

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

One Ashburton Place - Room 503  
Boston, MA 02108  
(617) 727-2293

**DANIEL OTERO,**  
Appellant

v.

D-14-297

**CITY OF LOWELL,**  
Respondent

Appearance for Appellant:

Joseph A. Padolsky, Esq.  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street, 4<sup>th</sup> Floor  
Boston, MA 02110

Appearance for Respondent:

Kenneth Rossetti, Esq.  
Rachel M. Brown, Esq.  
City of Lowell Law Department  
375 Merrimack Street, 3<sup>rd</sup> Floor  
Lowell, MA 01852

Commissioner:

Cynthia A. Ittleman<sup>1</sup>

**DECISION**

On December 23, 2014, Daniel Otero (“Appellant”), pursuant to G.L. c. 31 § 43, filed this disciplinary appeal with the Civil Service Commission (“Commission”), contesting the decision of the City of Lowell (“Lowell” or “Respondent”) to suspend him for a period of five (5) days from his position as a Police Officer. A pre-hearing conference was held at the offices of the Commission on January 13, 2015. A full hearing was held at Lowell City Hall on March 2, 2015.<sup>2</sup> Witnesses were sequestered. The hearing was digitally recorded and both parties were

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Todd M. Hirsch in the drafting of this decision.

<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence. When the discipline appeal

provided with a CD of the hearing.<sup>3</sup> During the hearing, following the Respondent's case in chief, the Appellant made an oral motion for summary decision, which motion was denied as there was a dispute as to genuine issues of material fact. Following the hearing, both parties submitted post-hearing briefs in the form of recommended decisions. In addition, the Respondent filed a Motion to Strike Appellant's Proposed Fact No. 39, which asserts that the parties stipulated that the Appellant became first in line for promotion to Sergeant in or around January 31, 2014. The Motion to Strike is denied as I understand the Appellant's proposed findings of fact to be just that – proposed findings – and not part of a stipulation. The evidence, and the weight it is given, establishes the facts found herein.

#### Findings of Fact

Twelve (12) exhibits were entered into evidence at the hearing. At the hearing, I asked the parties to submit certain stipulations, which are also included in the hearing record and referred to herein as "Stipulations". Based on these exhibits and Stipulations, the testimony of the following witnesses:

#### *Called by Respondent:*

- Lieutenant Mark Buckley, Lowell Police Department
- Lieutenant Paul R. Laferriere, Lowell Police Department

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hearing ended on the afternoon of March 2, 2015, the hearing on the Appellant's bypass appeal (docketed as G2-14-301) began and continued on March 24, 2015.

<sup>3</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

Although the parties and witnesses were instructed to refer to Ms. M and her child thusly, rather than using their names, there were a number of occasions in which they were referred to by their names. Thus, as advised at the hearing, the party seeking review of this decision will need to redact the transcript accordingly.

The Appellant also filed a promotional bypass appeal, docketed as D-14-297, on which the Commission issues a separate decision today as well. Recordings of both this appeal hearing and the Appellant's bypass appeal hearing were sent to Attorney Joseph Padolsky, who represented the Appellant in the instant appeal, and to Attorney Gary Nolan, who represented the Appellant in the bypass appeal, as well as to the Respondent. Attorney Nolan also attended part of the discipline appeal hearing.

- Superintendent William Taylor, Lowell Police Department

*Called by Appellant:*

- Daniel Otero, Appellant
- Ms. M, Appellant's wife;<sup>4</sup>

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and case law, and reasonable inferences from the credible evidence; a preponderance of the evidence establishes the following findings of fact:

1. The Appellant has been a Police Patrolman with the Lowell Police Department (LPD) for nineteen (19) years, since 1996. (Testimony of Appellant; Stipulated Facts)
2. LPD Officer Timothy Golden and Ms. M were once married and had a daughter together who is a minor. In or about May 2012, Officer Golden and Ms. M separated and in August 2012 they divorced under highly contentious circumstances. At or around the summer of 2012, Ms. M and the Appellant were involved in a romantic relationship. In July 2013, Ms. M and the Appellant were married. (Testimony of Appellant and Ms. M; Exhibit 1)
3. In or about August 2012, Officer Golden sent a video to Ms. M via text message that depicted their young daughter without underwear while playing. The video was accompanied by a caption that said, "This is what happens to kids of divorced parents." (Exhibit 1; Testimony of Appellant and Ms. M) The only people who saw the video were Ms. M, the Appellant, Ms. M's parents and Ms. M's sister. Ms. M's attorney, Greg Oberhauser, did not see the video. (Testimony of Ms. M)
4. On December 12, 2012, Lt. Mark Buckley and Lt. Francis Rouine met with Ms. M to discuss accusations that Officer Golden was harassing and threatening her and the

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<sup>4</sup> The Appellant's wife is identified as Ms. M to protect her identity and that of her daughter, who is a minor.

