

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
617.727.2293

MARCOS FREITAS,
Appellant,

v.

D1-11-245

CITY OF SOMERVILLE,
Respondent

Appellant's Attorney:

Gerard McAuliffe, Esq.
Law Office of Gerard McAuliffe
43 Quincy Avenue

Respondent's Attorney:

Matthew J. Buckley, Esq.
Assistant City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Commissioner:

Christopher C. Bowman

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Marcos Freitas (Mr. Freitas), appealed the decision of the City of Somerville (City) to terminate him from his position as a police officer with the Somerville Police Department (Department) for untruthfulness and conduct unbecoming a police officer. The appeal was filed with the Commission on August 5, 2011. A pre-hearing conference was held at the offices of the Commission on September 20, 2011. A full hearing was held on December 9, 2011. A digital recording was created of the hearing and both parties were provided with a CD of the proceeding. The hearing was declared to be private. Following the close of the hearing, proposed decisions were

submitted by both parties on February 10, 2012.

FINDINGS OF FACT

Eighteen (18) exhibits were entered into evidence at the hearing. I left the record open for the Department to submit: an audiocassette tape of an interview between Somerville Police Lieutenant Dan Cotter and Mr. Freitas; and all documents related to a written complaint filed against Mr. Freitas by Maria Curtatone, the sister of Somerville Mayor Joseph Curtatone, who serves as the Appointing Authority. This information was subsequently submitted by the City and marked as Exhibits 19 and 20 respectively. Based upon the documents admitted into evidence and the testimony of:

Called by the Appointing Authority:

- Dan Cotter, Lieutenant, Somerville Police Department;
- Michael Cabral; Deputy Police Chief, Somerville Police Department (served as Acting Police Chief at the time Mr. Freitas was terminated)

Called by the Appellant:

- Marcos Freitas, Appellant;

I make the following findings of fact:

1. Until his termination on March 29, 2010, Mr. Freitas was a permanent full-time police officer with the City for approximately eight (8) years. (Stipulated)
2. In August 2008, Mr. Freitas was in the process of applying for a police officer position in Austin, Texas. (Testimony of Mr. Freitas)
3. Mr. Freitas received two (2) weeks' vacation time and "swapped" one (1) week of time in the Department so that he could go through the rigorous application process in Austin. (Testimony of Mr. Freitas)

4. According to Mr. Freitas, he flew to Dallas, Texas and stayed with a friend. He rented a car so that he could drive to Austin for the testing and interview process. (Testimony of Mr. Freitas)
5. It is undisputed that, as part of the application process, Mr. Freitas underwent a polygraph examination on Friday, August 8, 2008. (Testimony of Mr. Freitas and Exhibit 5)
6. Mr. Freitas testified before the Commission that he drove from Dallas to Austin, which he estimated is a three (3)-hour drive each way, the night before (Thursday, August 7th) to make sure he was certain of the testing location. According to Mr. Freitas, he got lost – twice – during this dry-run and didn't get back to Austin until very late. (Testimony of Mr. Freitas)
7. Mr. Freitas testified before the Commission that he only got two (2) hours of sleep before making the trip back to Austin for a polygraph examination at 8:00 A.M. on Friday, August 8, 2008. (Testimony of Mr. Freitas)
8. Prior to the polygraph examination, Mr. Freitas participated in a “pre-test” interview. According to the written polygraph results, Mr. Freitas, during this “pre-test” interview, stated that:
 - “he sometimes uses ‘creative writing’ when completing his police reports to make them more ‘realistic’”;
 - “about a year and a half or two years ago, he found a ‘dime baggie’ of marijuana on a suspect of whom he was in the process of placing under arrest. Instead of placing the baggie into evidence, Mr. Freitas admitted that he gave the marijuana to a female friend”;
 - “about five years ago, he confiscated a marijuana cigarette from suspect and gave it to a female friend.” (Exhibit 5)
9. After the pre-test interview, Mr. Freitas was administered the polygraph examination. (Testimony of Mr. Freitas and Exhibit 5)

10. A summary of the polygraph results states: “In the opinion of the Examiner, this person’s polygrams showed no strong or consistent physiological responses to the relevant questions. It is therefore the opinion of the Examiner that this person was **truthful** when he answered the relevant questions.” (**emphasis in original**) (Exhibit 5)
11. After being told everything was “all set”, Mr. Freitas testified that he immediately drove back to Dallas. (Testimony of Mr. Freitas)
12. Mr. Freitas testified before the Commission that once he got back to Dallas on Friday, August 8th, he received a phone call from someone at the testing facility asking him to return to Austin to answer follow-up questions related to his pre-test interview responses. (Testimony of Mr. Freitas)
13. Mr. Freitas testified before the Commission that he was too tired to drive back to Austin and he told the person on the phone that it was not physically possible to make the drive back. (Testimony of Mr. Freitas)
14. Mr. Freitas testified before the Commission that, as an alternative, he was told to answer five (5) questions and send a reply “ASAP” via email. According to Mr. Freitas, he rushed to get the answers down and immediately sent an email to the individual at the testing facility the same day – Friday, August 8, 2008. (Testimony of Mr. Freitas)
15. Exhibit 6 is a copy of the email that Mr. Freitas sent to the testing facility. It indicates that it was sent on Monday, August 11, 2008 at 3:57 P.M. – three days later. In addition to this computer-generated date, Mr. Freitas wrote “August 11, 2008” at the beginning of the email.” (Exhibit 6)
16. In his Monday, August 11, 2008 email, Mr. Freitas wrote in relevant part:

“This letter is an explanation to the statements made by me during the Polygraph examination August 8, 2008 ...”

“... I stated that I have used creative writing in the past. In other words I have exaggerated written statements in my police report(s). For example such as a disorderly or intoxicated individual causing a disturbance to the neighborhood or public. I might of written ‘neighbors were outside observing the commotion’ when in fact one person called and complained. I have embellished more then (sic) what is required to make my statements vivid for those reading my reports.

