

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

VINCENT BOWMAN,

Appellant

Case No. D1-13-138

v.

CITY OF BROCKTON,

Respondent

Appearance for Appellant:

Vincent Bowman, Pro Se

Appearances for Respondent:

Philip Collins, Esq.
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062

Commissioner:

Paul M. Stein

DECISION

The Appellant, Vincent Bowman, appealed to the Civil Service Commission (Commission), from the decision of the Mayor of the City of Brockton (Brockton), as Appointing Authority, terminating Mr. Bowman from his position as a Police Officer with the Brockton Police Department (BPD). A pre-hearing conference was held July 9, 2013 at the offices of the Commission. A full hearing was held at the same location on December 13, 2013. Neither party requested a public hearing, so the hearing was deemed private. The witnesses were sequestered. The Commission received forty (40) exhibits, all marked in evidence, save for one [Exh.8] admitted for a limited purpose and eight (8) [29 through 36] marked for identification only and received one post-hearing additional document [P.H.Exh.39]. The hearing was digitally recorded and the parties were provided with copies of the hearing CD. The Commission received post-hearing submissions from the parties on February 7, 2014.¹

¹ Mr. Bowman's post-hearing submission contained voluminous new documents that were not offered at the hearing. Brockton objected to the consideration of any of this new material. The Commission gives no weight to any of the new material contained in Mr. Bowman's post-hearing submission that was not offered at the hearing.

FINDINGS OF FACT

Based on the exhibits, the stipulations of the parties, the testimony of Mr. Bowman, BPD Police Chief Emanuel Gomes and BPD Captain Wayne Sargo; 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, Vincent Bowman, became a Brockton Police Officer in 1997 and served in that position until his discharge on May 20, 2013. (*Exhs. 4 & 36ID; Testimony of Appellant*)

2. Officer Bowman was the subject of prior discipline that included:

- a. A 2004 incident in which used excessive force and omitted material information in a police report, which resulted in an agreed 30 day suspension (15 days in abeyance) and referral to an employee assistance program of anger management counseling;
- b. Multiple excessive use of sick time that resulted in sick leave probation; and
- c. A 2011 incident involving four occasions on which Officer Bowman failed to appear in court after being summonsed as a witness in criminal cases, one of which caused a felony charge of OUI, Third Offense, to be dismissed.

(*Exhs. 18, 19, 22 through 25, 37*)

3. In 2007, Officer Bowman was taking Vicodin and was advised that he should not take the medicine when he was reporting for work because Vicodin is a narcotic and precluded him from carrying a firearm. (*Exh. 21*)

4. In 2008, Officer Bowman confided to then Captain (now Chief) Gomes that he “needed help”. He was relieved of his firearm, placed on no-pay status and referred to the employee assistance program for treatment, which he completed in or about August 2008 and returned to duty. (*Exhs 2 & 20; Testimony of Appellant & Chief Gomes*)

5. In late 2011, Officer Bowman told Captain Gomes that he had a substance abuse problem, i.e., that he had been abusing prescription drugs. Captain Gomes placed Officer Bowman on paid leave and arranged for him to attend a treatment facility in Vermont for a period of several weeks (*Testimony of Chief Gomes*)

6. In fact, Officer Bowman was experiencing a variety of issues, exacerbated after a murder/suicide involving a fellow officer that had “opened the floodgates” of his own traumatic and tragic childhood experiences (including gang and drug violence and the deaths and murders of siblings), but substance abuse was not one of them. Prior to getting treatment, he knew he “needed help” but believed that his problems were not serious enough to warrant medical treatment unless he claimed he had a substance abuse problem. He had been told in 2008 that he was suffering from Post-Traumatic Stress Disorder (PTSD), but thought his own history undeserving of such a diagnosis – believing that his trauma was inconsequential compared to that of others who suffered trauma in the line of duty, such as 9/11 first responders. The treatment he received in 2011, however, had a dramatic effect on him and, for the first time, he acknowledged that he had serious medical and mental health issues, including PTSD, insomnia and high-blood pressure, and accepted the fact that his condition required a regime of medication. (*Exh. 29ID; Testimony of Appellant*)

