. (Luca Testimony; Plant Testimony, Exhibit 4).
13. The Carver Police Master Card Detail listing for [REDACTED] consists of seven (7) full pages, and shows that [REDACTED] was first a suspect in a crime starting on February 8, 2005. The listing shows that [REDACTED] was a suspect or had been arrested for numerous violent crimes. (Exhibit 10)
14. The Appellant had been involved as an on-duty officer in those prior situations and therefore knew, or should have reasonably known, [REDACTED] to be a violent person. (Id.)
15. There was substantial police activity at the [REDACTED] residence, [REDACTED], prior to the events of January 23, 2003. Those incidents are recorded in the Department’s “Incident Statistics” summary. The summary for [REDACTED] numbers 19 pages

showing a wide variety of police contact with that residence during the period September 7, 1994 through January 23, 2003. In some of those incidents, the Appellant was an actual responding officer, while in others there is described violent conduct of which the Appellant should have been aware. (Exhibit 9)

16. On February 26, 1995, the Appellant was involved in an incident at the residence when a woman at the home was screaming into the phone when the phone went dead. Officers were dispatched to the scene for the family disturbance. (Exhibit 9)
17. On December 16, 1995, the Appellant was involved with three (3) calls involving disturbances at the location. (Id.)
18. On September 8, 2000, the Appellant was involved in an incident in which [REDACTED] was accused of making three (3) threatening phone calls. (Id.).
19. On December 11, 2001, the Appellant was involved in serving a restraining order on [REDACTED]. (Id.)
20. Lastly, the Appellant is listed as being the officer who received an advisory that a child at the residence was awaiting an organ transplant. (Id.)
21. The record is also replete with multiple references regarding violent and other criminal behavior engaged in by [REDACTED] at the 20 [REDACTED] location. They include:

March 24, 1994	home invasion involving weapons;
July 25, 1992	assault;
June 10, 1997	malicious damage to property;
January 4, 1998	property damage caused by [REDACTED] "flipping out;"
Mary 29, 1999	[REDACTED] ripping wires out of the wall;
March 24, 2000	[REDACTED] victim of thrown beer bottle;
December 2, 2000	request to remove [REDACTED] from premises;
December 14, 2000	service of arrest warrant on [REDACTED];
July 1, 2001	complaint of death threats made by [REDACTED];
September 11, 2001	complaint that [REDACTED] out of control;
November 28, 2001	domestic disturbance
December 9, 2001	reported restraining order violation; and

May 11, 2002 [REDACTED] "flipping out" destroying the house.

(Exhibit 9)

22. On January 23, 2003 at approximately 7:05 a.m., Officer Page was dispatched to [REDACTED] [REDACTED] for a past break and entry. (Page Testimony, Exhibit 6)
23. Upon his arrival at the scene, Officer Page met the homeowner, [REDACTED]. [REDACTED] showed him his vehicle (black Expedition bearing plate #739-XJI) and stated that he had placed a Milwaukee Sawzall tool in the back that was now missing. (Page Testimony, [REDACTED] Testimony, Exhibit 6)
24. [REDACTED] then brought Officer Page to his shed in the back yard and stated that his Yamaha dirt motorcycle was stolen. (Page Testimony, [REDACTED] Testimony, Exhibit 6)
25. As they checked the shed, they noticed that there were motorcycle tire tracks in the snow on the ground. Along with the tire tracks were two sets of footprints. One set of footprints had the Converse brand sneaker logo on the tread and the other set of footprints were very distorted as if that person was pushing the heavy motorcycle. (Page Testimony, Exhibit 6)
26. As both [REDACTED] and Officer Page noticed the prints and tracks, they then began to follow them through the woods approximately a half mile to 25 Quaker Road. (Page Testimony, [REDACTED] Testimony, Exhibit 6)
27. Once at [REDACTED], they noticed that the tracks went into an old wooden shed and in front of the shed was a new pack of Native menthol cigarettes and a Minolta camera. (Page Testimony, [REDACTED] Testimony, Exhibit 6)