Question asked if I have sold or bought drugs/narcotics in the past. I replied ‘no’ in the first chart of questioning. As I had time to think about the question I recalled in two occasion giving marijuana to two people that I know. Prior to ... starting the second chart of questions I explained to him that in two separate times, two different people I had given marijuana to them. I believe the first time was roughly four years ago (2004) sometime in the late summer where I gave a roach, marijuana joint to a female. The female was a high school ... acquaintance whom at the time I had recently reunited with. I no longer talk with her or have any contact. I gave her the roach when she came to visit me at my house. I am not exactly sure how I obtained the roach but most likely I had confiscated it during a car stop. Somehow to preserve it I placed it in my pocket to make a further decision whether or not I was going to charge the subject with possession. Its quite possible that I forgot that I had the roach in my pocket never (sic) disposed it. During her stay in my house, talk about drugs came about which I recalled having the roach. Instead of destroying the roach I made a poor choice in giving it to her. The second time was roughly two years ago. I hade a ‘dime baggie’ of marijuana which I obtained during a pat down of an individual which I arrested. I failed to turn the marijuana into evidence and handed it to a civilian co-worker. I know that the decisions and actions that I made during the two times were completely out of line, unethical, unmoral (sic) and could of (sic) jeopardized my career as a Police Officer not to mention be fired. I’m not happy and regret them to this day. I also know that I can not go back in time and correct them but I know that I will never do it again. The correct thing to do was to destroy, dispose or turn the roach into evidence.” (Exhibit 6)

17. On Tuesday, August 12, 2008, a lieutenant from the Austin Police Department forwarded Mr. Freitas’s email to Lt. Dan Cotter of the Somerville Police Department. (Testimony of Lt. Cotter and Exhibit 6)
18. Lt. Cotter has been a police officer for the City for over twenty-three (23) years and has been assigned to the Department’s Office of Professional Standards since March 2005. Upon receiving the email from the Austin Police Department, he spoke with then-Police Chief

Anthony Holloway who advised him to conduct an investigation and report back to him.

(Testimony of Lt. Cotter)

19. According to the Appellant, he did not return to Somerville until “the next weekend” which would have been approximately Saturday, August 16, 2008 or Sunday, August 17, 2008.

(Testimony of Mr. Freitas)

20. Mr. Freitas testified that while waiting for a connecting flight from Washington, D.C. to Boston, he retrieved messages from Lt. Cotter and the local union president which caused him to conclude “I’m in trouble here.” (Testimony of Mr. Freitas)

21. Upon returning to Somerville, Mr. Freitas first met with the local union president and then met with Lt. Cotter. (Testimony of Mr. Freitas)

22. It appears, based on Exhibit 8, that the first meeting between Mr. Freitas and Lt. Cotter after Mr. Freitas returned from Texas occurred on Wednesday, August 20, 2008, at which time Mr. Freitas was ordered to undergo a drug test, which he took and passed. (Testimony of Lt. Cotter and Mr. Freitas and Exhibit 8)

23. Also on August 20, 2008, Mr. Freitas was put on paid administrative leave and his license to carry a firearm was suspended, pending the outcome of Lt. Cotter’s internal investigation. (Exhibit 8)

24. On September 4, 2008, Lt. Cotter and Captain Michael Devereaux conducted an investigatory interview of Mr. Freitas, who was accompanied by the local union president and union attorney Doug Louison. A Somerville Police Captain was also present at the interview. (Testimony of Lt. Cotter)

25. Exhibit 7 is a summary of the investigatory interview, prepared by Lt. Cotter and forwarded to then-Chief Holloway. (Exhibit 7)

26. Exhibit 19 is an audiocassette recording of the September 4th interview, which I have reviewed. All references to what Mr. Freitas said at the September 4th interview are based on my review of the recording. (Exhibit 19)
27. As part of the September 4, 2008 interview, Mr. Freitas stated that he was “rushed” into writing the email. He then stated, “I took the polygraph on a Friday, and I believe they already made a determination to terminate the process. Monday I got a phone call and they wanted a statement and, you know, at the time I was in Dallas and they wanted to me to drive to Austin for the 3-hour drive and I said I couldn’t do that, I didn’t have the means to get down there. They felt a little bit upset by it and they, you know, were very firm in saying well, we need a statement from you and you need to get it back to us. I didn’t really have enough time to explain myself. I was on the time clock and I submitted that. I was trying to be as candid as possible from what I remembered. Tuesday morning is when they told me I was terminated, but I already felt that they already knew that they were going to terminate.” (emphasis added) (Exhibit 19)
28. As referenced in Findings 12 – 14, Mr. Freitas testified before the Commission that: 1) he received a phone call seeking clarification on his pre-test interview on Friday, August 8, 2008, just after driving back from Austin; and 2) he did not drive back to Austin because it was “physically impossible” because he was too tired, which he attributed to a lack of sleep due to getting lost on his dry-run trip the night before, Thursday. This testimony contradicts his statement to Lt. Cotter when he indicated that: 1) he received the call on Monday, August 11, 2008; and 2) he did not drive back to Austin because he didn’t have the means. (Testimony of Mr. Freitas)

29. As part of the September 4th interview, Mr. Freitas was asked if he could recall any specific incidents where he had “exaggerated” statements on a police report. Mr. Freitas responded by saying that there was only one incident and that it involved a male that he arrested for disorderly conduct in front of a restaurant and bar in Somerville in April 2008. Mr. Freitas stated that two bouncers from the establishment had called because an intoxicated individual who had been refused entry refused to leave. Mr. Freitas said that there were people inside the establishment, but the front windows were tinted and he could not see inside. Mr. Freitas then stated that “I might have stated in my report that there was a crowd ... I might have stated that there was a ‘crowd’ when there was only three or four people around.” (Exhibit 19)

30. As part of the September 4th interview, Mr. Freitas was asked about the email statements related to the marijuana roaches. In regard to the incident involving a female acquaintance he knew from high school, Mr. Freitas stated that he couldn’t remember how he confiscated the marijuana roach, but that he must have put the roach in his pocket. According to Mr. Freitas, when he arrived home and was recounting his day to his female friend, he remembered that he had the roach in his pocket and he showed it to her. In his interview, Mr. Freitas stated after showing the roach to his female friend, “I’m not sure if I tossed it or she tossed it ...”. (Exhibit 19)

31. As referenced in Finding 16, Mr. Freitas did not state that he disposed of the marijuana roach in his email statement to the Austin Police Department. Rather, he stated:

“Instead of destroying the roach I made a poor choice in giving it to her.”