Appellant. The Appellant attended this meeting. At this meeting, Ms. M described the aforementioned video as just one example of the type of harassment by Officer Golden that she was experiencing. Lt. Buckley asked to see the video but Ms. M told him that she was having problems with her phone and, as a result, the video had been lost.

(Testimony of Ms. M; Exhibit 1)

5. Lt. Buckley has worked at the LPD for sixteen (16) years and has conducted numerous investigations. He operates the LPD unit responsible for addressing domestic violence and sexual abuse. (Testimony of Lt. Buckley)
6. Lt. Buckley discussed the video with Lt. Rouine following the meeting but he Lt. Buckley) took no action regarding the video at that time. (Testimony of Lt. Buckley)
7. On December 13, 2012, one day after the December 12, 2012 meeting, Ms. M was arraigned on charges of breaking and entering into the marital home pursuant to a complaint by Officer Golden. The charges were dismissed via a nolle prosequi on May 23, 2013. (Testimony of Ms. M; Stipulation)
8. On April 25, 2013, while the breaking and entering charges against Ms. M were still pending, a meeting was held at the District Attorney (“DA”)’s Office to discuss whether the alleged harassment by Officer Golden warranted criminal charges. (Exhibit 1; Testimony of Lt. Buckley) In attendance were Lt. Buckley; Ms. M; Attorney Greg Oberhauser, who was representing Ms. M; Ms. M’s mother; the Appellant; DA Victim Witness Advocate Rani Scott; and Assistant District Attorney Dannon Stacer. (Stipulation) At this meeting, Attorney Oberhauser mentioned the video of Ms. M’s daughter and Ms. M described the video in the same way as she had at the December 12, 2012 meeting. (Exhibit 1; Testimony of Lt. Buckley)

9. At this April 25, 2013 meeting, after Ms. M finished her description of the video, the Appellant made specific false statements indicated in the record embellishing what was in the video which, if such statements were true, would warrant a mandatory report of child sexual abuse to the Department of Children and Families. Upon hearing this description by the Appellant, Ms. M put her head into her hands. Lt. Buckley then asked to see the video, as he had done at the December 12, 2012 meeting. However, Attorney Oberhauser told Lt. Buckley that a forensic specialist had looked at the phone and had been unable to retrieve the video. (Exhibit 1, Testimony of Lt. Buckley)
10. In a Police Report written on April 25, 2013 after the meeting at the DA's office, Lt. Buckley wrote that the Appellant made specific statements about the contents of the video sent by Officer Golden to Ms. M. (Exhibit 1)
11. Also on April 25, 2013, Lt. Buckley also filed a G.L. c. 119, § 51A report with the Department of Children and Families ("DCF") with allegations of child abuse against Officer Golden and allegations of parental neglect against Ms. M. (Exhibit 1; Stipulation)
12. The 51A report form filled out by Lt. Buckley asks the reporting person to answer a number of questions. One question asks, "What is the nature and extent of injury, abuse, maltreatment, or neglect, including prior evidence of same? (Please cite the source of this information if not observed firsthand.)" (Exhibit 1) In response to this question, Lt. Buckley wrote, "Alleged by ex wife, that ex husband video taped daughter [taking actions which, if true, would warrant a mandatory report of child sexual abuse to the Department of Children and Families] ... and sent video to ex-wife last August. Mother never reported it." (Exhibit 1) Although it was the Appellant who actually made the

specific abuse allegation, Lt. Buckley determined that if Ms. M disagreed with the Appellant, she would have said so but she did not. As a result, Lt. Buckley concluded that Ms. M acquiesced in the Appellant's specific allegation and yet she failed to report the alleged abuse until months later and she had allowed the child to continue visitation with Officer Golden during that time. (Testimony of Lt. Buckley, Lt. LaFerriere; Exhibit 1) Although the Appellant was the one who asserted the child abuse, he was not the child's parent. (Administrative Notice)

13. Between April 30, 2013 and May 6, 2013, DCF Investigator Jennifer A. Capone (Ms. Capone) conducted a series of separate interviews regarding the allegations made in the 51A report filed by Lt. Buckley. This included an April 30<sup>th</sup> interview of Ms. M, who stated that there was nothing sexual about the video of her daughter, even though she thought it was inappropriate. Ms. Capone also interviewed the Appellant, Ms. M's and Officer Golden's daughter, Officer Golden, Officer Golden's previous wife, and Lt. Buckley. (Exhibit 1)

14. Ms. Capone interviewed the Appellant. Ms. Capone reported that the Appellant had effectively retracted his prior assertion of child abuse, stating that the Appellant asserted that "... [Ms. M] had an old flip phone and the picture was small and not clear." (Exhibit 1) Ms. Capone further wrote that the Appellant "... could not tell if [the video showed evidence of child sexual abuse] ... because the picture was not clear. ..."