7. Upon his return from treatment in late 2011, Captain Gomes arranged for Officer Bowman to receive a free apartment through a Brockton housing assistance program, as his marriage had broken up and he needed a place to live. (*Testimony of Chief Gomes*)

8. In early 2012, Captain Gomes was promoted to BPD Police Chief. (*Testimony of Chief Gomes*)

9. The medication prescribed for Officer Bowman included drugs to regulate his mood, blood pressure and treat insomnia. Officer Bowman kept the precise details of his medications to himself and a few close confidants, as he worried that if the word got out he would be considered “damaged goods” in the BPD. Even Chief Gomes, whom Officer Bowman then regarded as his friend, never knew (either as Captain or Chief) what the medications were or the medical and personal history for which Officer Bowman was being treated. (*Testimony of Appellant & Chief Gomes*)

10. In the Fall of 2012, Officer Bowman sought a transfer to the 12 AM TO 8 AM (midnight) shift and Chief Gomes arranged it, although it required an exception to the normal shift bidding process. Although Officer Bowman did not disclose it at the time, a shift change was proposed by Officer Bowman’s physician as a way of better accommodating the regimen of medications he was taking and regulating the side effects. As part of this regime, Officer Bowman called in to learn if he would be assigned to patrol or the station, as that would impact how he took his medications. He would try to take medication that would help him sleep just before getting off his shift whenever possible. (*Testimony of Appellant & Chief Gomes*)

11. On Wednesday, November 21, 2012, Officer Bowman was scheduled to attend a routine firearms qualification exercise. At 8:03 AM, after coming off his regular midnight shift, Officer Bowman emailed the following message to his supervisor, BPD Lt. La France:

“SIR i HAVE A MEDICAL CONDITION THAT REQUIRES MEDICATION i WILL BE UNAVAILABLE FOR THE RANGE TODAY I WILL BE IN THE mAKE UP GROUP [sic]

Officer Bowman sent this email because he had just taken one of his medications, having forgotten that he was not going straight home but was due to report to the firearms range. (*Exh. 6; Testimony of Appellant & Capt. Sargo*)

12. Officer Bowman's email was relayed to Capt. Sargo who placed a call to Officer Bowman at about 9:15 that morning and left a message for Officer Bowman to call back. Having no reply, Capt. Sargo checked the roster and noted that Officer Bowman was next due on duty on Saturday, November 24, 2012. As Thursday was Thanksgiving Day, Capt. Sargo decided to wait and try to reach Office Bowman again on Friday. Capt. Sargo's concern was, having no knowledge of the medical condition or medications involved, that whatever medication Officer Bowman was taking that prevented him from attending the firearms exercise could possibly also present a problem with his ability to carry a firearm on duty. (*Exh.7; Testimony of Capt. Sargo*)

13. At approximately 10:30 AM on Thursday, Thanksgiving Day, Capt. Sargo received a call from BPD Capt. McCabe, and learned that Officer Bowman had reported and was working an overtime shift that day. Capt. Sargo came to the BPD headquarters and summoned Officer Bowman to a meeting with him. Also present were BPD Sgt. Roderbush and Officer Morrissey. (*Exh. 7; Testimony of Appellant & Capt. Sargo*)

14. Capt. Sargo told Officer Bowman that "he was not in trouble", but the department needed to be sure that his medical condition and the medication he was taking would not be likely to adversely affect his ability to perform his duty as a police officer. Officer Bowman said he did not want to reveal his medical condition or "what meds he was on". Capt. Sargo stated that he was not ordering Officer Bowman to answer these questions but, if he did not do so, Capt. Sargo was obliged to take his firearm and relieve him from duty. Officer Bowman reacted emotionally – saying he "needed the money" – and handed Capt. Sargo his gun belt, crying as he did so. Capt. Sargo's efforts to calm him down were unavailing and, as Officer Bowman walked out, his raised voice continued to be heard as he left the building. (*Exhs. 7 &*

