

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

WILLIAM HATFIELD,

Appellant

v.

D1-15-121

TOWN OF HULL FIRE DEPARTMENT,

Respondent

Appearance for Appellant:

William Hatfield, Pro Se

Appearance for Respondent:

James B. Lampke, Esq.
Town Counsel – Town of Hull
115 North Street – Suite 3
Hingham, MA 02043

Commissioner:

Paul M. Stein

DECISION

The Appellant, William Hatfield, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§43, from his termination as Firefighter/Paramedic with the Town of Hull Department of Fire/Rescue & Emergency Services (HFD). The Commission held a pre-hearing conference on February 17, 2015 and a full hearing on September 16, 2015 at the Commission's Boston office.¹ The hearing was declared private. Witnesses were sequestered. HFD called seven witnesses. The Appellant called no witnesses and did not testify on his own behalf. Seventeen Exhibits (Exhs. 1 through 17) were received in evidence and two additional exhibits (Exhs. 18ID & 19ID marked for identification. At the Commission's request, HFD submitted two additional post-hearing exhibits marked PH20 and PH21. The full hearing was digitally recorded and both parties received a CD of the proceeding². HFD submitted a proposed decision.

¹ 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.

² 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. In such cases, the CD recording provided to the parties should be transcribed by the plaintiff in the judicial appeal into a written transcript.

FINDINGS OF FACT

Based on the Exhibits and the testimony of the following witnesses:

Called By the Appointing Authority:

- Christopher J. Russo, HFD Fire Chief
- Andrew G. Thomas, HFD Deputy Fire Chief
- William F. Souza, HFD Fire Captain
- James Rudolph, Trooper, Massachusetts State Police
- Simon Roy, M.D.
- Brigida Manjone, Pharmacist
- Ruth Abi-Kheirs, Pharmacist

Called by the Appellant:

- None

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

1. The Appellant, William Hatfield, is a resident of Plymouth MA, who served as an HFD firefighter/paramedic from May 31, 2005 until June 1, 2015. Certification as an Emergency Medical Technician (EMT) at the Paramedic Level is required as a condition of employment to perform the necessary duties of an HFD firefighter/paramedic. (*Exh. 1 & 17; PH Exh. 21 [Art. XI, Section 3]; Claim of Appeal; Testimony of Capt. Souza, Dep. Chief Thomas & Chief Russo*)

2. Paramedic level duties include handling and managing medication, including narcotics. Approximately 75% of HFD's calls involve medical aid. Even fire suppression calls can require, paramedic level treatment. (*Testimony of Capt. Souza & Dep. Chief Thomas & Chief Russo*)

3. Mr. Hatfield also worked as a medic (nurse) at Health Express, a chain of walk-in clinics, with locations in Pembroke and Weymouth. Dr. Simon Roy, a physician specializing in emergency medicine, supervised Mr. Hatfield at Health Express. (*Testimony of Dr. Roy*)

4. As a Health Express medic, Mr. Hatfield had access to the company's computer system, including patient medical records and access to prescription drug forms. (*Testimony of Dr. Roy*)

5. Mr. Hatfield had been receiving medical care for pain management for some time. His primary care physician prescribed Vicodin and, later, Percocet (also known as Oxycodone), a narcotic. Mr. Hatfield also once obtained a prescription for Percocet from Dr. Roy, who last saw and examined Mr. Hatfield as a patient during an office visit on May 5, 2014. (*Exh. 7 [Tpr. Rudolph's Report]; Testimony of Dr. Roy & Tpr. Rudolph*)³

6. On September 11, 2014, Mr. Hatfield, while on duty and in uniform, drove an HFD fire truck to the Nantasket Pharmacy in Hull, MA, where he presented a prescription for Percocet, purportedly issued to him on September 10, 2014 by Dr. Roy. His presence was recorded on a video camera. (*Exhs. 4, 5 & 7 [Tpr. Rudolph's Report]; Testimony of Abi-Kheirs & Tpr. Rudolph*)