(Exhibit 1). The Appellant also told Ms. Capone that he did not think that Officer Golden was abusing his (Officer Golden's) daughter and that he believed Officer Golden was a good father. (Stipulation; Exhibit 1) Ms. Capone wrote that Ms. M reported that when she started dating the Appellant, Officer Golden began to behave in a threatening and

dangerous manner towards Ms. M, the Appellant and the Appellant's children. Ms. M further told Ms. Capone that she was the one who had reported at the April 25, 2013 meeting that the video showed specific conduct but she asserted that she did not believe that the video contained sexual content or that Officer Golden abused their daughter. Ms. Capone wrote that Officer Golden denied that he sexually abused his daughter at any time and he said that he was "certain" that she did not do anything that would warrant a mandatory report of child sexual abuse. (Exhibit 1)

15. On May 6, 2013, Ms. Capone found that the allegations of child abuse against Officer Golden were unsupported and allegations of neglect against Ms. M were unsupported. (Exhibit 1; Stipulation)

16. Following Ms. Capone's report, the DA's office closed its investigation into the child abuse allegations on June 13, 2013. (Stipulation)

17. On January 7, 2014, the LPD Professional Standards Division received an internal complaint from Captain Richardson (Complaint #2013-0021) relating to potential domestic violence allegations lodged against Officer Golden by Ms. M. The allegations centered on Officer Golden's alleged harassment of Ms. M and the Appellant but they included allegations that Officer Golden abused their daughter. This complaint was transferred to the Internal Affairs Department on January 27, 2014. Lt. Laferriere was assigned to investigate these matters. (Testimony of Laferriere; Exhibit 1)

18. Lt. Laferriere has been a Lieutenant at the LPD for twelve (12) years. He is the Officer in Charge of the Internal Affairs unit, which handles approximately fifty (50) complaints per year. The process for handling complaints generally is that the complaints are logged in, assigned a number, the complaint goes to Lt. Laferriere for him to investigate and he

notifies the complainant and the officer who is the subject of the complaint that the complaint will be investigated. However, the length of the investigation, the number of people (if any) that he interviews, and any other steps he takes, varies for each case. At the time involved in this case, he would send his findings to Capt. Richardson for him to review and sign off, who would give the findings to the Chief for review and signoff and return the findings to Lt. Laferriere who would send the findings to the complainants and officers involved. (Testimony of Lt. Laferriere)

19. In the course of his investigation, Lt. Laferriere learned that the DA's office was looking into the child abuse allegations and the harassment allegations but that the DA's office had determined that the child abuse allegations were not sustained. Since the DA's office had found that the child abuse allegations were not sustained, Lt. Laferriere decided to investigate the child abuse allegations first. ( Testimony of Lt. Laferriere)

20. Lt. Laferriere's investigation involved two internal complaints against Officer Golden: 1) allegations that he was harassing Ms. M; and 2) allegations that he was harassing the Appellant and his children. The Appellant was dating Ms. M at the time and he witnessed some of the email and other messages Officer Golden sent Ms. M; in addition, the Appellant had "some interaction" with Officer Golden. (Testimony of Lt. Laferriere)

It was in the course of investigating the harassment allegations that the Appellant made the allegations about the video of Officer Golden's and Ms. M's child. (Testimony of Lt. Laferriere)

21. It took Lt. Laferriere several weeks or a month to complete his investigation regarding Officer Golden. First, Lt. Laferriere obtained all of the documents generated and obtained by Lt. Buckley concerning the two sets of allegations (that Officer Golden was



harassing Ms. M and that Officer Golden was harassing the Appellant and his children). He sorted out these documents in order to create a timeline. He also talked to Ms. Capone twice, Lt. Buckley and former Assistant District Attorney Stacer. Ms. Capone confirmed her report to Lt. Laferriere and said that the Appellant and Ms. M were saying things to her that were different from what they had said at the April 25, 2013 meeting at the DA's office and that they were not forthcoming in their responses to her questions. Former Assistant DA Stacer did not want to be involved in the matter further because he was no longer employed by the DA's office. (Testimony of Lt. Laferriere)