8[limited purpose - hearsay taken only to corroborate evidence supported by percipient testimony or exhibits]: Testimony of Appellant & Capt. Sargo)

15. Officer Bowman's reaction was prompted by his concern that he was living on a tight budget and knew, without a firearm, he would be unable to work details over the Thanksgiving weekend. He was counting on those details to pay his child support, and feared, if he didn't have the money, his ex-wife would be "all over him." He did not want to disclose the details of his medical condition for the reasons stated above, and knew there was little chance of seeing a doctor over the holiday to get a medical clearance in time to get his firearm back so that he could work the weekend details. (*Testimony of Appellant*)

16. Based on his encounter with Officer Bowman, Capt. Sargo recommended that Officer Bowman undergo a fitness for duty evaluation. When Chief Gomes learned of this incident, he was prepared to take immediate disciplinary action, but was persuaded by Capt. Sargo not to do so at that time. (*Exhs. 1 & 7; Testimony of Chief Gomes & Capt. Sargo*)

17. The next week, Chief Gomes received a letter dated November 27, 2012 from Richard Black, MD, addressed to Officer Bowman, which stated:

To Whom It May Concern:

Officer Bowman is prescribed a medication by me. The patient should be able [sic] perform the duties of his job including the use of a firearm while on this medication. Patient may return to work today.

(*Exh. 9: Testimony of Chief Gomes*)

18. On November 29, 2012, Capt. Sargo spoke to Officer Bowman and informed him that Dr. Black's letter was being reviewed by the Brockton Law Department and, pending its advice, he was placed on light duty status, which would not require him to drive a cruiser, wear his

uniform or carry a firearm. Capt. Sargo ordered Mr. Bowman to report to duty that night for the 12AM to 8AM shift. (*Exhs. 10 & 28; Testimony of Capt. Sargo*)

19. Officer Bowman did not report for duty on November 30, 2012 as ordered, taking the night off, exhausting all of his remaining benefit time and, actually, taking a half-hour without pay. (*Exh. 10; Testimony of Capt. Sargo*)

20. Capt. Sargo wrote Officer Bowman a “To/From” that recited the conditions of his return to work on light duty status and commented that the decision to take the night off “did not bode well.” (*Exh. 10*)

21. Officer Bowman remained on light duty status through December 2012 and into January 2013. On January 7, 2013, Mary Milligan, the Brockton Worker’s Compensation Agent, faxed a letter to Dr. Black, together with a standard “Work Capacity Form” and a five-page list of the job duties of a Massachusetts Police Officer. Although this form was specifically designed to evaluate the fitness for duty of an officer who had a work-related injury, it had occasionally been used for off-the-job illness and injuries as well. The form contained a specific section for the physician to identify whether (but not what) medication was prescribed and, if so, what accommodations, if any, were necessary. (*Exh. 10A*)

22. Dr. Black did not respond to Ms. Milligan’s letter nor did he return the “Work Capacity Form”. Chief Gomes could recall no other occasion when a physician had declined to honor a request to complete and return the form. (*Testimony of Chief Gomes*)

23. At some point in early January, based on advice received from Mary Mulligan, Officer Bowman decided that he should “get the union involved”. On January 17, 2013, Officer Bowman filed a Grievance Form protesting his limited duty status and demanding a return to full duty. He filed a second Grievance Form on January 18, 2013. A Step 2 grievance on the

matter was filed with Chief Gomes by Officer Bowman's union, the Brockton Police Association (BPA) on January 28 and, upon Chief Gomes's failure to respond in writing, by letter dated February 14, 2013, the BPA filed a Step 3 grievance with the Brockton Personnel Director. (*Exh. 26*)

24. On February 20, 2013, Capt. Sargo spoke with Officer Bowman over the telephone. Capt. Sargo said he wanted to "get him [Bowman] back to work" but told Officer Bowman the BPD still needed a physician's clearance to return him to full duty. Capt. Sargo suggested that Officer Bowman ask Dr. Black to fill out the form sent to him back in January, but only state that Officer Bowman was cleared for full duty as of now, and did not need to vouch for his medical status all the way back to November thinking that would "clear it up." (*Exh. 11; Testimony of Capt. Sargo*)