28. As Officer Page got closer to the wooded shed, he could see the motorcycle inside through the gaps of the wooden door. [REDACTED] then verified that it was his motorcycle. (Page Testimony, Punchard Testimony, Exhibit 6)
29. Upon finding the stolen motorcycle, Officer Page then informed his shift commander, the Appellant, who met them at the location. (Page Testimony, [REDACTED] Testimony, Exhibit 6)
30. Once there, Officer Page informed the Appellant of his findings. The officers then knocked on the door of 25 Quaker Rd. and [REDACTED] answered. (Page Testimony, Exhibit 6)
31. Officer Page asked [REDACTED] if [REDACTED] was home ([REDACTED] girlfriend's 20 year old son, with whom he had prior dealings) and he stated [REDACTED] was not there. The Appellant then informed [REDACTED] that they were there because of a stolen motorcycle in the shed of his property. [REDACTED] then began stating that he kicked both [REDACTED] and his friend [REDACTED] out of the house at 4:00 a.m. (Page Testimony, Exhibit 6)
32. At that time, dispatch informed Officer Page of a report of another break-in at 3 Quaker Rd. Officer Page then left the scene to check [REDACTED], while Sergeant Lapworth stayed behind. [REDACTED] was not in custody. (Page Testimony, Exhibit 7)
33. After Officer Page returned from [REDACTED] was arrested. (Page Testimony)
34. At 7:41:41, the Department received a 911 call from [REDACTED]. (Exhibit 8)
35. At 7:42:21, dispatcher Gordon Plant advised the Appellant of the 911 call and that it had been an abandoned call. (Id.)

36. At that same time, The Appellant advised the dispatcher that he was too busy to respond to the call. (Id.)
37. As of 7:42:21, The Appellant had not advised dispatch that he had a prisoner in custody. (Id.)
38. At 7:42:21, Officer Page did not observe anyone in custody. (Page Testimony)
39. As of 7:42:21, Sergeant Lapworth did not have a person in custody.
40. At 7:52:41, Officer Page was dispatched to a reported housebreak at [REDACTED].
(Exhibit 8)
41. At approximately 7:53, Officer Page left [REDACTED] to travel to [REDACTED].
(Page Testimony)
42. At the time Officer Page left 20 [REDACTED], no prisoner was in custody.
43. Officer Page spent approximately 10 minutes at [REDACTED] investigating a complaint of a breaking and entering. (Page Testimony, Exhibit 7)
44. Officer Page left [REDACTED] at 8:03:50. (Page Testimony, Exhibit 7)
45. After leaving [REDACTED], Officer Page returned to 25 Quaker Road. (Page Testimony)
46. Upon his arrival back at [REDACTED], there was no prisoner in custody. (Page Testimony)
47. Officer Page further testified at hearing as follows:
- “Q. Now, it would also be fair to say that when you left [REDACTED] to go to [REDACTED] that no one was in custody at that point in time, is that right?
- A. To the best of my knowledge, that’s correct.
- Q: And you were interviewed in this case by me—
- A: Yes.

Q. - - on April 12, 2003?

A. Yes.

Q. And you gave a statement to me at that time that was recorded, correct?

A. Yes.

Q. And we've reviewed that statement recently?

A. Yes.

Q. And you've made no corrections to that statement, is that right?

A. Not that, no, I haven't.

Q. So that when you left 3 Quaker Road on the morning of January 23rd at about 8:03 a.m. [REDACTED] was not in custody?

A. No."

(Page Testimony)

48. Officer Page arrested [REDACTED] after he returned from [REDACTED]

[REDACTED]. (Page Testimony)

49. Officer Page placed [REDACTED] in the Appellant's care after he returned from [REDACTED]

[REDACTED]. (Page Testimony)¹

50. The original dispatch of the Appellant to the call at [REDACTED] took place at 7:42.

(Exhibit 8)

51. The Appellant advised the dispatcher that he would not be responding to the call. (Exhibit

8)

¹ After placing Mr. Franke in custody sometime after 8:03a.m. (approximately 20-25 minutes after the 20 Purchase Street 911 call was relayed to him), the Appellant proceeded to respond to a call in the neighboring Town of Middleborough at approximately 9:30a.m. In violation of Department policies, the Appellant kept Mr. Franke in the back seat of his cruiser for over one and one-half (1 ½) hours before transporting him to the police station for booking.