22. Lt. Laferriere discussed the investigation with Lt. Buckley and asked him about two (2) inconsistencies in the documents he (Lt. Laferriere) had received. The first inconsistency was that Lt. Buckley's April 25, 2013 police report stated that it was the Appellant who made specific allegations of child abuse in the video but in the 51A report, Lt. Buckley wrote that it was Ms. M who made this assertion. Lt. Buckley explained that the 51A report accused Officer Golden of child abuse and Ms. M of child neglect; it did not accuse the Appellant of child abuse or child neglect because he is not the child's parent. Further, Lt. Buckley explained that he had deemed Ms. M's failure to contradict the Appellant's allegation constituted acquiescence thereto. In addition, Lt. Buckley explained that, as the remainder of the 51A report states, Ms. M had known about the video and the alleged abuse for months and yet she failed to stop Officer Golden's child visitation. Lt. Laferriere testified credibly that he accepted Lt. Buckley's explanations. (Testimony of Lt. Laferriere and Lt. Buckley)

23. The second inconsistency Lt. Laferriere asked Lt. Buckley about was that he (Lt. Buckley) wrote in his April 25, 2013 police report that the Appellant was the one who

specifically asserted that the video of Ms. M's daughter showed evidence of child sexual abuse. Ms. Capone's report stated that Ms. M's attorney, Greg Oberhauser said it. Lt. Buckley assured Lt. Laferriere that it was the Appellant, in Lt. Buckley's presence at the meeting, who made that assertion and that this aspect of Ms. Capone's report was an error. Ms. Capone was correct about what was said about the video at the April 25, 2013 but incorrect about who said it. (Testimony of Lt. Laferriere) Ms. Capone's report states that it was Lt. Buckley who told her that Attorney Oberhauser said that the video showed evidence of child sexual abuse. (Exhibit 1) In view of Lt. Buckley's credible testimony and the fact that Attorney Oberhauser was not one of the people who Ms. M reported had seen the video, I find it highly unlikely that Lt. Buckley told Ms. Capone that it was Attorney Oberhauser who reported this aspect of the video instead of the Appellant.

24. On February 12, 2014, Lt. Laferriere completed an Internal Affairs Report Re: Internal Complaint #2013-0021, relating to Officer Golden's alleged child abuse of his daughter. (Testimony of Lt. Laferriere; Exhibit 1) Lt. Laferriere found, among other things, that the child sexual abuse allegations against Officer Golden were "UNSUSTAINED". (Exhibit 1)(emphasis in original) Lt. Laferriere further reported,

"... Officer Golden may not have used the best judgment in taking and sending the video but he did not violate any of the Lowell Police Department Rules and Regulations.

A more concerning issue raised during this investigation is the fact that such a serious allegation was made against Lowell Police Officer Timothy Golden by another Lowell Police Officer, Daniel Otero. We are aware that Officer Otero was dating Officer Golden's ex-wife, that the Golden's had gone through a contentious divorce, and allegations of possible threats were made, but the making of an allegation of possible sexual abuse by one officer against another is by far the most pressing and disturbing issue.

On December 12, 2012 at a meeting between Lt. Rouine, Lt. Buckley and [Ms. M], the first details surfaced regarding this video sent by Officer Golden to his ex-wife. At that time [Ms. M] states that the video showed [the daughter **without** underwear while playing,] ... with the caption, "see what happens to kids

of divorced parents”. No other allegations made (sic). On April 25, 2013 at a meeting at the District Attorney’s Office, Daniel Otero adds to that allegation that he saw [evidence of child sexual abuse] ... He described what he saw [with specific details which, if true, would warrant mandatory report of child sexual abuse] ... The video was supposedly sent in August, 2012. This allegation is made by Daniel Otero approximately eight (8) months after he viewed this video. This revelation results in a 51A being filed by Lt. Buckley in this matter and investigations conducted by both DCF and the District Attorney’s Sexual Assault Unit.

The investigation by DCF resulted in the finding that the allegation of sexual abuse against Officer Golden was unsupported. During that investigation Officer Daniel Otero was again interviewed regarding the video. In this interview Officer Otero states that the picture on the phone was small and unclear, although at the meeting in the DA’s office he [described what he saw with unique, graphic details which, if true, would warrant a mandatory report of child sexual abuse] ... He states that he ... [could no longer see the abuse he described earlier] ... He states that Officer Golden is a good father and he does not believe that Officer Golden would ever abuse his daughter. An interview with [the daughter] concluded that there were no indications that she had been inappropriately touched by her father. The ex-wife, [Ms. M], also stated that there was nothing sexual about the video and what Tim did was stupid and inappropriate. The problem is that the allegation was made and resulted in several investigations of the allegations. The even bigger problem is that it was a Lowell Police Officer making the accusation.