7. The Nantasket Pharmacy's pharmacist then on duty noted that Mr. Hatfield's driver's license and the prescription showed him as a resident of Plymouth. She also noted that the prescription was issued through the Health Express facility by a physician in Weymouth, and she rarely saw a prescription for narcotics issued from that walk-in facility. She had also noted that Mr. Hatfield was wearing a HFD uniform indicating he worked in Hull. Accordingly, prior to filling the prescription, the pharmacist called Health Express and asked for the diagnosis that prompted the prescription to be issued. (*Testimony of Abi-Kheirs*)

8. Upon receiving the pharmacist's inquiry, Health Express's owner drove to Nantasket Pharmacy and verified that Dr. Roy had not issued the prescription in question and that the signature on the prescription form was a forgery. After being so informed, Nantasket Pharmacy declined to fill the prescription and the incident was reported to law enforcement and to the HFD. (*Exhs. 4 & 7 [Tpr. Rudolph's Report]; Testimony of Abi-Kheirs, Dr. Roy, Chief Ruisso & Tpr. Rudolph*)

³ According to his usual and customary protocol, and sound medical practice, Dr. Roy never issues a prescription for a narcotic without meeting with and assessing his patient. (*Testimony of Dr. Roy*)

9. Massachusetts State Trooper James Rudolph, assigned to the Plymouth County District Attorney's Office, undertook an investigation of the incident. On September 11, 2014, pending this investigation, Mr. Hatfield was placed on administrative leave by order of then Fire Chief Robert Hollingshead. (*Exh. 7 [Tpr. Rudolph's Report]; Testimony of Tpr. Rudolph & Chief Russo*)

10. Tpr. Rudolph accessed the Prescription Monitoring System (PCP), an online system managed by the Massachusetts Department of Public Health, which tracks patient prescriptions for the past twelve month period. The PCP confirmed that, from September 30, 2013 through September 30, 2014, the total prescriptions issued to Hatfield included 22 prescriptions for oxycodone & combinations (1,226 pills or 312 day supply), 13 prescriptions for hydrocodone & combinations (260 pills or 245 day supply) and 11 prescriptions for diazepam (690 pills or 203 day supply). (*Exh. 7 [Tpr. Rudolph's Report], Exh.9; Testimony of Tpr. Rudolph; Adverse Inference [Failure of Appellant to Testify]*)

11. Tpr. Rudolph identified nine specific prescriptions issued to Mr. Hatfield on which Mr. Hatfield had forged Dr. Roy's signature. These prescriptions included:

- 6/20/14 – 30 oxycodone tablets filled at Wal-Mart Pharmacy in Plymouth MA
- 6/20/14 – 30 diaepam tablets filled at Wal-Mart Pharmacy in Plymouth MA
- 7/23/14 – 40 oxycodone tablets filled at Walgreen's in Plymouth, MA
- 8/1/14 – 40 oxycodone tablets filled at Wal-Mart Pharmacy in Plymouth, MA
- 8/10/14 – 40 oxycodone tablets filled at Nantasket Pharmacy in Hull, MA⁴
- 8/21/14 – 40 oxycodone tablets filled at Walgreen's Pharmacy in Plymouth, MA
- 8/29/14 – 40 oxycodone tablets filled at Wal-Mart Pharmacy in Plymouth, MA
- 9/6/14 – 40 oxycodone tablets filled at Walgreen's Pharmacy in Plymouth, MA
- 9/11/14 – 40 oxycodone tablets (declined) at Nantasket Pharmacy in Hull MA

(*Exhs. 4 through 6 & 7 [Tpr. Rudolph's Report]; Testimony of Tpr. Rudolph, Dr. Roy, Manjone & Abi-Kheirs; Adverse Inference [Failure of Appellant to Testify]*)

⁴ Mr. Hatfield also appeared in uniform while on duty and driving an HFD apparatus when he filled this prescription. (*Testimony of Manjone*)

12. On October 17, 2014, Tpr. Rudolph interviewed Mr. Hatfield at the State Police Barracks in Middleborough, MA. He appeared alone and agreed to an audio and video recording of the interview. Mr. Hatfield described his back injury and acknowledged that he started taking pain medication “for the right reason” but it spiraled out of control, resulting in a dependency. He recently completed a four week in-patient program and was continuing out-patient treatment and seeing a therapist. He did not admit any criminal wrongdoing. (*Exh. 7 [Tpr. Rudolph’s Report]; Testimony of Tpr. Rudolph; Adverse Inference [Failure of Appellant to Testify]*)