Mr. Freitas then referenced another incident and stated:

“The second time was roughly two years ago. I had a ‘dime baggie’ of marijuana which I obtained during a pat down of an individual which I arrested. I failed to turn the marijuana into evidence and handed it to a civilian co-worker. I know that the decisions and actions that I made during the two times were completely out of line, unethical, unmoral (sic) and could of (sic) jeopardized my career as a Police Officer not to mention be fired. I’m not happy and regret them to this day. I also know that I can not go back in time and correct them but I know that I will never do it again. The correct thing to do was to destroy, dispose or turn the roach into evidence.” (emphasis added) (Exhibit 6)

32. On September 15, 2008, Captain Deveraux penned a memorandum to then-Chief Holloway recommending that disciplinary charges be filed against Mr. Freitas for violating various rules of the Department. Untruthfulness was not one of the charges listed. (Exhibit 10)
33. On September 22, 2008, then-Chief Holloway sent a letter to Mr. Freitas informing him that he was suspended for five days and that he (Holloway) was recommending that Mayor Curtatone hold a hearing to determine if a greater penalty up to and including termination was justified. (Exhibit 11)
34. Three days later, on September 25, 2008, the City, Mr. Freitas and the local police union entered into a “settlement agreement” in which Mr. Freitas agreed to a 15-day suspension. The agreement stated, in part, that the City: “will not terminate or impose additional discipline, except as provided below, on Freitas at this time provided that Freitas comply with all of the terms of this Agreement ...” The Agreement also stated that “The parties agree that the disciplinary action ... appl[ies] only to the incidents contained in the Chief’s September 22, 2008 disciplinary notice ... Any reporting discrepancies, mishandling of property coming into possession of the police department or other misconduct may subject Freitas to additional disciplinary action up to and including discharge ...”. (Exhibit 12)
35. Shortly after the Settlement Agreement was signed on September 25, 2008, then-Chief Holloway contacted the Middlesex District Attorney’s office to inform them that Mr. Freitas

had been disciplined. (Exhibits 13 and 14) I infer that this was related to the Police Chief's obligation under the so-called "Brady Rule" requiring criminal prosecutors to disclose to the defense certain information about the "untruthfulness" of a potential police witness or supervisor.

36. On October 23, 2008, then-Chief Holloway received a facsimile from the Middlesex District Attorney's office with a cover sheet stating, "Per our discussion today, attached are the documents we intend to file on Monday. If you have questions / issues, please contact [the ADA] tomorrow ...". Attached to the cover sheet is what appears to be a supplemental discovery response template that would be sent to parties in which Mr. Freitas had been a witness. (Exhibit 13)

37. The supplemental discovery response template stated in relevant part:

"Now comes the Commonwealth and informs the Defendant and the Court that the Somerville Police Department has conducted an Internal Affairs investigation into Somerville Police Officer Marcos A. Freitas and has reached a conclusion regarding allegations of misconduct on his part that involve, among other things, misstatements in his police reports."

...

As of this date, the Commonwealth has provided counsel for the Defendant with the following items of discovery:

1. Email from City of Austin, Texas Police Department to the Somerville Police Department, forwarding an email from Office (sic) Freitas a polygraph test administered to him on August 8, 2008 (2 pages).
2. Austin, Texas Police Department Forensic Science Division Polygraph Section Polygraph Results, dated 8/8/08 ... regarding polygraph of Officer Freitas.
3. Arrest statistics of Officer Freitas, on Somerville Police Department letterhead, dated 8/14/08.
4. Letters from Chief Anthony Holloway, Somerville Police Department, to

Officer Freitas, dated 9/22/08, 9/15/08, and 8/20/08 regarding an investigation by the Somerville Office of Professional Standards, Officer Freitas' suspension from the Police Department, and the suspension of his firearm license.
(Exhibit 13)

38. On October 31, 2008, the Director of District Courts for the Middlesex District Attorney's office penned a two-page letter to then-Chief Holloway documenting an October 23, 2008 phone conversation between the two of them. (Exhibit 14)

39. The October 31st letter stated in relevant parts:

“... the Commonwealth filed a Supplementary Discovery Response concerning Somerville Police Officer Marcos A. Freitas with the Somerville District Court And the appropriate defense attorney on a case that was before the Court on October 27, 2008 ...

As we also discussed, the Commonwealth will file this Notice in all pending matters where Officer Freitas is the arresting or reporting officer, as well as in any other pending matters where Officer Freitas contributed in a material way to the investigation and/or arrest ...

As I articulated to you, our office is concerned that Officer Freitas' continued involvement in writing reports, making arrests or participating in investigations in a material way, and possibly testifying in connection with these reports, arrests, or investigations under oath, may potentially compromise these arrests, investigations and cases. As I have explained to you, in keeping Officer Freitas as a patrolman, the District Attorney's Office may have to continue to disclose information about him to the court and defendants in certain future matters.”

(Exhibit 14)

40. Mr. Freitas testified that when he returned to work as a patrol officer after his suspension, he was told to avoid taking any actions that would result in him having to testify in Court.