25. Capt. Sargo's suggestion did not resolve the impasse. Per legal advice, Dr. Black "refused to fill out the form" because it was "not their business" and it would be "unethical" to complete a fitness for duty form when Dr. Black had not seen Officer Bowman since November 2013. (*Exhs. 11, 32ID & 33ID; Testimony of Appellant*)

26. A Step 3 grievance hearing was tentatively set for March 15, 2013. Officer Bowman believed that the hearing would lead "City Hall" to agree that Dr. Black's initial November 2012 note would be enough to get him back to full duty. (*Exh. 27; Testimony of Appellant*)

27. Meanwhile, by letter dated March 11, 2013, Chief Gomes ordered Officer Bowman to report to Dr. Paul Keefe for a fitness for duty examination on March 14, 2013. Chief Gomes issued this order believing that it was the best available process that could provide the information he needed to return Officer Gomes to full duty. (*Exh. 12; Testimony of Chief Gomes & Capt. Sargo*)

28. Officer Bowman refused to accept Chief Gomes's letter, believing that to do so would compromise his position at the pending grievance hearing that his own doctor's letter was sufficient. He also saw this action as a clear signal that Chief Gomes was no longer on his side. A copy of Chief Gomes's letter was left in his BPD mailbox. The letter also was sent certified mail to Mr. Bowman's home. (*Exhs. 12 through 14; Testimony of Appellant & Chief Gomes*)

29. BPD Rules and Regulations, Article 10 – Fitness for Duty – provide: "Officers shall submit to a medical or psychological examination, at the expense of the Department when so ordered to do so by the Police Chief" and authorizes the Police Chief to order any officer to submit to a physical or psychological examination "whenever circumstances dictate that it is in the best interests of the officer and/or the Department" . Officer Bowman was well aware of these rules. A copy of these rules was attached to the March 11, 2013 letter (*Exhs. 12 & 17*)

30. Officer Bowman reported to Dr. Keefe's office on March 14, 2013. He was "professional and respectful" but refused to submit to a blood draw or any medical evaluation, stating that on legal advice, he "elected not to cooperate." (*Exh. 15; Testimony of Appellant*)

31. On Friday, March 15, 2013, the union grievance was settled without a hearing. Chief Gomes acknowledged that the time it was taking to resolve Officer Bowman's duty status was unduly prolonged and agreed to pay Officer Bowman lost overtime and details to make up for the number of opportunities he lost during the holiday season, which amounted to about \$3,500 at that point. Officer Bowman assumed the settlement excused his prior refusal to submit to a medical exam and cleared him for full duty but nothing explicitly required that as Chief Gomes understood it. At the Commission's request, Brockton submitted a copy of the Side Letter of Agreement regarding the union grievance which tends to corroborate Chief Gomes's understanding. (*Exh. 3; PH Exh.39; Testimony of Appellant & Chief Gomes*)

32. By letter dated Monday, March 18, 2013, Chief Gomes placed Officer Bowman on five-days suspension without pay or benefits (the maximum discipline he was authorized to impose) and recommended additional discipline, which would be the prerogative of Mayor Balzotti, the Appointing Authority, after hearing. The specific reasons for the suspension and possible further discipline were stated as follows:

1. Violation of Roll Call #97/023: Conduct Unbecoming an Officer – Any specific type of conduct that reflects discredit upon the member as a police officer or upon his fellow officers, or upon the police department he or she serves.
2. Violation of Roll Call #97/023: Insubordination – Failure or deliberate refusal to obey a lawful order issued by a superior, ranking, or commanding officer.