13. On November 4, 2014, Tpr. Rudolph forwarded a report of his investigation to his commanding officer. The report concluded that Mr. Hatfield had committed five offenses of uttering a false prescription and four offenses of obtaining a controlled substance by fraud. Criminal complaints issued on November 21, 2014, one for six counts in Plymouth District Court and one for three counts in Hingham District Court. (*Exhs. 7 & 8; Testimony of Tpr. Rudolph*)⁵

14. On December 4, 2014, the Massachusetts Office of Emergency Services (OEMS) issued a “Notice of Agency Action” in which it suspended Mr. Hatfield’s EMT certification, effective immediately, and proposed to temporarily revoke his certification pending a future determination of his fitness to practice as an EMT. The OEMS notice found, among things, the following facts that I also adopt and incorporate herein:

“EMTs hold an important place of public trust in their communities. By the nature of their jobs, EMTs are in close proximity with patients of all ages and genders, and their medications and other possessions, in unsupervised environments, in stressful situations. As a paramedic [Mr. Hatfield] would have access to a variety of narcotics. . . and could seek to be hired at a paramedic level ambulance service . . . [Mr. Hatfield’s actions] endanger the public health. Further, at a minimum, [Mr. Hatfield] has admitted that he is addicted to narcotics. To allow him to remain as an EMT at any level would endanger the public health and safety.”

(*Exh. 9*)

⁵ The four forged prescriptions that Mr. Hatfield had filled at Wal-Mart Pharmacy were not included in the criminal charges brought against him, which were limited to five counts of uttering, and four counts of obtaining, the fraudulent prescriptions he presented to Walgreens Pharmacy and Nantasket Pharmacy. (*Exhs. 7 & 8*)

15. By separate action, Mr. Hatfield's ability to practice as a paramedic was revoked by the HFD's medical control officer at the South Shore Hospital. (*Testimony of Chief Russo*)

16. As a result of the OEMS's suspension of Mr. Hatfield's EMT license, he was prohibited from acting as an EMT at any level indefinitely. At the time of the Commission hearing, no evidence was presented to suggest that the status of Mr. Hatfield's EMT license had changed or that his authority to act as an EMT at any level had been restored. (Exh. 18ID; *Testimony of Chief Russo; Adverse Inference [Failure of Appellant to Testify]*)

17. On or about January 1, 2015, HFD Fire Chief Hollingshead retired and then Deputy Chief Christopher J. Russo assumed the position of HFD Fire Chief. Prior to his promotion, as Deputy Chief and a member of the HRD's command staff, Chief Russo had been directly involved in the pending issues concerning Mr. Hatfield from inception. (*Testimony of Chief Russo*)

18. By letter dated February 6, 2015, Chief Russo notified Mr. Hatfield that a hearing would be held to consider possible discipline for his alleged misconduct in three specific respects:

- Forgery of Dr. Roy's signature on multiple prescriptions for controlled substances he then used to procure, or attempt to procure, those controlled substances without a lawful prescription on three occasions from Wal-Mart, on three occasions from Walgreen's Pharmacy and on three occasions from Nantasket Pharmacy;
- Misuse of sick /overtime privileges on August 18, 2014 resulting in an attempt to obtain compensation to which he was not lawfully entitled; and
- Inability to perform the duties of a paramedic due to the loss of his EMT license.

Chief Russo's letter cited numerous HFD rules and regulations, Hull's Fraud Policy, and other Massachusetts laws, and asserted that the alleged misconduct, if proved, "renders you incapable and not legally able to perform the duties necessary for the position for which you were hired" and "constituted improper and/or illegal actions, fraud, deceit, misrepresentation, miss-use [sic] of public funds, conduct unbecoming, acting in violation of the above laws, rules and regulations, being unqualified for your position and actions inimical to public service." (*Exhs. 2, 14 & 15; Testimony of Chief Russo*)

19. On February 16, 2015, a hearing was held at Hull Town Hall before John J. Clifford Esquire, of the law offices of Clifford & Kenney LLP, a hearing officer designated by the appointing authority. Mr. Hatfield and the HFD were represented by counsel. Mr. Hatfield did not testify. (*Exh. 16; Testimony of Chief Russo*)