(Testimony of Mr. Freitas)

41. Mr. Freitas testified that, after returning to work as a patrol officer, he investigated a matter regarding forgery and uttering. (Testimony of Mr. Freitas)

42. According to Mr. Freitas, a male citizen [First Name: Antonio] was accused of taking money from a woman, forging a signature on a title to a vehicle and selling the woman a “lemon”.
(Testimony of Mr. Freitas)
43. On June 15, 2009, there was a Clerk Magistrate’s hearing in Somerville District Court regarding this matter and it was continued to June 22, 2009. (Testimony of Mr. Freitas and Exhibit 20)
44. Sometime between June 15, 2009 and June 22, 2009, Antonio retained Attorney Maria Curtatone, the sister of Mayor Curtatone. (Exhibit 20)
45. Mr. Freitas testified that, prior to the continued court date, he had time to make contact with the witness and she prepared a statement supporting the charges against Antonio. (Testimony of Freitas)
46. On June 22, 2009, the continued Clerk Magistrate’s hearing was held at Somerville District Court, where Antonio was represented by Ms. Curtatone. (Exhibit 20) Mr. Freitas testified that, at the clerk magistrate’s hearing, Ms. Curtatone approached him and told him that unless he had the charges dropped against her client, she was going to file a complaint against Mr. Freitas with the Attorney General’s Office, the Chief of Police and Internal Affairs. Mr. Freitas testified that he declined Ms. Curtatone’s demand and told her, “you do what you have to do and I’ll do what I have to do.” (Testimony of Mr. Freitas)
47. Mr. Freitas testified that there was ultimately a pre-trial disposition of the matter and Antonio was ordered to reimburse the woman. (Testimony of Mr. Freitas)
48. On August 3, 2009, Ms. Curtatone penned a letter to then-Police Chief Holloway. The entirety of the letter is as follows:

Dear Chief Holloway:

I have been retained by [Antonio] due to the alleged wrongdoings conducted against him by Officer Marcos Freitas.

Please find attached a copy of a Civil Rights Complaint that has been filed with the Office of the Attorney General in May 2009 against Officer Marcos Freitas. As detailed in [Antonio's] complaint, Officer Freitas continues to employ unethical methods and tactics to harass and intimate innocent citizens of the City of Somerville.

[Antonio] details that his seven year old autistic child was frightened so much by Officer Freitas' inappropriate actions that he wet his pants. My client strongly believes that there are abusive powers that have continued to be utilized against him by this one particular officer.

Pursuant to our prior conversation, Officer Freitas has taken out a criminal complaint for the charges of Uttering a False Instrument and Forgery of a Document. I've enclosed a copy of the Application for Complaint as a well as Incident Report #9015976. This matter was heard at a Clerk Magistrate's hearing at the Somerville District Court on June 15, 2009. At that time, I was not present, however I returned with [Antonio] on June 22, 2009.

At both hearings, the owner of the motor vehicle in question was present and he is available at all times to prove that no such motor vehicle documents were forged. On June 22, 2009, after explaining all of this to the Assistant Clerk Magistrate conducting the hearing, the matter was continued until September 21, 2009 at 2:00 P.M., for a final determination whether or not a criminal complaint will issue.

We have fulfilled our obligation to notify you with regards to this matter and have hopes that this type of behavior conducted by Officer Marcos Freitas will immediately cease and desist.

Lastly, I sincerely hope an investigation will be conducted on Officer Freitas and an internal evaluation will be completed with regard to the matter at hand prior to the date of September 21, 2009.

Thanking you in advance for your courtesies and cooperation.

As always I remain,
Maria C. Curtatone (Exhibit 20)

49. Mr. Freitas testified that he was cleared of any wrongdoing related to the complaint filed against him by Ms. Curtatone. (Testimony of Mr. Freitas)

50. As part of the investigation into Ms. Curtatone's complaint, another matter arose regarding an allegation from Antonio related to a picture of Mr. Freitas on his personal website.

(Testimony of Mr. Freitas)

51. On August 31, 2009, then-Chief Holloway penned a "Letter of Reprimand" to Mr. Freitas stating in relevant part:

"The Office of Professional Standards conducted an investigation regarding an incident #9015976. During this investigation [Antonio] provided Lieutenant Cotter a copy of a photo. [Antonio] told Lieutenant Cotter that this photo was from your personal web page ...

The photo is of you wearing your Somerville Police uniform aiming your department issued weapon. [Antonio] stated that underneath the photo is a caption. The caption states, "I am a police officer in the U.S., watch out."

Lieutenant Cotter states that he spoke with you regarding this matter and you have subsequently removed the photo from your ... web page ...

Based upon the above facts you are given a written reprimand." (Exhibit 18)

52. The City sought to introduce the photograph from Mr. Freitas's website (now removed) in which he is in police uniform holding a gun. Hand-written beneath the photograph were the words referenced by Antonio. Based on a colloquy with counsel, it is undisputed that those words were NOT found beneath the photograph on Mr. Freitas's website. Rather, they were hand-written in by the Department's Office of Professional Standards based on what Antonio told them he had seen on the site. There is NO reliable evidence to show that those words ever appeared on Mr. Freitas's website and it appears likely that Ms. Curtatone's client fabricated that allegation. The document was not entered into evidence.

53. While the parties were unable to provide the exact date that it was filed, it is undisputed that at some point after one of the defendants received the "Brady material" from the District

Attorney's office, he [First Name: Gerard] filed a civil rights suit against Mr. Freitas and several other Somerville police officers related to an allegedly unlawful arrest. (Exhibit 15)

54. On February 3, 2010, as part of the civil case referenced above, Mr. Freitas gave sworn testimony during a deposition conducted by counsel for Gerard. (Exhibit 15)

55. As part of an answer related to the email he sent to the Austin Police Department, Mr. Freitas stated during his February 3, 2010 deposition:

“The reason why I wrote it that way is because during the time that I was being interviewed for this position, I was rushed to elaborate my answers. So I had to write something really quick. I had a time line. I didn't have time to think about what I was writing. They said ‘Marcos, we need for you to write something down real quick and just email it to us.’

The following questions (from counsel) and answers (from Mr. Freitas) then occurred:

Q: Who told you that?

A: The Austin Police Department

Q: When did they tell you that?

A: The polygraph was August 8th.

Q: At 8 in the morning?

A: Yes.

Q: When did you send this email?

A: August 12th. Well, no sorry. Not August 12th. I believe it was August 11th. What happened there is I took this polygraph at 8 in the morning in Austin, and I was staying in Dallas. And that is a three-hour commute. So I drove from Dallas to Austin to make this appointment at 8 o'clock in the morning. Once the polygraph was complete, I then drove back to Dallas. When I got back, they wanted me to come back and explain my answers. And I told them I couldn't do that. I'm not going to drive six hours. So they were like, well, in order for use to complete your process, we need an email and we need this urgently. So I was forced to write something quickly to explain myself only I didn't explain myself correctly.