(Exhs. 1 & 16; Testimony of Chief Gomes)

33. By letter dated April 22, 2013, Mayor Balzotti notified Officer Bowman that a hearing would be held on May 3, 2013, before her designee, Maureen Cruise, Brockton Personnel Director, as Hearing Officer, to consider whether he should be discharged, removed or suspended from his position as a BPD Police Officer. *(Exh. 2)*

34. On April 26, 2013, Officer Bowman filed another “Grievance Form”, protesting, among other things the BPD’s “unfair & harsh treatment, not keeping your agreement on my settlement” and racial discrimination. No evidence was introduced as to the course or outcome of this additional grievance. *(Exh. 34ID; Testimony of Appellant)*

35. At the appointing authority hearing on May 3, 2013, Brockton submitted thirty (30) exhibits and called no witnesses. Officer Bowman, represented by the BPA, introduced no exhibits and called no witnesses. *(Exh. 3)*

36. On May 16, 2014, the Hearing Officer submitted a report recommending that Officer Bowman be discharged for “repeated inability to control his temper, insubordination, neglect of duty, incompetence, discourteous actions and refusal to comply with direct orders” in violation

of Article 10 of the BPD's Rules and Regulations and Roll Call #97/023 (Conduct Unbecoming an Officer). The Hearing Officer drew an adverse inference against Officer Bowman from his failure to testify that "his testimony would not have rebutted the evidence supporting the charges." (*Exh. 3*)

37. By letter dated May 20, 2013, Mayor Balzotti accepted the Hearing Officer's report and recommendations and terminated Officer Bowman from his position as a BPD Police Officer, effective immediately. This appeal duly ensued (*Exhs. 4 & 5*)

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)).

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).

While the Commission makes *de novo* findings of fact, “the Commission’s task, however, is not to be accomplished on a wholly blank slate.” Town of Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). “Here the Commission does not act without regard to the previous decision of the town, 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.’” *Id.* (citing Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev. den., 390 Mass. 1102 (1983)). The role of the Commission is to determine “whether the appointing authority sustained its burden of proving there was reasonable justification for the action taken by the appointing authority.” Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304, rev. den., 426 Mass. 1102 (1997).

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

The issues in this appeal involve whether Chief Gomes's orders to Officer Bowman regarding his medical status were, in fact, lawful orders and whether failure to comply with those orders justified discharge from employment. As the Chief of Police, Chief Gomes's duties include protecting public safety, managing the department, and addressing budget concerns. It is essential to the operation of the department that his lawful orders be complied with.

The authority to require a police officer to submit to a fitness for duty examination is well-recognized. As stated in Nolan v. Police Comm'r of Boston, 383 Mass. 625, 630 (1981) :

“There is no doubt that the Commissioner has a public duty to oversee the performance of police officers, and especially their use of firearms [citing City of Boston v. Boston Police Patrolmen's Ass'n, Inc., 8 Mass.App.Ct. 220, 225-227 (1979)]. A fortiori, the Commissioner has the authority and duty to determine a police officer's fitness to perform his duties or to return to full working status.”

See also Broderick v. Police Comm'r of Boston, 368 Mass. 33, 41-43 (1975), cert.den., 423 U.S. 1048 (1976) (authority to inquire about off-duty actions that were “narrowly and specifically” directed and “reasonably related to the officer's ability and fitness to perform his official duties”); Dalrymple v. Civil Service Comm'n, 82 Mass.App.Ct. 1107 (2012) (Rule 1:28 opinion) (police chief's duty cannot be carried out if it is left to the police officer being examined to determine what portions of the fitness for duty evaluation will be complied with); Bistany v. Civil Service Comm'n, C.A. 2013ESCV00726 (2014), appeal pending, A.C. 2014-P-0849 (police chief may lawfully order an officer to submit to a diagnostic test reasonably related to making a definitive decision about fitness for duty).

Officer Bowman's self-disclosed concern that the medication he was taking in November 2012 was likely to interfere with his ability to operate a firearm gave the BPD reasonable grounds to inquire further about this matter and to require an unequivocal medical opinion that

his medication did not preclude him from performing the duties of a police officer, specifically, the ability to carry and safely draw and accurately discharge his firearm, if necessary. The BPD was fully justified to require Officer Bowman to surrender his firearm and place him on restricted duty until clear evidence of these facts satisfactory to the BPD had been provided.