52. At 7:57 the day shift reported for duty and was advised that the 911 call had not been responded to.
53. Patrolman Luca was assigned to patrol unit No. 723 and responded to [REDACTED] by approximately 8:10 a.m. (Luca Testimony)
54. Upon his arrival at the scene, Officer Luca found that the 911 call pertained to a domestic disturbance between [REDACTED] and her brother [REDACTED]. (Luca Testimony)
55. Officer Bassett was dispatched to and arrived at the scene of [REDACTED]. (Bassett Testimony, Exhibit 5)
56. Officer Bassett spoke with the person who had called the police, [REDACTED], who was visibly upset and crying. [REDACTED] kept holding her head, while stating that he “punched him (sic) in the head.” Officer Bassett asked [REDACTED] if she wanted to be treated by an ambulance, but she refused treatment. (Bassett Testimony, Exhibit 5)
57. [REDACTED], in the presence of her nine year old daughter, [REDACTED], stated to Officer Bassett that they were involved in a verbal altercation, when [REDACTED] entered [REDACTED]’s bedroom and punched her in the head and face area several times. [REDACTED] then pushed his sister’s head into the bedroom wall, causing a circular cave-in in the wall, exposing the sheet rock. (Bassett Testimony, Exhibit 5)
58. [REDACTED] and his girlfriend, [REDACTED], and their one year old son, fled the home prior to police arrival. It was during this time that dispatcher Plant advised Officer Bassett that [REDACTED] was at the station requesting an ambulance for a domestic assault. [REDACTED] stated that [REDACTED] threw a Sunbeam iron towards him at first striking the wall, then hitting him between the shoulder blades. [REDACTED] was seen by an ambulance, but refused

to be transported to Jordan Hospital for treatment. [REDACTED] signed the appropriate refusal paperwork. (Bassett Testimony, Exhibit 5)

59. Officer Bassett advised [REDACTED] of her rights under the 209A abuse law, both in writing and in hand. [REDACTED] was unsure if she would obtain an order through the court. She was advised that Officer Bassett would be notifying the DSS hotline due to the fact that that her daughter [REDACTED] was present during the domestic assault. (Bassett Testimony, Exhibit 5)

60. [REDACTED] also confirmed that she and her mother, [REDACTED], were involved in an argument over her ([REDACTED]) not wanting to get out of bed for school. As they were arguing, [REDACTED] entered [REDACTED]'s bedroom and punched her in the head area and pushed her into the wall. [REDACTED] did not observe her mother throw and strike [REDACTED] with an iron. (Bassett Testimony, Exhibit 5)

61. Officer Bassett confiscated the Sunbeam iron as evidence from the assault. [REDACTED] was also advised that the police department would request a court hearing regarding her alleged assault on her brother with the iron. (Bassett Testimony, Exhibit 5)

62. Upon arrival at the police station, [REDACTED] stated that he was involved in an altercation with his sister, [REDACTED]. [REDACTED] stated that [REDACTED] ripped her daughter [REDACTED] out of bed. This made him angry, so he began arguing with [REDACTED]. According to [REDACTED], [REDACTED] then threw the iron, striking the wall first, and then striking him in the back between his shoulder blades. (Bassett Testimony, Exhibit 5)

63. Officer Bassett spoke with [REDACTED] girlfriend, who confirmed the incident. [REDACTED] stated that she and [REDACTED] were sleeping when they heard a loud banging noise and [REDACTED] yelling at her daughter [REDACTED]. Both [REDACTED] were

arguing, causing [REDACTED] to wake up crying. [REDACTED] then went to tell [REDACTED] to quiet down, but she then yelled at him, and then took the iron by its cord and swung it around. The iron was released, striking the bedroom wall and then striking [REDACTED] in the back area. They then fled the scene and went to the police station. (Bassett Testimony, Exhibit 5)

64. [REDACTED] was advised that he was being placed under arrest for domestic assault. He was led into the booking room, pat-searched and then handcuffed. His personal property was given to [REDACTED] prior to her leaving the station at his request. (Bassett Testimony, Exhibit 5)

65. [REDACTED] was advised of his right to use the telephone, following which he made several calls. [REDACTED] was also advised of his rights under the 209A abuse law, in writing and verbally. He did indicate whether he would seek an order through the court. (Exhibit 5)