Based on the investigation of the alleged sexual abuse claim against Officer Timothy Golden, and even though he was not the subject of this investigation, I find that Officer Daniel Otero has violated the following rules and Regulations of the Lowell Police Department:

J(4)- Conduct Unbecoming an Officer – conduct unbecoming an officer shall include that which brings the department into disrespect or reflects discredit upon the officer as a member of the department, or that which impairs the operation or efficiency of the department and/or officer.

Therefore, MISCONDUCT NOTED regarding Officer Daniel Otero.  
(Exhibit 1)(emphasis in original)

25. Lt. Laferriere did not send his findings to the Appellant until September 2014 because Capt. Richardson said not to send them until the harassment investigations were also completed. The DA’s office did not complete its investigation of the harassment allegations until June 2014, following which Lt. Laferriere pursued his investigation of the harassment allegations. (Testimony of Lt. Laferriere)

26. Prior to the child abuse allegations asserted by the Appellant, Lt. Laferriere had no particular view of the Appellant's professionalism and he had no problems with the Appellant. (Testimony of Lt. Laferriere)
27. Supt. Taylor reviewed Lt. Laferriere's report on August 12, 2014. (Testimony of Supt. Taylor; Exhibit 1) Supt. Taylor was appointed Superintendent on November 19, 2013. (Stipulation)
28. On or about September 11, 2014, Lt. Laferriere issued Findings of Internal Investigation #2013-0021 to the Appellant. (Exhibit 4)
29. On November 13, 2014, Supt. Taylor issued a Notice of Five (5)-Day Suspension to the Appellant for conduct unbecoming a police officer. The Notice of Suspension also explained that it was issued, "due to prior history of violations for which you have received lesser discipline." These prior violations factored into the weight of the discipline issued pursuant to Lowell's use of the policy of progressive discipline. (Exhibit 2)
30. The Respondent conducted a hearing regarding the investigation findings, pursuant to G.L. c. 31, § 41, on December 4 and 8, 2014 before designated Hearing Officer Robert W. Healy. (Stipulation) City Manager Kevin Murphy (City Manager Murphy), an attorney, appointed Hearing Officer Healy to conduct the hearing, rather than conducting the hearing himself, because he (Mr. Murphy) had formerly represented Officer Golden in a civil matter. (Testimony of Supt. Taylor; Exhibit 3)
31. By letter dated December 10, 2014 to City Manager Murphy, Hearing Officer Healy wrote that the Appellant was represented by counsel at the Respondent's hearing, that Patrol Officers' Union Representative Brian Keefe was present and that the following

individuals testified: Lt. Laferriere, Lt. Buckley, Supt. Taylor, Ms. M and the Appellant.

Hearing Officer Healy further wrote that he found, in part,

While this matter is complicated by various other complaints relating to domestic issues during and after a contentious divorce, the fact is that statements made at a meeting in the District Attorney's office on April 25, 2013 about the contents of a video sent in August of 2012 caused Lt. Buckley, as a mandated reporter, to immediately, file a 51-A report with the Department of Children and Families which names both Officer Timothy Golden, and [Ms. M] as 'alleged perpetrators'.

This resulted in an Investigation by two agencies of the Commonwealth, Middlesex County District Attorney, the Department of Children and Family Services, and ultimately a finding of "closing our review of the matter", by the District Attorney's Office, and "Unsupported" (as to both parties) by the Department of Children and Family Services.

Despite different versions of "who said what" at the April meeting, Officer Otero was present at this meeting and, at a minimum, "reiterated" what [Ms. M] described as the content of the August video, which caused the 51A report and subsequent investigation. During the investigation both parties "moderated" their statements resulting in a closing of the case by both law enforcement agencies. The fact is, that a "mandated reporter", i.e. Lt. Buckley (sic) felt compelled to file a 51A report after listening to the statements made at the April meeting in the District Attorney's office, and thus, creating the requirement of a thorough investigation. The interview conducted during this investigation, provided a different interpretation of the video, resulting in a "closing" of this case (sic)

Thus, I recommend that the Appointing Authority uphold the 5 day suspension imposed by the Superintendent of Police.  
(Exhibit 3)

32. By letter dated December 12, 2014, City Manager Murphy wrote to the Appellant stating that he adopted the findings of Hearing Officer Healy and affirmed the five (5)-day suspension initially issued to the Appellant, enclosing copies of Mass. General Laws Chapter 31, §§ 41-45 concerning appeals to the Commission. (Exhibit 3)<sup>5</sup>

