

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

ROBERT McCOY,

Appellant

v.

D-05-171

TOWN OF WAYLAND,

Respondent

Appellant's Attorney:

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Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Robert McCoy, (hereinafter "McCoy" or "Appellant"), is appealing an action taken by the Respondent, Wayland Police Department (hereinafter "the Department") as Appointing Authority, terminating him from his position as a police officer. The appeal was timely filed. A full hearing was held on June 21, 2006 at the offices of the Civil Service Commission (hereinafter "Commission"). As no written notice was received from either party, the hearing was

declared private. Two (2) audiotapes were made of the hearing. Following the hearing, Proposed Decisions were submitted by the parties as instructed.

FINDINGS OF FACT:

Based upon the documents entered into evidence (Joint Exhibits 1 – 22) and the testimony of Chief Robert Irving (“Irving”), Lieutenant Bruce Cook (“Cook”), and the Appellant, Robert McCoy (“McCoy”), none of whom were sequestered, I make the following findings of fact:

1. The Wayland Police Department is made up of approximately 22 members, including the Chief, the Lieutenant, Sergeants and Patrol Officers. Robert Irving (“Irving” or “the Chief”) has been the Police Chief in Wayland for approximately five (5) years. Prior to becoming Chief, he served in the Cheshire, Connecticut Police Department for twenty-two (22) years. (Testimony of Chief Irving)
2. Lieutenant Bruce Cook (“Cook”) has been a member of the Department since 1970, and a Lieutenant since 1991. In his capacity as Lieutenant, he has participated in many of the investigations into alleged misconduct by officers within the Department. (Testimony of Cook)
3. The Appellant, Robert McCoy, was hired and began working as an intermittent police officer in the Town of Wayland on June 3, 2002. He was appointed as a full time permanent police officer on August 5, 2002. Prior to being employed by the Wayland Police, he was employed as a police officer in Lincoln and as a police officer at Northeastern University. (Testimony of McCoy and Irving)

4. On October 31, 2002, the Appellant, while serving his one year Civil Service probationary period, received a two-day suspension for misusing a Department computer. The Department has received no other complaint, nor investigated the Appellant for any other alleged misconduct, prior to the present case. (Exhibit 18, Testimony of Irving and McCoy)
5. On January 28, 2005, Irving sent out an e-mail to all officers addressing the use of sick and vacation days over the upcoming Super Bowl weekend. The Chief stated that requests for vacation time would only be granted for Super Bowl Sunday if there was another officer available to cover without causing the need for a hold-over (e.g., a vacation request would be granted if officers arranged for a shift-swap, which does not result in any overtime being paid by the Department, but would not be granted if the result was an officer being held-over, which does result in overtime being paid). The Chief's e-mail stressed that he did not expect any abuses and, in the event an officer needed to call in sick on Super Bowl Sunday, there would be no option but to hold-over another officer to make sure there was adequate coverage on the shift. (Exhibit 9)
6. On January 29, 2005, the Appellant sent an e-mail requesting vacation days for Sunday, February 6 and Monday, February 7 and stated that Officer Bradford had agreed to work for him on February 6. (Exhibit 19)
7. McCoy purchased tickets to see the New England Patriots play in the Super Bowl in Jacksonville, Florida on February 6, 2005. A friend accompanying McCoy to the Super Bowl purchased plane tickets for McCoy departing on February 4. McCoy was scheduled to work on Friday, February 4, and Saturday, February 5.