20. On April 15, 2015, Mr. Hatfield made an Admission to Sufficient Facts in accordance with G.L.c.278, §29D, on all nine counts in the two criminal cases pending in Plymouth District Court and Hingham District Court, respectfully. Both cases were Continued Without a Finding (CWOFF) for 18 months, with orders for supervised probation, to remain drug free and to continue and comply with current treatment and counseling. (*Exhs. 7 & 8*)

21. On May 21, 2015, Hearing Officer Clifford issued Findings and Recommendation which, in relevant part, found that Mr. Hatfield: (1) forged and falsified eight prescriptions for Percocet and utilized a marked HRD fire apparatus to appear in uniform and while on duty to fill two of them; (2) lost his EMT certification on December 2, 2014 and it had not been restored; and (3) called in sick on August 18, 2014 and submitted an overtime slip for attending training “rounds” the same day. For the first two acts of misconduct, the hearing officer recommended termination and, for the third, a suspension for one 24-hour shift. (*Exh. 16*)

22. By letter dated June 1, 2015, Chief Russo adopted the hearing officer’s report and findings and imposed the following discipline:

“As relates to your calling in sick for your shift of August 18, 2014 and taking part in rounds and seeking compensation for either or both of sick leave and/or rounds, you are hereby suspended without compensation for 1 work day. As you have been in a non-pay status for some time,⁶ the exact day of the suspension will be determined administratively, as may be necessary.”

“As to the charges related to the loss of your EMT/Paramedic license, for so long as you may be an employee of the Town, you are hereby suspended without pay

⁶ During Chief Russo’s testimony toward the end of the Commission hearing, he explained that Mr. Hatfield had been placed on sick leave and, at some point, prior to his termination; had exhausted his sick leave entitlement. Mr. Hatfield represented that he went on “no pay” status in April 2015, but no evidence confirmed these dates.

indefinitely until your license is restored and you are otherwise legally qualified and able to resume work.”

“As relates to all other charges which have been established [i.e., nine instances of forgery and falsely procuring or attempting to procure a prescription for a controlled substance], you are hereby immediately discharged and terminated and your employment with the Town of Hull is hereby immediately discharged and terminated.”

Chief Russo found, among other things, that Mr. Hatfield violated the Town of Hull’s Fraud Policy; violated numerous HFD rules and regulations (i.e., Knowledge of Regulations, Obedience to Laws and Regulations, Performance of Duty, Establishing Elements of Violation, Immoral Conduct, Intoxicants on Departmental Property, Intoxicants – Purchase and Consumption, Guidelines for Handling Drug/Alcohol Violations, Malingering, Obligation to Duty, Personal Preference, Reporting for Duty, Truthfulness, Conduct Unbecoming, Submitting Reports, Falsifying Reports, Insubordination and Accountability); and violated the State Conflict of Interest Law and the False Claims Act. He explained the basis for his decision to impose termination for the misconduct related to prescription drugs as follows:

“These charges, the evidence and the resulting hearing involved a pattern of serious misconduct, some of which involved actions contrary to the criminal laws of the Commonwealth by you. The misconduct is of such a serious nature that it is inimical to the good order of the Fire Department and the Town. The conduct is contrary to the reasonable expectations of a public employee, especially one vested with the authority and responsibility of a fire fighter/paramedic.”

“Particularly noteworthy and troubling about your inappropriate conduct in obtaining medications and substance in an inappropriate and illegal manner is that you engaged in this conduct at times that you were on duty, in uniform and using a fire truck. . . . [Y]ou engaged in illegal actions and acted grossly in a manner contrary to how members of society should act, particularly those in public employ.

“Your conduct seriously undermines the confidence the public expects in its Fire Department and from its fire fighters and paramedics. You have engaged in dishonest behavior. Your actions have seriously impacted your credibility and ability to function effectively and have adversely affected the good morale and order of the Department to such a degree that you should not hold public employment with the Town.”