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<sup>5</sup> With respect to Officer Golden, by a March 20, 2015 email message (after the hearing in this appeal), the parties filed a stipulation initially proposed at the hearing, providing, in part,

1. Officer Timothy Golden was the subject of internal complaints ... which respectively concerned allegations of threats and harassment by Officer Golden against his ex-wife and Appellant Officer Daniel Otero. ...
2. ... Officer Golden did not receive discipline in connection with allegations of child abuse or for circumstances specifically relating to the video. ...
3. An additional Internal Affairs report ... determined that the Complaints against Officer Golden regarding charges of threatening to commit a crime and criminal harassment were unsustainable. The report nonetheless found that Officer Golden had violated the Rules and Regulations of the LPD by engaging in

33. The Appellant filed the instant appeal at the Commission on December 23, 2014.

(Administrative Notice)

**Prior Discipline**

34. The Appellant has not been suspended before but he was counseled once and has received two (2) Official Reprimands. (Stipulation)

35. On June 6, 2012, the Appellant was counseled by Captain K. Staveley regarding proper Lowell Police Department email procedures after he sent an email stating, “who the f\*\*\* took my bike from the precinct,” to all Police Officers in the Department when he could not find his Department bicycle. (Stipulation; Exhibit 5) Sgt. Sheehan reported to Captain Staveley that the Appellant expressed remorse stating, “I knew as soon as I sent it, that I shouldn’t have ....” (Exhibit 5)

36. On February 11, 2013, the Appellant received an Official Reprimand from the Department for violation of sick leave policy in May 2012. On May 29 and 30, 2012, the Appellant called in sick in order to attend a police promotional training session. (Testimony of Supt. Taylor; Stipulation; Exhibit 6) This abuse of the sick leave policy gave the Appellant an unfair advantage over the other police officers. (Testimony of Supt. Taylor) The Appellant had paid \$1,200 to attend the training session and did not want to miss it. (Testimony of Appellant)

37. On January 31, 2014, the Appellant received an Official Reprimand from the Department for “leaving the city or sector” and “other punishable offenses” on September 22 and

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Conduct Unbecoming an Officer ... As a result of this finding, LPD issued a Notice of Two (2) Day Suspension to Officer Golden on November 13, 2014. ... Officer Golden was not found to be in violation of department rules or disciplined for [the] filing against Ms. M. ...

The hearing record was re-opened, pursuant to 801 CMR 1.01(10)(k)(2), for the purpose of including this stipulation in the record.

October 6, 2013. (Stipulation) On both dates, the Appellant left his route while on duty, parked his patrol car on the street, and went to his brother's house for lunch and on at least one of these occasions he watched part of a Patriots football game on television.

(Testimony of Appellant; Exhibit 8)

### *Applicable Law*

Pursuant to G.L. c. 31 § 43, a tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L. c. 31 § 41, may appeal the decision to the Commission. The Commission must determine whether the appointing authority, by a preponderance of the evidence, met its burden of proving that there was just cause for the discipline imposed. Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823 (2006); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, *rev.den.*, 726 N.E.2d 417(2000); McIsaac v. Civil Serv. Comm'n, 38 Mass.App.Ct. 473, 477 (1995); Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev.den.*, 390 Mass. 1102 (1983).

The Civil Service 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 Comm'n, 43 Mass.App.Ct. 486, 488 (1997).

G.L. c. 31, § 43 also vests the Commission with the authority to “modify any penalty imposed by the appointing authority.” *Id.* Although the Commission has been given considerable discretion to modify a penalty imposed by the appointing authority, this discretion is “not without bounds.” Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594, 600 (1996). Rather, the Commission must provide a rational explanation for the reason the penalty

should be modified. Id. Unless the findings of fact differ substantially from those of the appointing authority, the Commission does not have the authority “to substitute its judgment about a valid exercise of discretion based on merit or policy considerations.” Brewington v. Boston Police Dep’t., 20 MCSR 637, 638 (2007)(citing Boston Police Department v. Collins, 721 N.E.2d 938 (Mass.App.Ct. 1997).

The Commission must take account of all credible evidence in the record, including whatever would fairly detract from the weight of any particular supporting evidence. *See, e.g.*, Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine the credibility of the witnesses who appear before the Commission. *See e.g.*, Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003); Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003). *See also* Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997).

The Commission is also mindful of the standard of conduct expected of officers of the law. "An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion." Mclsaac v. Civil Serv. Comm’n, 38 Mass.App.Ct. 473, 474 (1995). "[P]olice officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens." Attorney General v. McHatton, 428 Mass. 790, 793 (1999).