On Friday, February 4, and Saturday, February 5, 2005, the Appellant called the Department and informed dispatch that he would not be coming in to work as he was sick. (Testimony of McCoy)

8. On Monday, February 7, Irving discovered two cartoons that had been slid under his office door. He believed that the character depicted in the cartoon was McCoy because the character had a red face, and McCoy has red hair. One of the cartoons had a typewritten note on the bottom stating, *"Glad to see he respected your email regarding Super Bowl Sunday."* (Exhibits 10A,10B and Testimony of Irving)
9. After reviewing the cartoons, the Chief instructed Cook to look into potential sick leave abuse by the Appellant. The Chief typically assigned Cook to do initial investigations into potential misconduct by officers. (Testimony of Irving)
10. On February 16, 2005, Cook advised McCoy that he wanted to speak with him about his use of sick leave. McCoy asked if he might be disciplined as a result of the conversation and was advised that Cook merely wanted to have a "discussion". During the meeting, the Appellant stated that he had rights and maybe should get a union representative. Cook responded that they could stop the meeting if he wished to have union representation. The Appellant declined to exercise his rights at that time and continued on with the meeting. (Testimony of Cook)
11. When Cook asked about the basis for requested sick leave on February 4th and 5th, McCoy stated that he was at home with stomach problems on the 4th and flew to Jacksonville on Saturday, February 5 on a vacation day. (Testimony of McCoy)

12. When Cook informed the Appellant that the records showed he had taken a sick day on Saturday, February 5, the Appellant stated that he had sent an e-mail to Cook requesting vacation days for both Saturday and Sunday. When Cook reviewed his e-mails, however, he only found the Appellant's January 29, 2005 e-mail requesting Sunday, February 6th, and Monday, February 7th, as vacation days. Cook spoke with the dispatcher who took the Appellant's call on Saturday February 5th who informed him that the Appellant told her to "put me down as sick" when he called on February 5th. (Exhibit 11 and Testimony of Cook)
13. On February 17, 2005, Irving and Cook met with the Appellant. Irving advised the Appellant that he was concerned about some of the inconsistencies in his account of what occurred over the Super Bowl weekend. The Appellant stated that he was home sick with stomach problems on Friday, February 4th and that he called dispatch on Saturday, February 5 merely to confirm that he had a vacation day scheduled. When the Chief informed the Appellant that he had called in sick on Saturday, February 5, he responded that he must have called in sick by mistake because he was at the Super Bowl and had had a lot to drink. The Appellant was unable to provide details about his trip, including the name of the airline on which he had flown. He also stated that he had arranged a swap with Bradford for February 6. At times, during the course of the meeting, the Appellant became very angry and agitated. (Exhibits 8 and 11 and testimony of Cook and Irving)
14. On February 18th, the Chief summoned the Appellant to his office. Once in the office, the Appellant advised the Chief that he did not want to talk without union representation. The meeting was rescheduled to February 22nd. On that day, the

Chief met briefly with the Appellant but the actual meeting was postponed because the union representative was not available until February 25th.

(Testimony of Irving)

15. On February 25th, the Chief met with the Appellant and the union's attorney. At this meeting, the Appellant stated that he flew to Jacksonville on Saturday morning, February 5th but did not remember which airline he had taken because his friend had made the reservations. The Chief asked the Appellant to obtain this information so he (the Chief) could confirm that he flew to Jacksonville on Saturday. The Appellant responded that he would do this. (See Exhibit 8 and Testimony of Chief Irving)

16. On March 1st, Irving and Cook met with the Appellant and his union representative. The Appellant stated that he had flown on Independence Airlines on February 5 but did not know the flight number or have written ticket documentation. The Chief asked the Appellant where he had stayed in Jacksonville and whether he rented a car. The Appellant responded that he could not remember the name of the hotel or the rental car company. The Chief instructed the Appellant to contact his friends and provide him with the written documentation showing that he had flown to Jacksonville on the morning of Saturday, February 5th. At the end of the meeting, the Chief advised McCoy that this was his last chance to be truthful and if he had said anything up to that point that was not truthful, this was the time to clarify the situation. The Appellant did not respond. (See Exhibit 8 and Testimony of Irving)