(Exhs. 14 through 17; Testimony of Chief Russo)

23. When Chief Russo decided to terminate Mr. Hatfield, he did not know that the criminal cases against Mr. Hatfield had been "CWOFed" or that Mr. Hatfield admitted to sufficient facts on all nine charges asserted against him. (*Testimony of Chief Russo*)

24. The evidence concerning the August 18, 2014 incident included documentation that unequivocally confirmed that Mr. Hatfield had called in sick prior to his shift on that day (which started at 7:00 AM on 8/18/2014 and ended at 7:00 AM on 8/19/2014). The evidence also unequivocally confirmed that, from approximately 10:00 AM to Noon that same day, Mr. Hatfield attended an OEMS required training session of "rounds" at South Shore Hospital and submitted a request for overtime pay to cover that training. (*Exhs. 10 through 13; Testimony of Dep. Chief Thomas*)

25. Due to an administrative error, Mr. Hatfield's absence on August 18, 2014 was initially recorded as a "Sick Comp" day but was eventually corrected to reflect a "Sick" day charged to his attendance record. Under the applicable Collective Bargaining Agreement, overtime pay would be authorized for an employee who had taken a "Sick Comp" day, but not for one who had called in "Sick". When Mr. Hatfield's overtime request came across Chief Russo's desk, he denied it and Mr. Hatfield received no overtime pay for his attendance at the August 18, 2014 training exercise. (*Exhs. 12 & 13; PH Exh. 21; Testimony of Dep. Chief Thomas & Chief Russo*)

26. At the end of the Commission hearing, Mr. Hatfield proffered evidence that purported to show that the HFD had treated other firefighters more leniently for comparable infractions of "conduct unbecoming" on at least four occasions within the past three years. The four proffered examples included one firefighter who was out on injured leave caught working another job, one firefighter who was caught consuming alcohol on duty, and two examples of

firefighters who admitted to a drug dependency and were permitted to return to duty after treatment. As none of the alleged other situations had involved an employee who had been caught forging and obtaining a fraudulent prescription or who had taken an HFD fire truck while on duty to fill such prescriptions, I concluded that these incidents were not sufficiently comparable. (*Colloquy with Appellant and Offer of Proof*)

APPLICABLE CIVIL SERVICE LAW

A tenured civil service employee may be disciplined for “just cause” upon due notice and opportunity for hearing and written decision by the appointing authority “which shall state fully and specifically the reasons therefore.” G.L.c.31,§41. A person aggrieved by a decision of an appointing authority made pursuant to G.L.c.31,§41 may appeal to the Commission under G.L.c.31,§43, which provides, in part:

“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.”

Under Section 43, the Commission makes a de novo review “for the purpose of finding the facts anew.” Town of 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.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997). See also City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, rev.den., 440 Mass. 1108 (2003); Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411,

rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n, 38 Mass.App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, rev.den., 390 Mass. 1102 (1983).

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., 359 Mass. 211, 214 (1971); City of 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 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.’ ” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of “merit principles” of civil service law that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “separating employees whose inadequate performance cannot be corrected.” G.L. c.31,§1.

The Appointing Authority meets its burden of proof "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). See also Selectmen of Wakefield v. Judge of First Dist.

Ct., 262 Mass. 477, 482 (1928) The Commission must take account of all credible evidence in the record, including whatever fairly detracts 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). The Commission is not obliged to follow strictly the rules of evidence applied in a judicial proceeding, and may credit, in its sound discretion, reliable hearsay that would be inadmissible in a court of law. See, e.g., Doe v. Sex Offender Registry Board, 459 Mass. 603 (2011); Costa v. Fall River Housing Auth., 453 Mass. 614, 627 (2009). The hearing officer determines the credibility of witnesses. Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See also Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003); 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).

G.L.c.31, Section 43 also vests the Commission with “considerable discretion” to affirm, vacate or modify the discipline imposed by an appointing authority, although that discretion is “not without bounds” and requires sound and reasoned explanation for doing so. See Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 600 (1996) and cases cited. (“The power accorded to 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”). See also Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006), quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

ANALYSIS

The preponderance of the evidence establishes just cause for terminating Mr. Hatfield from his position as a firefighter/paramedic with the HFD based on his repeatedly and knowingly procuring fraudulent prescriptions for narcotics and deceptively obtaining such narcotics

fraudulently and, in some cases, through the use of his official position as an HFD firefighter. The discipline imposed for Mr. Hatfield's loss of his EMT license was limited to an indefinite suspension and was also justified, although mooted by the termination. As to the one-day suspension for overtime/sick leave abuse, I do not find just cause for that infraction but, as no suspension was ever served, that discipline also is now moot.