#### Parties’ Arguments

The Appellant argues that Lowell did not have just cause to impose a five-day suspension. It is the Appellant’s contention that he never made any allegations against Officer Golden regarding child abuse. Further, the Appellant avers that he never used the specific words in the record to describe what was depicted in the video sent by Officer Golden to Ms. M. The



Appellant also points to inconsistencies in Lt. Buckley's reports to assert that the Respondent lacked just cause to discipline him. The Appellant further argues that he was not given notice that he was a party to internal investigation #2013-0021 until after he was accused of misconduct in violation of his due process rights. Therefore, the Appellant concludes that his suspension was not based on just cause, it was unfair and it was the result of favoritism and personal bias.

The Respondent argues that there was just cause to suspend the Appellant for five days. Respondent asserts that the Appellant made heinous false accusations against a fellow officer, which constitutes conduct unbecoming an officer. Further, the Respondent argues that the Appellant told investigators in specific terms that the video sent by Officer Golden to Ms. M showed evidence of sexual abuse of their daughter. According to the Respondent, the Appellant's serious assertion caused the LPD to investigate the allegations, as well as the DCF and the DA's office to conduct investigations, to determine if Officer Golden engaged in child abuse. The Respondent found that any inconsistencies in the investigation reports were explained and accepted by Lt. Laferriere. In addition, it is the Respondent's contention that the Appellant retracted his allegation that Officer Golden abused his child during the investigations, showing that his initial assertion in this regard was false and highlighting his lack of regard for his fellow officer and the LPD. Therefore, the Respondent avers that the Appellant's misconduct warranted discipline and that the five (5)-day suspension was an appropriate penalty.

### Analysis

Lowell has met its burden of proving, by a preponderance of the evidence, that there was just cause for suspending the Appellant for five days. The Appellant was suspended because it was determined that he had engaged in conduct unbecoming an officer, namely falsely accusing Officer Golden, a fellow officer, of sexual abuse of his (Officer Golden's) own child. The effects

of such an accusation can be devastating and difficult, if not impossible, to overcome. Worse still, the assertion was made while the Appellant was dating Ms. M at or around the time of the especially contentious divorce of Ms. M and Officer Golden.

The Appellant's specific false accusations on April 25, 2013 that the video that Officer Golden sent Ms. M showed evidence of child sexual abuse prompted investigations by multiple agencies, each of which concluded that Officer Golden had not abused his daughter. Although there were two discrepancies involving Lt. Buckley's reports and the DCF report about the accusations, Lt. Buckley credibly explained each of them. Lt. Buckley testified at the Commission that his 51A report indicated that it was Ms. M who made the statement (not the Appellant) because the complaint was against her, for child neglect, and Officer Golden, for child abuse; specifically, the allegation was that she was aware of the what was in the video months earlier and yet she continued to send her daughter to Officer Golden for parental visitation. In addition, the Appellant was not the subject of the 51A report and he is not the child's parent. Moreover, Lt. Buckley interpreted Ms. M's silence in the face of the Appellant's specific allegation as acquiescence since he believed that any parent who heard such an allegation and did not believe it would say so. As to the inconsistency of the part of the DCF report that said that it was Ms. M's attorney, Greg Oberhauser, who reported that the video showed evidence of child abuse (and not the Appellant who stated this), Lt. Buckley credibly testified that the DCF report was mistaken. Lt. Laferriere testified that he found Lt. Buckley's explanations credible and concluded that it was the Appellant who said that the video showed evidence of child sexual abuse. I find the explanations of Lt. Buckley and Lt. Laferriere to be credible. They, like all of the witnesses, were sequestered. Their testimony was straightforward and consistent. In addition, it is clear that the DCF report erred in stating that Attorney

Oberhauser made the accusation since the DCF report stated that Lt. Buckley was the person who made the accusation. I do not believe that Lt. Buckley was confused about who made the accusation at the April 25, 2013 meeting that he attended. He wrote his police report shortly after the meeting and wrote that it was the Appellant who made the allegation. His police report included the Appellant's specific statements alleging the Officer Golden had abuse his own child. In addition, Attorney Oberhauser never saw the video. Further, Lt. Buckley is an experienced Lieutenant who operates the LPD unit that addresses child abuse and domestic violence and it is unlikely that he would make an error of that kind. Finally, I sensed no bias or other inappropriate motive against the Appellant on the part of Lt. Buckley, Lt. Laferriere or Supt. Taylor.