66. [REDACTED] did state that he would be seeking medical attention upon his release from court. He was complaining that he had pain in his back. Officer Bassett did not observe any redness or bruising on his back, but did observe what appeared to be fingernail scratches on his neck area. (Bassett Testimony, Exhibit 5)

67. [REDACTED] was then placed in a cell to await transport to court for his arraignment. (Bassett Testimony, Exhibit 5)

68. The Bureau of Criminal Investigation took photographs of both [REDACTED] and the residence at [REDACTED]. (Exhibits 26 and 26A)

69. On March 27, 2003, the Appellant was interviewed regarding the events of January 23, 2003. (Exhibit 11)

70. The Appellant was aware that the Department policy on January 23, 2000 was to respond to all 911 calls. The Appellant's statement in this regard was as follows:

“Q. 911 calls usually carry with them some sense of urgency?

A. I don't know if that's a fair statement.

Q. Sometimes you get 911 calls that . . .

A. We have a tremendous amount of people that intend to dial 411, a tremendous amount of accidentals or a lot of companies and businesses that have to dial 9 to get an outside line; we get a lot of those.

Q. Is there any special significance to an abandoned 911 call?

A. No.

* * *

Q. Have you received training with respect to whether or not you should respond to an abandoned 911 call?

A. We respond to all 911 calls.”

(Exhibit 11)

71. On April 12, 2003, Officer Page was interviewed regarding the events of January 23, 2003. (Exhibit 12)

72. Officer Page stated that it was the Department Policy to respond to all 911 calls. (Id.)

II. Sergeant Lapworth's Prior Disciplinary Record

(a) The One-Day Suspension

73. On January 26, 2001, the Appellant and Officer Orr arrested an individual for driving under the influence. (Exhibit 24)

74. Gordon Plante, dispatcher for the Department, called the Appellant on July 19, 2001 and left a message informing him that the case had been continued and he did not need to appear in court the next day. (Exhibit 24)
75. The trial was rescheduled on November 29, 2001 in the Wareham District Court. The Court issued a summons for the Appellant on that date as he failed to appear. On October 30, Officer Hedges, the Department's Court Officer at the time, gave the Appellant's summons to Officer Brine to deliver to the Appellant. At the time, Officer Brine was living with The Appellant. (Exhibit 24)
76. The Appellant received the summons, but did not respond to it or make any inquiries regarding it. (Exhibit 24)
77. The Appellant did not appear at the Courthouse on November 29. (Exhibit 24)
78. On January 22, 2002, Chief Skoog informed the Appellant that she was suspending him for one day for failing to appear in court to testify. (Exhibit 24)
79. The Appellant sought a just cause hearing before the Board of Selectmen. The Board upheld Chief Skoog's decision on February 5, 2002. The Appellant filed an appeal of the suspension on February 7, 2002. (Exhibit 24)
80. Thereafter, the Commission issued its decision upholding the suspension, holding, in pertinent part.

"The Department's policy was to require officers on injured leave to report to court as summonsed unless they were incapacitated. The Appellant, by his own admission, received and read the summons. He was not incapacitated on November 29, 2001, yet he failed to respond to the summons. When Chief Skoog demanded an explanation for his failure to appear at Court, the Appellant claimed that he did not react to the summons because Mr. Plante left him a phone message in July telling him that all of his cases would be postponed until he returned to duty. It is the function of a hearing officer to assign credibility and weight to testimony offered before him. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978); Doherty v. Retirement Board

of Medicine, 425 Mass. 130, 141 (1997). The dispatch logs note that Plante merely told the Appellant that the DUI trial scheduled for July 19 was postponed, not that all of the Appellant's cases were continued indefinitely, notwithstanding any notice he received from the Court. In light of that notification, I find that Officer Hedge never left a message on the Appellant's phone that would lead the Appellant to believe he was free of all courtroom responsibilities. Therefore, the Appellant, contrary to his assertions, had no justification to disregard the summons.”
(Exhibit 24)

(b) The Appellant's Five-Day Suspension

81. On May 19, 2000, The Appellant was involved in a motor vehicle stop on Route 58 in Carver. Inside the vehicle were two men. The Appellant issued the driver a citation and then released the two men. During the course of the stop, the Appellant learned that one of the two individuals in the car had tossed a blue bag out of the vehicle before stopping.
(Exhibit 25)