Q: In that conversation where they asked you to come back, you said no, and they said, okay, write an e-mail, that was the same day as the polygraph exam?

A: Yes.
(Exhibit 10; Pages 37 – 38)

56. As part of his February 3, 2010 deposition, Mr. Freitas was also asked a series of questions regarding the marijuana roach that he had in his possession when a female friend visited his home. The following questions (from counsel) and answers (from Mr. Freitas) occurred:

Q: On the other occasion, you gave drugs to someone; is that accurate?

A: No.

Q: Why is that not accurate?

A: This person, acquaintance of mine, a friend from school, she came over my house. And I had worked that morning, and I had a roach in my pocket from removing that from a car stop. I completely forgot about it. I had it in my pocket. When I was home, I pulled it out and there it was. And she happened to be there. She looked at it and said, 'This is what it looks like.' I said, 'Yes' and I got rid of it, threw it in my yard. (emphasis added)

Q: You threw it in your yard?

A: Yes, I dumped it.

Q: Can you describe where in this email that you wrote that – where it describes that?

A: It's not written. I didn't write it down.

Q: Is that a separate incident where you found a roach and then threw it in the yard, or is that one of the incidents you described?

A: No. It's the one here (indicating) where she saw it and then I took it and I threw it in the back of my house in the yard where all the grass is, but I didn't write that down.
(Exhibit 15, Page 44)

57. Mr. Freitas, as part of this deposition, was then asked a series of questions as to whether this above-referenced statement, regarding the marijuana roach and his female acquaintance, conflicted with his email communication with the Austin Police Department.

Q: So you accidentally said I gave her the roach three times when you meant to say I threw the roach in the yard. Is that an accurate summary?

A: Yes.
(Exhibit 15, Page 47)

58. It is undisputed that sometime after the Appellant gave his February 3, 2010 deposition, counsel for Gerard contacted Matthew Buckley, the Assistant City Solicitor, who is representing the City in the instant appeal before the Commission. It is undisputed that counsel for Gerard urged Attorney Buckley to review the transcript.
59. It is also undisputed that on around this same time period, Attorney Buckley had communicated with counsel for Mr. Freitas that Mayor Curtatone wanted Mr. Freitas to resign.
60. After Attorney Buckley reviewed the transcript of the February 3, 2010 deposition, he referred the matter for investigation to Michael Cabral, who had been designated as “Acting Chief” by Mayor Curtatone in January 2010.
61. Mr. Cabral began as a police officer with the City in 1987 and served as a Deputy Chief since 2008, prior to his Acting Chief designation in 2010. (Testimony of Mr. Cabral)
62. Mr. Cabral testified that, at the time he was provided with the information from Attorney Buckley, he was aware that Mayor Curtatone wanted Mr. Freitas to resign or be terminated. (Testimony of Mr. Cabral)
63. Mr. Cabral testified that Attorney Buckley’s request, on behalf of the Mayor, to further investigate Mr. Freitas, put him in a “tough spot” because he was under consideration by the Mayor for the permanent Police Chief position at the time. (Testimony of Mr. Cabral)
64. Mr. Cabral testified that the matter “put pressure on me” both because of his candidacy for permanent Police Chief and because Mr. Freitas is a personal friend of his. (Testimony of Mr. Cabral)

65. Mr. Cabral conducted his own investigation by comparing the transcript of Mr. Freitas's February 3, 2010 deposition with the email that Mr. Freitas sent to the Austin Police Department. Mr. Cabral did not consult with anyone from the Department's Office of Professional Standards, including Lt. Cotter, who had conducted the previous investigation that resulted in the 15-day suspension. Mr. Cabral did not listen to the recorded interview between Mr. Freitas and the Office of Professional Standards nor did he review the summary of the interview. Mr. Cabral, at the time he conducted his review, was not aware of any explanation or clarifications that Mr. Freitas had previously provided to the Office of Professional Standards. He did not compare the statements made by Mr. Freitas to Lt. Cotter with the deposition testimony. Rather, as referenced above, he compared the deposition testimony to the email that Mr. Freitas had written to the Austin Police Department. Finally, he never even spoke to Mr. Freitas as part of his investigation. (Testimony of Mr. Cabral)
66. On March 5, 2010, then-Acting Chief Cabral penned a letter to Mr. Freitas notifying him that he was being suspended for an additional five (5) days and that a hearing would be held to determine if a greater penalty, including termination, was justified. (Exhibit 1)
67. Then-Acting Chief Cabral's letter stated in relevant part:

“The reason for this suspension and contemplated further disciplinary action is that on February 3, 2010, you appeared at the Law Office of Howard Friedman with counsel and gave false testimony at a deposition. In just one example of the false testimony, you were being asked questions about admissions you made to a Police Polygraph Examiner at a prior time when you had been seeking employment with the Austin, Texas Police Department. You admitted to the Polygraph examiner that during the course of your employment as a Somerville Police Officer you had confiscated a marijuana cigarette, failed to properly document and store the evidence, and then later gave the contraband item to a female companion. Yet, at the deposition, when questioned about this episode, you insisted that you had disposed of the marijuana cigarette by tossing it into the backyard of your home in Winchester.

This false statement was made at a deposition in a civil case in which you and

several other Somerville Police Officers are defendants. Your false testimony has not only thrown your credibility into question, it has also greatly harmed the ability of the other officers to defend the case and may lead to great financial cost to the City.

...