It was also reasonable for the BPD to require more information than it received in Dr. Black's November 27, 2012 letter before restoring Officer Bowman to full duty. In fact, Dr. Black's letter was reasonably viewed by the BPD to raise more questions than it answered – by stating that Officer Bowman was capable of the “use of a firearm while on [his] medication”, Dr. Black seems to contradict what Officer Bowman asserted when he wrote his November 21, 2012 letter explaining why he would not report for firearms qualification. Given this inconsistency, the BPD was fully justified in seeking a more formal medical opinion in January 2013, and, when that produced no resolution, for Chief Gomes to order an independent medical examination in March 2013 as a condition to returning Officer Bowman to full duty.²

As Chief Gomes's orders were reasonably related to determining Officer Bowman's fitness to perform his duties and return to full working status, these were lawful orders. Officer Bowman's refusal to comply with them is misconduct that clearly justified imposing discipline.

Having determined that it was appropriate to discipline Officer Bowman, the Commission must determine if Brockton was justified in the level of discipline imposed, which, in this case, was the termination of Officer Bowman's employment as a police officer with the BPD.

Mr. Bowman seeks to excuse his insubordination by suggesting, in effect, that he was simply following the lead of his doctor and protecting his perceived collective bargaining rights.

² In this regard, I note that I did review the documents attached to the Appellant's post-hearing submission that purported to show instances in which Brockton appeared to accept a “simple” doctor's note to excuse an absence for medical illness and view them as clearly distinguishable and not persuasive. Even if these documents had been proffered in evidence at the hearing (which they were not), they would not change my conclusion that, in this particular situation, Brockton acted reasonably to require a more definitive opinion of Officer Bowman's status.

Misunderstanding on the part of Dr. Black certainly did contribute to the impasse between the parties that led, ultimately, to Officer Bowman's "election" to refuse to comply with the order to submit to a fitness for duty examination. Had a different approach been taken, with better communication on the part of all involved, this matter might have been resolved at the treating physician level. Similarly, had Officer Bowman explained his concern about the timing of the fitness for duty examination and sought accommodation from Chief Gomes's order pending the grievance hearing, an accommodation might have been possible that could have cut through the misconceptions and avoided the confrontation that led to Officer Bowman's discharge.

It is not within the purview of the Commission, however, to turn back the clock and decide the validity of collective bargaining grievances, to interpret collective bargaining rights and strategy, or to rule whether Officer Bowman had provided sufficient proof that he was fit for duty. My findings of fact as to Officer Bowman's insubordinate (albeit misguided) actions do not differ significantly from those relied upon by Brockton, nor does the Commission interpret the law differently than did Brockton in this case. Officer Bowman was not the victim of disparate treatment or ulterior motives. Indeed, in many respects, his tenure with the BPD was replete with many examples of his favorable treatment. Most of the efforts by the BPD were clearly motivated to get him back to work, not to get him fired. Finally, in weighing the appropriate discipline, Brockton was fully justified to consider Officer Bowman's prior disciplinary history, including another recent episode of serious misconduct for unexcused failure to appear to testify in court. Under these circumstances, the Commission is not warranted to exercise its discretion to modify the discipline and reduce it to a suspension.

Mr. Bowman served his community well for many years. He sincerely believes that he was well on the way to conquering the issues that have plagued him since childhood. He believes he

had proved that he is fully capable of providing many more years of service as a BPD police officer. Had he handled the issues differently, he may have persuaded the BPD to give him that chance. The Commission, however, will not interfere with the judgment of the appointing authority in this case which has made a reasonable determination, consistent with merit principles, that it is not in the best interests of the BPD and the people of Brockton to do so.

In sum, Brockton had just cause to terminate Officer Bowman from employment with the BPD. Therefore, the appeal of Vincent Bowman, filed under Docket Number D1-13-138, is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman (no relation to Appellant); Ittleman, McDowell, and Stein, Commissioners) on November 13, 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:
Vincent Bowman (Appellant)
Philip Collins, Esq. (for the Respondent)