82. The Appellant's partner, Officer Vautrinot, found the bag on the side of the road. The bag contained a handgun whose serial number had been removed, a full ammunition clip, a black ski mask, a camouflage ski mask, black gloves, and personal papers. The Appellant called the Bureau of Criminal Investigation, which took photographs of the scene. The Appellant took charge of the items and brought them to the station, where photographs of the bag's contents were taken. (Exhibit 25)

83. At the criminal trial, counsel for the two defendants raised the issue of a gap in the custody chain of the evidence between the time that the Appellant placed the items in the Sergeant's Office and when Sergeant O'Donnell delivered them to the crime lab. (Exhibit 25)

84. Both defendants were acquitted of all criminal charges. (Exhibit 25)

85. At a Town Meeting on September 25, 2001, a citizen voiced concern about how the Department handled the evidence involving the two defendants, and how this led to the acquittal of both defendants. (Exhibit 25)
86. Town Counsel Christopher Groll was instructed to investigate allegations of inappropriate conduct by officers in the Department. It is unclear who ordered him to do so, and what prompted this investigation. (Exhibit 25)
87. After the investigation was completed, the Appellant received a letter from the Board of Selectmen dated April 11, 2002, notifying him of a hearing to be held on April 30 regarding his failure to follow the Department's evidence policy. (Exhibit 25)
88. On May 31, 2002, after the hearing, the Board of Selectmen ordered The Appellant suspended for five days for violating the Department's evidence policy. In their notice to the Appellant, the Board noted "(t)hat the reason(s) why the applicable criminal case was lost is not relevant and does not mitigate your admitted violation of department rules and regulations." (Exhibit 25).
89. The Appellant filed an appeal with the Commission on June 7, 2002. (Exhibit 25)
90. On August 11, 2005, the Commission issued its decision upholding the imposition of the five (5)-day suspension. The Commission held, in pertinent part:
- "The Appointing Authority has demonstrated that the Appellant clearly and directly violated a longstanding Departmental policy by failing to properly record and secure articles of evidence. The record does not contain sufficient proof to lead the Commission to conclude that the Appointing Authority's decision was in any way retaliatory due to the ultimate dismissal of criminal charges. The appeal is *dismissed*."
- (Exhibit 25)

III Disciplinary Action Relating to January 23, 2003 Incident

91. By letter dated April 16, 2003, The Appellant was advised that pursuant to G.L. c. 31, s. 41 a hearing would be held on April 22, 2003 to determine whether there was just cause to discipline the Appellant for his actions on January 23, 2003. (Exhibit 1)
92. Subsequently, by letter dated May 9, 2003, the Appellant was terminated from his position as a police sergeant with the Town. (Exhibit 2)
93. The Appellant timely appealed this decision by letter dated May 13, 2003.(Exhibit 3)
94. Here, the credible documentary and testimonial evidence establishes that:
- a. The Appellant's failure to respond or to make proper arrangements to respond to the abandoned 911 call from [REDACTED] on January 23, 2003 was violative of the policies and procedures of the Carver Police Department;
 - b. The Appellant falsely responded that the reason for his failure was because he had a prisoner in custody in his cruiser when he interviewed as part of an internal investigation regarding his failure to respond to the January 23, 2003 abandoned 911 call from [REDACTED]; and
 - c. The Appellant failed to arrange for the immediate booking of a prisoner and instead placed the prisoner in the rear of his patrol car for approximately one and one-half hours (while he investigated a non-emergency call in a neighboring town), in violation of the policies and procedures of the Carver Police Department.
95. While the Appellant was forthcoming about his prior disciplinary issues, the objective documentary evidence establishes that The Appellant failed to respond or make the proper arrangements for response to the abandoned 911 call, and breached Department protocol in keeping a suspect detained in the back of his cruiser for such an extended time. Additionally, he failed to offer a credible explanation as to his demonstrably false statements during the Department's internal investigation of the events of January 23,

2003. Instead, The Appellant offered a wholly unsupported allegation that he was terminated to “make way for [another officer] to become Chief”.