It must also be pointed out that your habit of making untruthful statements has made your continued service as a police officer untenable. In every criminal court in which you are involved, the District Attorney's Office is required by law to provide defense attorneys with so-called *Brady* material, i.e., detailed information on your past misconduct as a police officer, including lying on official police reports, failing to follow proper procedures and misappropriation of evidence. Based on the Settlement Agreement emanating from your last disciplinary action, which states that your 'failure to comply with each and every term of this Agreement will result in termination,' and your inability to function Effectively as a police officer, I must recommend that your employment be terminated."
(Exhibit 1)

68. Mayor Curtatone designated then-City Personnel Director Jessie Baker as a hearing officer (Exhibit 3) and Ms. Baker conducted a hearing in Somerville on March 22, 2010, at which Mr. Freitas testified. (Stipulated Facts)

69. On March 23, 2010, Ms. Baker issued findings including, the following:

"... At the time of his [Austin, Texas] polygraph examination, Officer Freitas made admissions of prior misconduct that occurred during his tenure as a Somerville Police Officer, including, but not limited to, being untruthful in police reports and illegal distribution of confiscated marijuana. When asked for a further explanation of this past misconduct, Freitas sent an email response admitting that he took a marijuana roach he had confiscated while on duty as a Somerville Police Officer and gave it to a female acquaintance stating, 'I gave her the roach when she came to visit me at my house.' He went on to state, '[i]nstead of destroying the roach, I made a poor choice in giving it to her.'"

The Freitas admissions were conveyed by the Austin Police Department to the Somerville Police Department and an investigation ensued. During the course of the investigation, despite the unequivocal statements noted above, Freitas denied ever having illegally distributed marijuana. He stated that on a prior occasion in the summer of 2004, one day, after

work, he had a marijuana roach in his pocket that he had confiscated during the course of his work as a Somerville Police Officer. He stated that he did not give the drugs to anyone but that he showed it to a female companion and then threw it away. Freitas described the person to whom he gave the drugs as a high school acquaintance with whom he had recently reunited. Yet Freitas could not remember her name. I find that this explanation is untruthful. (emphasis added)

The improper disposal of evidence is obviously a much less serious offense than distribution of confiscated contraband to a personal friend. Surely, the fact that the marijuana was disposed of rather than distributed would have been included in the explanation of the underlying event to a potential employer. Further, Freitas had every motivation, once he realized he was under investigation for the misconduct he had admitted, to explain it away.

Upon the conclusion of the 2008 investigation Chief Holloway imposed a five day suspension charging Freitas with having illegally distributed drugs he had seized while on duty as a Somerville Police Officer, and with using creative writing and embellishing his written police reports ... Chief Holloway also recommended that further disciplinary action up to and including termination be imposed.

Before a hearing could be held to determine what, if any, further penalty should be imposed, the City, [the union] and Freitas arrived at an agreement ... The agreement imposed a 15 day suspension that Freitas and the union agreed not to contest, and specifically set forth that any failure to comply with the Settlement Agreement, including complying with Police Department Rules and Regulations, would result in termination.

On February 3, 2010, Freitas testified at a deposition in a federal civil rights case in which he was a defendant with several other officers. At that deposition, a transcript of which was provided at the hearing ... Freitas was questioned about the admissions he had made in Austin, Texas, including being untruthful on police reports and the illegal distribution of confiscated drugs. At the time of the deposition, Freitas was under oath. Freitas denied that he illegally distributed marijuana he had confiscated. When asked about the incident, Freitas stated that he showed the marijuana to a friend from high school and ‘she looked at it, said, ‘this is what it looks like.’ I said, ‘yes’ and I got rid of it, threw it in my yard.” I find that this statement is false along with virtually all of Freitas’s sworn testimony regarding the Austin admissions. (emphasis added)

I further find, based on Chief Cabral's testimony, the Officer Freitas' usefulness as a police officer has been greatly compromised ... [References to *Brady* issues] ... Given that such material is provided in each and every case in which Freitas is involved, Freitas is no longer assigned to any matter that might result in his being called upon to testify. This has greatly limit (sic) his usefulness as a police officer.

Although it is true that Freitas has already been disciplined for the underlying misconduct of distributing drugs he seized while on duty, and was never specifically disciplined for being untruthful in his explanation in 2008, that does not give him free rein to repeat the lie, particularly in sworn testimony in a matter that the City may face great financial costs. (emphasis added)

I find that Freitas violated department rules when he lied at his deposition on February 3, 2010. In doing so, I find that Freitas failed to comply with the Settlement Agreement of September 25, 2008 ... Finally, I find that Officer Freitas has displayed conducting unbecoming a police officer. (emphasis added)

Based on the findings noted above the appointing authority would be justified in imposing disciplinary action up to and including discharge.” (Exhibit 4)

70. On March 29, 2010, Mayor Curtatone accepted the findings and conclusions of his Personnel Director, Ms. Baker, and terminated Mr. Freitas. (Exhibit 4)

Appellant's Argument

Mr. Freitas argues that, after returning from Austin, Texas, he met with Captain Michael Deveraux and Lieutenant Dan Cotter of the Somerville Police Department and offered a full explanation and clarification regarding an email he wrote to the Austin Police Department. In his email to Austin, Mr. Freitas stated that he gave a marijuana roach that he had confiscated earlier that day to a female companion. In his later interview with Captain Deveraux and Lieutenant Dan Cotter, Mr. Freitas stated that, because he was rushed to write the email, he didn't state that he took the marijuana roach back from his female companion and either he or his

female companion disposed of it. After that interview, the City, Mr. Freitas and the local police union entered into a settlement agreement in which Mr. Freitas received a 15-day suspension for actions that “constitute a violation of the Department’s Rules and Regulations.”

According to Mr. Freitas, he was then unjustly terminated after offering the same full explanation and clarification of the email several months later as part of a deposition. Mr. Freitas argues that the City’s about-face was motivated, in part, by an intervening complaint filed against him by Attorney Maria Curtatone, the sister of Somerville Mayor Joseph Curtatone.

Appointing Authority’s Argument

The City argues that Mr. Freitas lied at his interview with Captain Deveraux and Lieutenant Cotter on September 4, 2008, when he stated that he disposed of the marijuana roach after showing it to his female companion. According to the City, Mr. Freitas “added the exculpatory elements, i.e., the disposal of rather than the distribution of drugs, in a clear attempt to reduce the seriousness of his offenses.”