17. McCoy testified that, when first questioned by Cook, he “panicked” and gave an untruthful response. At each subsequent interview, McCoy felt he had to “stick with his original story”. (Testimony of McCoy)
18. On March 1, 2005, Cook asked Bradford if he had agreed to work the Appellant’s shift on February 6. Bradford stated he had told McCoy that he did not want to work overtime that day but that if he was held over he would not make an issue of it. (Exhibit 11 and Testimony of Cook)
19. On March 1, Irving contacted Independence Airlines and requested information concerning the flights taken by McCoy and his two friends from Boston to Jacksonville on February 4th or February 5th. (Exhibit 21)
20. On March 2, Irving and Cook met with the Appellant and his union representatives. The Appellant presented Irving with a document from “Travelocity Reservation Information” indicating that he flew Independence Air from Boston at 3:45 p.m. on Saturday, February 5th. The flight connected at Dulles Airport in Washington, D.C. with a final destination of Jacksonville, Florida at 8:33 p.m. The return flight was on Independence Air, leaving Jacksonville at 12:25 p.m. on Monday, February 7th and arriving in Boston, after a stop at Dulles, at 4:45 p.m. (Exhibit 12)
21. The Chief, upset, asked the Appellant why he had been saying all along that he flew to Jacksonville on Saturday morning, when the itinerary clearly showed he flew there on Saturday afternoon. The Appellant responded that he was sorry but that he had called in sick from home on Saturday morning and then flew to Jacksonville that afternoon. (Exhibits 8 and 11, Testimony of Irving)

22. On March 3, Irving received a call from Independence Airlines stating that their records indicated a reservation had been made for the Appellant on Friday, February 4th, but had been cancelled and a full refund had been made to the credit card on which the flight had been purchased. Independence Airlines informed the Chief that McCoy never took the flight out of Boston at 3:45 p.m. on Saturday, February 5th, and provided him with documentation that the Appellant had received a refund for the reservation. (Exhibit 13 and Testimony of Irving)
23. Later on March 3rd, the Chief and Cook met with the Appellant and his union representatives and confronted the Appellant with the fact that Independence Airline cancelled his reservation and refunded the fare. The Appellant refused to answer the Chief's questions. (Exhibit 8 and Testimony of Irving)
24. The following day, March 4th, a Sergeant advised Irving that he had been able to determine that the Appellant and his two friends had all flown out of Boston to Jacksonville, Florida on Friday, February 4th, on an AirTran Airways flight. The Sergeant provided documentation from AirTran's executive offices which confirmed this information. (Exhibit 14 and Testimony of Irving)
25. When Irving confirmed that McCoy's responses had been untruthful, McCoy was suspended for five days and Irving recommended to the Board of Selectmen that McCoy's employment be terminated. (Exhibit 4)
26. The Chief recommended terminating the Appellant on the basis of his less than two years of service as an officer with the Department, involvement in misconduct during his probationary period and repeatedly lying and submitting deceptive and misleading documentation during the current internal investigation.

- He stated that he has to rely on his officers telling the truth and there was no way he could trust the Appellant again. (Testimony of Irving)
27. After Irving recommended terminating McCoy, he contacted the Appellant's former employers, the Northeastern University Police and the Lexington Police, in an attempt to garner further incidents of past untruthfulness to support his recommendation of termination. There were no other incidents. (Testimony of Irving)
28. Neither Irving nor Cook is aware of any member of the Department, other than the Appellant, who has provided untruthful statements or misleading and deceptive documents as part of an internal investigation. (Testimony of Irving and Cook)
29. Chief Irving has very rarely had to deal with issues of misconduct among his officers, such that he has had to impose discipline, during the nearly five (5) years that he has served as Chief of the Department. (Id.)
30. The Appointing Authority conducted a hearing in accordance with G.L. c. 31, § 41 and terminated McCoy's employment for violating numerous rules and regulations related to truthfulness.
31. Numerous letters supporting McCoy were submitted by citizens in the community, addressing his popular methods of community policing. All the letters submitted into evidence at this hearing were identical in content. According to his testimony, the Appellant authored the letters and some friends of his canvassed his neighborhood soliciting people to provide signatures for the form letters of recommendation. (Testimony of McCoy and Exhibit 22)