First, in assessing just cause for the discipline imposed upon Mr. Hatfield, the Commission must consider the fact that he was employed in a "highly sensitive and responsible" position of firefighter/paramedic, that "traits of trustworthiness and good judgement are necessary for the firefighter to perform his duties and responsibilities properly . . . [to] safeguard the public and enforce the fire prevention and arson laws" and "the effective discharge of duties in a public safety department . . . cannot be compromised." Mathews v. City of Boston, 22 MCSR 450 (2009) (firefighter candidate bypassed based on criminal history). See also Wilson v. Town of Norton, 26 MSCR 442 (2013) (firefighter candidate bypassed based on prescription drug abuse); Waugaman v. Town of Falmouth, 25 MCSR 211 (firefighter terminated for conducting extra-marital affair in firehouse while on duty); Mulcahy v. City of Fitchburg, 24 MCSR 453 (2011) (upholding "zero tolerance" for drug abuse in public safety positions such as firefighter); Johnson v. City of Cambridge, 22 MCSR 589 (2009) (firefighter candidate bypassed for prior criminal history and substance abuse).

This high level of scrutiny is required so as to ensure both the integrity of the fire force as well as to maintain the level of trust demanded of public safety officers by their fellow officers who depend on them as well as among the citizens they are employed to protect and serve. See O'Leary v. Salem Fire Dep't, 26 MCSR 559 (2013) (fire lieutenant's misappropriation of funds was "egregious and warrants termination, even after considering that Mr. O'Leary had no prior

disciplinary record . . . given the trust that citizens put in public safety officers. . . Mr. O’Leary irrevocably violated that trust and there is no place for him in the Salem Fire Department”); Dunn v. Boston Fire Dep’t, 26 MCSR 485 (2013) (reasonableness of policy of bypassing firefighter candidate with a recent CWOFF to ensure employment of responsible public safety officers “who must maintain the public’s trust”); Howard v. Town of Nahant, 25 MCSR 379 (2012) (firefighter terminated for stealing union funds “violated the trust of his fellow firefighters”); Tobias v. City of Newton, 22 MCSR 661 (2009) (firefighter terminated after repeated involvement in acts of domestic violence, noting that “firefighters necessarily enter the homes of the citizens of Newton They are entrusted with the safety and well-being of men, women and children of all ages at all times of the day or night” and “The Appellant has repeatedly proven himself unworthy of that public trust.”)

Second, the HFD showed that Mr. Hatfield engaged in a pattern of egregious misconduct that broke the law and violated numerous HFD rules and regulations that irrevocably brought discredit upon himself and the HFD. He repeatedly forged his employer’s signature and fraudulently obtained narcotics that he had no lawful right to possess. While on duty, he drove an HFD fire apparatus to a pharmacy, at least twice, effectively taking himself and the fire apparatus out of service, which risked putting all citizens of Hull in jeopardy had there been a call for service to which that apparatus would need to respond. These facts were proved by the overwhelming preponderance of the evidence, both in documentary form and the credible testimony of two pharmacists, as well as Dr. Roy and Tpr. Randolph. Chief Russo was fully justified to conclude that there was no room to continue to employ Mr. Hatfield in the “highly sensitive and responsible” position of an HFD firefighter/paramedic.

Third, at no time during the period in which Mr. Hatfield was perpetrating his fraud did he show any remorse or wrongdoing. Had he not been exposed through the diligence of the Nantasket Pharmacy, he most certainly would have continued to engage in his illicit and deceptive scheme for as long as took for him to be caught. This continuing deceptive behavior represents yet a further, serious breach of trust of the sort which the HFD has rightly decided it cannot tolerate in a member of its fire service.