The City then argues that, “while Freitas ultimately received a fifteen day suspension for the actions underlying his admissions in Texas, that does not give him carte blanche to repeat the fabricated explanation, particularly under oath in a federal civil rights action ... The lie on February 3, 2010, while being deposed in a federal civil rights suit, is a new and different offense than having told the same lie on September 4, 2008 at the internal affairs investigatory interview ... Although it might have been difficult for Freitas to back away from the prior statements, the only way to begin to rehabilitate a reputation for a lack of veracity is to tell the truth.”

Just Cause Standard

G.L. c. 31, § 43, provides:

“If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority’s procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.”

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102, (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm’n, 43 Mass. App. Ct. 486, 488, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983)

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956).

“The commission’s task...is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision

of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision’”, which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006). See Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev.den., 390 Mass. 1102 (1983) and cases cited.

Under Section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. The role of the Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102, (1997). See also Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den. (2000); McIsaac v. Civil Service Comm’n, 38 Mass App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, 390 Mass. 1102 (1983).

CONCLUSION

Allegations of untruthfulness often form the basis of disciplinary actions against police officers that are then appealed to the Commission. In most such cases, the dispute heard by the hearing officer focuses primarily on a factual dispute regarding whether the police officer was indeed untruthful. Here, Mr. Freitas, a Somerville police officer for eight years, was terminated for repeating a lie as part of sworn testimony in 2010 that he allegedly first made to a Somerville Police Captain and Lieutenant during an interview in 2008. Mr. Freitas denies that he was untruthful in 2008 *or* 2010.

In the September 2008 Settlement Agreement, which occurred *after* Mr. Freitas was interviewed by the Police Captain and Lieutenant and resulted in a 15-day suspension, there is no admission by Mr. Freitas that he was untruthful. Further, nothing in the Settlement Agreement indicates that the 15-day suspension was the result of untruthful statements made by Mr. Freitas to the Police Captain and Lieutenant.

The City's hearing officer appears to engage in some revisionism when she states: "Although it is true that Mr. Freitas has already been disciplined for the underlying conduct of distributing drugs he seized while on duty, and was never specifically disciplined for being untruthful in his explanation in 2008, that does not give him free rein to repeat the lie." "The lie", according to the City, allegedly relates to Mr. Freitas's statement during the interview that he disposed of the marijuana roach, something he never mentioned in his email communication with Austin. Mayor Curtatone takes the revisionism a step further, by stating in a cover letter adopting the hearing officer's report, that "The fact that you told the same lie at your deposition that you told during the investigation, which resulted in your prior disciplinary action, does not allow you to continue to tell that lie, particularly in such a serious matter." (emphasis added)

These findings and conclusions, which the City relies on in support of its decision to terminate Mr. Freitas, imply that the parties agreed, or Mr. Freitas acknowledged, in 2008, that his statement regarding the disposal of a marijuana roach to the Police Captain and Lieutenant was untruthful and/or that the 15-day suspension was related to that untruthful statement during the interview. No such admission is referenced in the 2008 Settlement Agreement and, as referenced above, Mr. Freitas has always maintained that he told the truth during the 2008 interview and during his 2010 deposition. In fact, in a memorandum to then-Chief Holloway

penned by the Police Captain, he recommended a series of charges against Mr. Freitas that did not include untruthfulness.

However, after reviewing the entirety of the September 2008 interview, the transcript of the March 2010 deposition and the testimony of Mr. Freitas before the Commission in 2011, there is substantial evidence to show that, if I were to credit Mr. Freitas's testimony before the Commission, then he was indeed untruthful in his deposition.

As stated in the findings, Mr. Freitas offered vivid testimony before the Commission regarding the logistics of his trip to Austin, Texas, including his round-trip driving commutes from Dallas to Austin. According to Mr. Freitas, he decided to stay with family members in Dallas, Texas, and then commute (via automobile) to the testing facility in Austin, Texas. Mr. Freitas testified that, after arriving in Dallas on Thursday, August 7, 2008, he made a round trip driving commute that night from Dallas to Austin and then back to Austin to ensure that he could find the facility the next morning.

Mr. Freitas testified that he got lost – twice – during this dry-run and didn't arrive back in Dallas until very late, which meant that he had only two hours of sleep before making the drive back to begin the polygraph examination at 8:00 A.M. on Friday, August 8, 2008. Mr. Freitas then testified that after taking the polygraph examination on Friday, August 8th and driving back to Dallas the same day, he received a call (the same day) asking him to immediately drive back to Austin to answer additional questions. Mr. Freitas testified that he told the Austin Police Department official that it was “physically impossible” to make the drive back. Physically unable to make the drive back, Mr. Freitas testified that he was then told to immediately send an email answering questions that were posed to him by the official.

According to Mr. Freitas, this is the reason that he wrote a rushed, incomplete email – on Friday, August 8th - that he would later clarify during his interview with the Police Captain and Lieutenant. This testimony is markedly different from the statement he made to the Police Captain and Lieutenant in September 2010. According to that taped interview, he told the Police Captain and Lieutenant that he was asked to drive back to Austin on August 11, 2008, three days later, and that he didn't have the "means" to return to Austin, which resulted in him being asked to write an email. During his 2010 deposition, Mr. Freitas first stated that he received a call regarding the need to answer additional questions on August 12, 2008, but then stated that he received the call on August 11, 2008, which, according to Mr. Freitas's deposition, was the same day as the polygraph examination.

Witnesses can be excused for fading memories with the passage of time, including mixing up certain dates and times that occurred 2-3 years ago. Here, however, Mr. Freitas testified before the Commission, with vivid detail and certainty, about being unable to make a return trip to Austin the same day that he took the examination, because it was physically impossible, citing his lack of sleep and harrowing dry-runs the night before. The documentary evidence shows that he wasn't asked to return to Austin until three days after he took the examination. Also, contrary to his testimony before the Commission, Mr. Freitas never told the Police Captain and Lieutenant that it was "physically impossible" to make the return trip, but, rather, he told them that he didn't have the "means". Mr. Freitas told a hybrid of those stories during his 2010 deposition, stating that he was called on August 11th, which he claimed, falsely, was the same day as the polygraph examination.