32. Chief Irving was an extremely credible witness with good recall. His manner was very professional and he was clearly spoken and confident. He provided detailed accounts of critical facts and dates. I find that his consistently stated comments regarding the importance of truthfulness in a police officer's character represent a core value that he expects from himself and his charges. I find that his testimony on this subject arose from a deeply-held philosophy and that it was not suddenly crafted in a self-serving manner to relate to the instant matter

33. When this Hearing Officer asked the Appellant at the conclusion of the hearing if he wished to give a final statement, the Appellant offered what seemed like a sincere and contrite apology for his misconduct. Throughout his testimony, the Appellant had displayed a calm and respectful demeanor. He answered questions politely and confidently. He appeared sincerely contrite in his admissions of wrongdoing. The Chief then asked, in the interest of fairness, if he, too, could offer a final statement. Disappointingly, the Chief informed all that this was not the first time he had heard such an apology from the Appellant. He had heard it following other incidents of misconduct, indicating that the apologies were meaningless. He had, in essence, heard this *mea culpa* from McCoy before. By this strong admonition, I find that the Chief successfully impugned the Appellant's attempted sincerity of contrition. (Testimony of Irving and McCoy)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for

the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The 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." Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority's burden of proof is one of a preponderance of the evidence which is established "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). In reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an appellant, the Commission shall affirm the action of the appointing authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See Commissioners of Civil Serv. v. Municipal Ct. of Boston*, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In the present case, the Appellant concedes that the Department had just cause for disciplining him whereas he feigned illness to attend the 2005 Super Bowl and lied to cover up this action through submitting false documentation. However, the Appellant contends that the Department did not show by a preponderance of the evidence that the facts of this matter justify his termination from employment and, therefore, the sanction should be reduced or vacated as it was unduly harsh.

A review of the record reveals that reasonable justification exists for the actions taken by the Department. It is well established that police officers must "comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into the public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities." *See supra* Meaney v. City of Woburn, 18 MCSR 129, 133 (2005);

citing Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986). An Appointing Authority is well within its rights to take action when a police officer has “a demonstrated willingness to fudge the truth in exigent circumstances” because “[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a stop or a search or might embarrass a fellow officer.” See Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 801 (2004); *citing City of Cambridge*, *supra* at 303.

Here the Appellant exhibited a willingness to repeatedly lie and submit deceptive and misleading documents in order to frustrate a legitimate police investigation. The discipline imposed by the Appointing Authority was subsequent to the Appellant’s being given several opportunities by the Department to correct his mistakes. Rather than taking the opportunity to be truthful, he engaged in further deceitful misconduct.

As stated above, it is of paramount importance that police officers tell the truth. The Appellant’s repeated lies, refusal to cooperate, and submission of deceptive documentation during an internal investigation prompted Chief Irving’s credible testimony that he has to rely on his officers telling the truth and he could not trust the Appellant again. Irving’s firm belief that this type of conduct cannot be tolerated from a police officer, especially in a small community with a department of only 22 members, led to his recommendation that the Appellant be terminated and the Appointing Authority’s taking such action. On the facts found by the Commission, there was reasonable justification for this action.

The Appellant maintains that he was not treated in a uniform and equitable manner in regard to this matter. However, he did not submit evidence showing that the Appointing Authority's decision to terminate him had overtones of political control or objectives unrelated to merit standards or neutrally applied public policy. However, testimony from Irving and McCoy indicated that there were very few instances of discipline during Irving's five year tenure as Chief and evidence substantiated the Appellant's additional misconduct during his probationary period.

For all the aforementioned reasons, the Commission determines that, by a preponderance of evidence, there is just cause for the action taken against the Appellant. Therefore, the Appellant's appeal on Docket No. D-05-171 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Chairman Goldblatt, Guerin, Marquis and Bowman, Commissioners) [Taylor, Commissioner absent] on February 8, 2007.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c 30A s.14(1) for the purpose of tolling the time for appeal.

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

Notice to:

Timothy M. Burke, Esq.

Elizabeth Valerio, Esq.