During DCF Investigator Capone's May 3, 2013 interview, the Appellant retracted his allegation against Officer Golden. He stated that the video was too small and unclear to conclude with any certainty that the daughter was being sexually abused by Officer Golden, as the DCF report noted in detail. The Appellant's inconsistent descriptions of the video undermine his credibility. I also find the Appellant not credible for a number of other reasons. For example, despite the fact that Ms. M and the Appellant met with the police and at the DA's office to complain that Officer Golden was repeatedly harassing her, the Appellant and the Appellant's children, when asked at the Commission hearing if he had any hostility toward Officer Golden, the Appellant said that Officer Golden had not done anything to him. He denied being angry with Officer Golden, ascribing Officer Golden's action as the actions of a "jealous ex-husband".

I find that the Appellant made a number of other statements that lacked credibility. On December 12, 2012, the Appellant and Ms. M met with the police complaining about Officer Golden's harassment. The next day, Ms. M was arraigned for breaking and entering into Officer

Golden's home. The breaking and entering charge remained open when the Appellant and Ms. M and others met at the DA's office on April 25, 2013 and the Appellant alleged that the video they reported on December 12, 2012 showed evidence of child sexual abuse. When the Appellant was asked at the Commission hearing if Ms. M was arraigned around the time of the December 12, 2012 meeting with the police, the Appellant said he did not know, notwithstanding the fact that he reported he had been dating Ms. M for months by that time. When asked at the Commission hearing if the breaking and entering charge against Ms. M was still pending when he and Ms. M attended the April 25, 2013 meeting at the DA's office, the Appellant said he did not know. Within weeks after the Appellant accused Officer Golden of child abuse, the breaking and entering charge against Ms. M was dismissed via a nolle prosequi. Further, when the Appellant was asked at the Commission hearing when Ms. M was divorced from Officer Golden, the Appellant first said that he did not know and then he said "sometime in 2012". I find the Appellant's responses at the Commission hearing not credible given the significance of those dates and the back and forth of those tumultuous events.

Ms. M's testimony also lacked credibility. When she was asked at the Commission hearing why Lt. Buckley did not file a 51A or police report after the December 2012 meeting if her description of the video of her daughter was the same at the December 12, 2012 meeting with the police and the April 25, 2013 meeting at the DA's office, Ms. M said that she did not know. She testified that she did not recall what the Appellant said about the video of her daughter at the April 25, 2013 meeting, notwithstanding the seriousness of the allegation against Officer Golden. She testified that she was the one who told DCF that the video was hard to see on her phone where the evidence shows that the Appellant made that statement to the DCF Investigator. When asked if there was any hostility between the Appellant and Officer Golden at the time of the

April 25, 2013 meeting, she asserted that she did not understand the question despite abundant evidence that there was significant hostility between them. She testified that she deleted the video from her phone the day that she received it but there are repeated indications in the record that the reason the video was not available was that there was a problem with her phone.

Consequently, a preponderance of the evidence indicates that the Appellant's specific accusations were unfounded, that they caused the LPD, as well as DCF and the DA's office to conduct investigations in order to make that determination, causing harm to the reputation of Officer Golden, the LPD and others. Police officers are held to a higher standard. The Appellant's conduct, as found here, fell well below that standard and constitutes substantial misconduct which adversely affects the public interest by impairing the efficiency of public service. The Respondent appropriately considered the Appellant's disciplinary history in assessing a five (5)-day suspension, reflecting progressive discipline. Having made findings substantially the same as those found by the Respondent, modification of the discipline is not warranted. The Appellant alleges that he was not given proper notice of the allegations against him since he was not informed of the allegations until he received Lt. Laferriere's report. However, the Appellant cites no policy or rule that was violated in this regard. In addition, Lt. Laferriere credibly testified that the charges against the Appellant were processed in the time and manner that information was available from the LPD, as well as the DCF and the DA's office. In addition, the Appellant was given the opportunity to appeal the suspension and was granted a hearing by the Respondent accordingly. Having found no bias or other inappropriate motive on the part of the Respondent, there is no other reason for the Commission to modify the five (5)-day suspension issued to the Appellant.

## Conclusion

For the foregoing reasons, the Respondent has established by a preponderance of the evidence that it had just cause to discipline the Appellant with a five (5)-day suspension.

Therefore, the disciplinary appeal of the Appellant, under Docket No. D-14-297, is hereby *denied*.

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Tivnan, and Stein) on October 27, 2016.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Joseph A. Padolsky, Esq. (for Appellant)  
Kenneth Rossetti, Esq. (for Respondent)  
Rachel M. Brown, Esq. (for Respondent)