Also, after reviewing the email statement, his statements to the Police Captain and Lieutenant in 2008 and his 2010 deposition, it is clear that Mr. Freitas did not, as part of his 2010

deposition, simply “repeat” what he told the Police Captain and Lieutenant. While he told the Police Captain and Lieutenant that he wasn’t sure if he or his female companion had disposed of the marijuana roach, he testified in his deposition that he disposed of it and then added that he did so by throwing it in his back yard.

Unfortunately, it is overwhelming clear to me that Mr. Freitas, either in his statements to the Police Captain and Lieutenant or his deposition or in his testimony before the Commission, has made the same type of “creative” statements that he acknowledged making in at least one of his police reports. This conclusion supports the other finding by the City, supported by the Middlesex District Attorney’s office, that Mr. Freitas can no longer effectively perform the duties of a police officer.

For decades, the Commission has steadfastly upheld disciplinary actions against public employees who have been untruthful, including law enforcement officials who have fudged the truth. See MacHenry v Wakefield, 7 MCSR 94 (1994). Lying in a disciplinary investigation alone is grounds for termination. LaChance v. Erickson, 118 S. Ct. 753 (1998), *citing* Bryson v. United States, 396 U.S. 64 (1969). The Commission has stated that “it is well settled that police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens.” Garrett v. Haverhill, 18 MCSR at 381, 385 (2005). Specifically, there “is a strong public policy against employing police officers who are untruthful.” Royston v Billerica, 19 MCSR 124, 128 (2006). Therefore, “a police officer that has lost his credibility can no longer effectively perform the duties of the position.” Pearson v. Whitman, 16 MCSR 46, 50 (2003). Meaney v. Woburn, 18 MCSR 129, 133-35 (discharge upheld for police officer based, in part, on officer’s consistent dishonesty and “selective memory” during departmental investigation of officer’s misconduct); Pearson v. Whitman, 16 MCSR at 49-50 (appointing authority’s

discharge of police officer who had “a problem with telling the truth” upheld); Eisenbeiser v. West Springfield, 7 MCSR 99, 104 (discharge upheld based, in part, on officer’s dishonesty as his misconduct was ongoing, intentional and showed no signs of improvement); Rizzo v. Town of Lexington, 21 MCSR 634 (2008); (discharge upheld based partially on officer’s dishonesty regarding a use of force incident); Desharnias v. City of Westfield, 23 MCSR 418 (2009) (discharge upheld based primarily on officer’s dishonesty about a relatively minor infraction that occurred on his shift). Kinnas v. Shrewsbury, 24 MCSR 67 (2011) (discharge upheld for being untruthful about whether he accessed a fellow employee’s family Facebook account and made inappropriate postings); Gonsalves v. Falmouth, CSC Case No. D1-09-411 (2012) (evasive and inconsistent statements by a police officer called into question his ability to serve in that position.)

For all of the above reasons, the City has shown, by a preponderance of the evidence, that there was just cause to discipline Mr. Freitas.

Having determined that it was appropriate to discipline Mr. Freitas, the Commission must determine if the City was justified in the level of discipline imposed, which, in this case, was termination.

The Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’ ” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the

Commission is not charged with a duty to fine-tune an employee's discipline to ensure perfect uniformity. See Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

“The ‘power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.’” Falmouth v. Civ. Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (2004) quoting Police Comm'r v. Civ. Serv. Comm'n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission's findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to “substitute its judgment” for that of the appointing authority, and “cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation” E.g., Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006).

I have, based on the testimony of credible witnesses and the documentary evidence submitted, reached the same conclusion of the City. Specifically, albeit for somewhat different reasons, I have found that untruthful statements by Mr. Freitas call into question his ability to effectively serve as a police officer any longer, thus justifying the City's decision to terminate him.

I carefully reviewed the argument by Mr. Freitas that his termination was partly the result of a complaint filed against him by Attorney Maria Curtatone, the sister of the City's Mayor, for which Mr. Freitas was ultimately cleared. I am troubled by many aspects of Ms. Curtatone's complaint against Mr. Freitas.

It is undisputed that Mr. Freitas was pursuing criminal charges against an individual that would later be represented by Ms. Curtatone. While that matter was still pending, Ms. Curtatone, according to her own letter, had a personal conversation with then-Police Chief Holloway, objecting to the filing of such charges and detailing what was effectively, her client's

version of events, for which a clerk magistrate's hearing was scheduled to be heard in the future. Part of Ms. Curtatone's letter states, "Officer Freitas continues to employ unethical methods and tactics to harass and intimate innocent citizen of the City of Somerville" and that "I sincerely hope an investigation will be conducted on Officer Freitas and an internal investigation will be completed with regards to the matter at hand prior to the date of September 21, 2009 [the date of the upcoming hearing]."

As part of an internal investigation of this matter, Lt. Cotter found, among other things that the allegations against Ms. Curtatone's client, who has a criminal history for attaching motor vehicle plates and counterfeiting a motor vehicle document, were disputed by several percipient witnesses, including the female victim.

Equally disturbing, Ms. Curtatone's client then made an unsubstantiated allegation against Mr. Freitas, alleging that Mr. Freitas had posted threatening remarks beneath his picture on a personal website. No evidence supported that allegation.

Less than eight months after the complaint was filed by Ms. Curtatone, Mr. Freitas was terminated for other charges described in this decision. It is understandable that Mr. Freitas would question whether the two events were related. Notwithstanding the concerns noted above, there is no evidence to show that the two matters are related and I draw no such inference. I based this, in part, on the fact that Lt. Cotter, after fully investigating the matter, did not determine that Mr. Freitas engaged in the misconduct alleged by Ms. Curtatone and did not recommend any discipline for the matters referenced in her letter.

Finally, I considered that, prior to the events that occurred here, the Appellant had no prior disciplinary history. For many of the reasons stated above, however, engaging in untruthfulness

as a police officer is a serious offense that warrants termination, even in those situations where the police officer has no prior discipline.

For all of the above reasons, the Appellant's appeal under D1-11-245 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on June 28, 2012.

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 to:
Gerard S. McAuliffe, Esq. (for Appellant)
Matthew Buckley, Esq. (for Respondent)