96. In contrast, the testimony of the Town’s witnesses [Officer Lawrence Page; Officer Anthony Luca; Officer Heidi Bassett] was highly credible. All of these witnesses were composed, and presented information in a clear and concise manner. Each of these sequestered witnesses confidently and uniformly corroborated the testimony of one another, as well as their own respective prior statements (as recorded in their various reports and the Department’s internal investigation transcripts). Nor was their testimony in any way discredited upon cross-examination.

CONCLUSION:

The role of the Civil Service 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.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983). McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000). City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is “justified” when 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.” City of Cambridge at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The proper inquiry

for determining if an action was justified is, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983). School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). This burden must be met by a preponderance of the evidence. G.L. c. 31, §43.

Substantial misconduct by police officers adversely affects the public interest more than any other civil service position. In a free society the public must have confidence in their police officers because of the vast power they can dispatch. “Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986). “Police officers must comport themselves in accordance with the laws they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel.” Id. Because of the nature of a police officer’s position, and the risk of abuse of power, police officers are held to a higher standard of conduct than other employees and citizens. Attorney General v. McHatton, 428 Mass. App. Ct. 790 (1999); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473 (1995); Boston Police Department v. Collins, 48 Mass. App. Ct. 408 (2000).

It is the conclusion of this Commission that the Respondent has satisfied its burden of proving reasonable justification for terminating the Appellant’s employment with the Town of Carver Police Department. Specifically, the evidence proffered by the Department is sufficiently

reliable to warrant a reasonable mind to find that the Appellant is guilty of the misconduct for which he was penalized.

The credible documentary and testimonial evidence conclusively establishes that:

- a. The Appellant failed to respond or to make proper arrangements to respond to the abandoned 911 call from [REDACTED] on January 23, 2003 in violation of the policies and procedures of the Carver Police Department;
- b. The Appellant falsely responded that he failed to do so because he had a prisoner in custody in his cruiser when he was interviewed as part of an internal investigation regarding his failure to respond to the January 23, 2003 abandoned 911 call from [REDACTED] and [REDACTED];
- c. The Appellant failed to arrange for the immediate booking of a prisoner and instead placed the prisoner in the rear of his patrol car for approximately one and one-half hours (while he investigated a non-emergency call in a neighboring town), in violation of the policies and procedures of the Carver Police Department.

It is the function of the agency hearing the matter to determine what degree of credibility should be attached to a witness' testimony. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978). Doherty v. Retirement Board of Medicine, 425 Mass. 130, 141 (1997). The hearing officer must provide an analysis as to how credibility is proportioned amongst witnesses. Herridge v. Board of Registration in Medicine, 420 Mass. 154, 165 (1995).

Here, the Commission assigns little credibility to the testimony of The Appellant with respect to the incidents in question. While The Appellant was forthcoming about his prior disciplinary issues, the objective documentary evidence establishes that The Appellant failed to

respond or make the proper arrangements for response to the abandoned 911 call, and breached Department protocol in keeping a suspect detained in the back of his cruiser for such an extended time. Additionally, he failed to offer a credible explanation as to his demonstrably false statements during the Department's internal investigation of the events of January 23, 2003. Instead, The Appellant offered a wholly unsupported allegation that he was terminated to "make way for [another officer] to become Chief".

In contrast, the testimony of the Town's witnesses [Officer Page; Officer Luca and Officer Bassett] was highly credible. All of these witnesses were composed, and presented information in a clear and concise manner. Each of these witnesses confidently and uniformly corroborated the testimony of one another, as well as their own respective prior statements (as recorded in their various reports and the Department's internal investigation transcripts). Nor was their testimony in any way discredited upon cross-examination.

For all of the above stated reasons, it is found that the Town of Carver has established by a preponderance of the reliable and credible evidence in the record that it had just cause to discipline the the Appellant for the misconduct. Therefore, the appeal on Docket No. D-03-341 is *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Marquis, Guerin and Taylor, Commissioners) on May 3, 2007.

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. A motion for reconsideration shall be deemed a motion for rehearing in accordance with GL c. 30A, sec. 14(1) for the purpose of tolling the time of appeal.

Pursuant to GL c. 31, sec. 44, any party aggrieved by a final decision or order of the Commonwealth may initiate proceedings for judicial review under GL c. 30A, sec. 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 To:

Austin M. Joyce, Esq.
David C. Jenkins, Esq.