Fourth, Mr. Hatfield admitted to his fraudulent scheme by admission to specific facts on all nine counts of fraudulently uttering and procuring narcotics brought in the criminal cases against him. See, e.g., Gonzalez v. Department of Correction, 27 MCSR 325 (2014) and cases cited (in an appropriate case, appointing authority may rely on credible evidence that the employee admitted to felonious conduct whether or not the employee was actually found guilty of the offense). Also, by his failure to testify at the Appointing Authority hearing or the Commission hearing, an adverse inference is warranted that he does not dispute that he engaged in the misconduct as alleged. See, e.g., Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 826-27 (2006) (“We have long held that a party in a civil case seeking shelter under the privilege against self-incrimination of the Fifth Amendment to the United States Constitution and art. 12 of the Declaration of Rights of the Constitution of Massachusetts may be the subject of a negative inference by a fact finder.”) See also Howard v. Town of Nahant, 25 MCSR 379 (2012) (notice taken of admission to specific facts made after close of Commission hearing and adverse inference drawn from failure to testify)

Chief Russo did not rely on these additional factors in deciding to terminate Mr. Hatfield and I do not need to rely on them either, although it would be justified to do so, since the misconduct

was proved independently by a preponderance of other direct, percipient evidence presented to the Commission as set forth above.

Fifth, as I conclude that the HFD had just cause to terminate Mr. Hatfield for his misconduct in fraudulently procuring narcotics, the Commission need not address the other aspects of the discipline imposed, namely, an indefinite suspension pending restoration of Mr. Hatfield's EMT license and the one-day suspension (never served) for overtime/sick leave abuse. The HFD correctly determined that so long as Mr. Hatfield had lost his right to practice as an EMT, he could not perform the essential duties of his job, and the evidence at the Commission hearing showed that situation had yet not changed. Thus, although the loss of license was not used as a factor to support termination by the HFD, I do take account of the suspension, as well as the lengthy period of supervised probation imposed on Mr. Hatfield by the criminal courts, in the analysis of whether any modification of the discipline to a suspension is warranted. Here, the facts as found by the Commission are not materially different from those relied upon by the HFD in making the determination to terminate, as opposed to suspend, Mr. Hatfield, and the license suspension and lengthy criminal probation do not support, but tend to detract from, a modification of the termination. Thus, this case is not one in which the Commission would be warranted to exercise its discretion to modify the HFD's disciplinary decision made with just cause.⁷

Sixth, it is clear that this decision was not an easy one to make. Mr. Hatfield's personal struggle to resist the compelling temptation to abuse addictive pain-killing drugs has become an all too familiar tragedy that is only now just receiving the public attention it requires. Those

⁷ For cases in which a termination has been upheld based on the employees loss of a required license, see Pelissier v. Town of North Attleboro, CSC No.D1-14-271, 29 MCSR --- (2016); Bean v. Town of Bourne, 24 MCSR 1 (2011); McKeown v. Town of Brookline, 23 MCSR 749 (2010). See also City of Attleboro v. Civil Service Comm'n, 84 Mass.App.Ct. 1130 (Rule 1:28), rev.den., 462 Mass. 1104 (2014) (reversing Commission's modification of motor equipment operator who lost CDL license for 90 days)

involved in the investigation or decision that led to Mr. Hatfield's termination empathized with the personal tragedy, and no one was motivated by any animus or bias toward him. To the contrary, Chief Russo fully acknowledged that Mr. Hatfield came before the Commission with a record of many years of honorable service to the HFD. Dr. Roy called him "one of the best" employees at Health Express who will "sorely be missed." Ultimately, however, Chief Russo concluded that, despite Mr. Hatfield's record of service, the deficiencies he demonstrated in the areas of trust and conduct unbecoming an HFD firefighter, meant that it would be a disservice to the HFD and the Town of Hull to continue his employment with the HFD fire service. The Commission is obliged to honor and respect that sound and unbiased judgment made in the public interest, and which is fully supported by the preponderance of the credible evidence and duly established just cause for discharge at the time that decision was made.

CONCLUSION

For all of the above stated reasons, the appeal of the Appellant, William Hatfield, under Docket No. D1-15-121, is *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Stein & Tivnan, Commissioners) on December 8, 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:

William Hatfield (Appellant)

James B. Lampke, Esq. (for Respondent)