

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

EDWARD FREITAS, JR.,
Appellant

v.

D-15-198

NEW BEDFORD SCHOOL DEPARTMENT,
Respondent

Appearance for Appellant:

Philip Brown, Esq.,
Associate General Counsel
AFSCME Council 93
8 Beacon Street – 7th Floor
Boston MA 02108

Appearance for Respondent:

Jane Medeiros Friedman, Esq.
First Assistant City Solicitor
City of New Bedford
133 William Street
New Bedford MA 02740

Commissioner:

Paul M. Stein

DECISION

The Appellant, Edward Freitas, Jr., appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§43 contesting a five-day suspension by the New Bedford School Department (NBSD) from his position of Building Custodian.¹ A pre-hearing conference was held at the UMass School of Law in Dartmouth, MA on December 11, 2015 and a full hearing was held at that location on March 25, 2016. No party requested a public hearing and the hearing was declared private. The full hearing was digitally recorded and copies of the CD provided to the parties.² Twenty-three exhibits were received into evidence (Exhs. 1 through 13, 14a-14b, 15a-15s, 16, 17, 22 & 23) and four documents marked for identification (Exhs. 18ID through

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 becomes obligated to supply the court with a written transcript of CD 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.

211D). The NBSD called five witnesses and Mr. Freitas testified on his own behalf. Both parties submitted proposed decision on June 2, 2016.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- Lucille Drapeau, NBSD Elementary Dispatcher
- Joseph Aguiar III, NBSD Senior Custodian
- Paul Corbett, NBSD Assistant Facilities Manager
- Kelly Benevides, NBSD, Employee Relations Specialist
- Al Oliveira, NBSD Director of Facilities

Called by the Appellant:

- Edward Freitas, Jr., Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

Appellant's Employment History

1. The Appellant, Edward Freitas, Jr., has been employed with the NBSD as a tenured Building Custodian since January 12, 1993. (*Exh. 1*)

2. Mr. Freitas first worked at the New Bedford High School. In 2000, he was transferred to Hayden McFadden Elementary School where he worked the first shift (6AM to 3PM) until April 2014, when he was reassigned to the Keith Middle School where he works the second shift (3PM to 11PM). (*Exhs. 1, 15a-15s; Testimony of Appellant*)

3. Mr. Freitas received "Satisfactory" overall performance evaluations for each year of his employment, including his most recent review in 2015, save for 1997 and 2014. On multiple occasions, however, Mr. Freitas's annual performance reviews have rated him "Unsatisfactory" in individual categories, most frequently in the categories of Quality, Productivity and/or Dependability. (*Exhs. 15a-15s*)

4. Mr. Freitas was rated “Unsatisfactory” in the category of “Adheres to Policy” in 2004, when his supervisor wrote: “Per memo of 4/29/03 Edward is suppose [sic] to meet with the senior Custodian each afternoon – this has not happened. He is also suppose [sic] to sign in and out and leave the building only by the front door.” (*Exh. 15h*)

5. Mr. Freitas’s disciplinary history includes six written warnings for miscellaneous performance related issues and two attendance issues:

- 9/20/1996 – Letter of Reprimand for issues of performance and attitude
- 11/26/2001 – Written Warning for no call/no show
- 1/5/2005 – Written Warning for performance issues
- 5/6/2005 – Written Warning for performance issues
- 5/16/2007 – Written Warning for performance issues
- 5/25/2007 – Written Warning for performance issues
- 11/30/2007 – Written Warning for performance issues
- 10/31/2013 – Two day suspension for “calling sick two days for which you had previously requested and had been denied as vacation days. You admitted you were not sick . . .”

(*Exhs. 2 through 5, 9 through 11 & 13b*) (*emphasis added*)

6. On two occasions, first in September 2006 and, again in February 2008, Mr. Freitas was put on notice that his use of sick time was a matter of concern and would be monitored and, for a time, he was required to provide medical documentation for sick leave, in accordance with the terms of the Collective Bargaining Agreement between the NBSD and Mr. Freitas’s union, AFSCME Council 93, Local 641. (*Exhs. 6 through 8, 12, 16*)

7. Mr. Freitas explained that his frequent use of sick time was related primarily to certain chronic medical conditions due to shoulder and other injuries he has suffered. Save for the two days in 2013, noted above, that he admitted he took sick time when he was not sick, Mr. Freitas’s use of sick time was duly approved and, except for the two days in 2013, Mr. Freitas used sick time only when he was legitimately unable to work due to illness. (*Exhs. 16; Testimony of Appellant, Aguiar, Corbett, Benevides & Oliveira*)

Sick Leave Call-In Policy

8. Custodians, such as Mr. Freitas, accrue fifteen days of sick leave per year, plus three (3) personal days. (*Exh. 16*)

9. For personnel other than custodians (teachers, nurses, para-professionals, etc.) NBSD policy required them to report absences to one of two School Dispatchers. The School Dispatchers would be responsible to arrange for a substitute to fill in for an absent teacher or “para”. (*Exh. 17; Testimony of Drapeau*)

10. When a custodian called the School Dispatcher to report an absence, the School Supervisor was responsible only to relay the absence to the NBSD Supervisor of Custodians. She did not have responsibility to secure a replacement to fill in for the absent custodian. During the summer months, when school was not in session, the School Dispatcher did not work and any calls made to her would not be answered. (*Exh. 17; Testimony of Drapeau*)

11. Over the years, custodians followed a variety of different procedures to call in sick, sometimes calling the School Dispatcher, sometimes calling the Supervisor of Custodians directly and sometimes calling the Principal’s Office at the school where they worked. (*Exh. 22; Testimony of Appellant, Drapeau, Aguiar, Corbett & Oliveira*)

12. In Mr. Freitas’s case, while working at New Bedford High School, he called in sick to the School Dispatcher. When he transferred to Hayden McFadden Elementary School, he continued this practice until his last year at that school, when he started reporting his absences directly to Mike Medeiros, who then served as the Supervisor of Custodians. Mr. Freitas made this switch because sometimes the School Dispatcher was not always able to forward the messages in time, which was of particular concern with assuring coverage for first-shift custodians, who needed to open the school in the morning. (*Testimony of Appellant, Drapeau*)

13. When Mr. Freitas transferred to Keith Middle School in April 2014, he reported his absences by contacting Joe Aguiar, his supervisor, the senior custodian at Keith Middle School, or one of the other three junior custodian colleagues. He followed this practice because, unlike first-shift custodians, there were no “floaters” available to be assigned on second-shift. Rather, Keith Middle School, as did each school, had its own internal practice for the remaining custodial staff to cover for an absent second-shift custodian. (*Testimony of Appellant & Aguiar*)³

14. In July 2015, Paul Corbett, a 32-year NBSD employee, was promoted from Senior Custodian to Supervisor of Custodians, reporting to the NBSD Facilities Director, Al Oliveira. (*Testimony of Corbett & Oliveira*)

15. By Memorandum to “All Custodians” dated July 8, 2015, Mr. Oliveira announced a “Summer Sick Call Procedure” effective from July 10 to September 1, 2015, which required all custodians to call in sick by contacting Mr. Corbett on his mobile telephone number provided. This procedure was intended to be temporary, with the expectation that by September, the NBSD would have a new automated call-in system in place. (*Exh. 18; Testimony of Corbett & Oliveira*)

16. The July 8, 2015 memorandum was not posted at the Keith Middle School or distributed to custodians. Mr. Freitas never saw it. (*Testimony of Appellant, Aguiar, Corbett & Oliveira*)

Appellant’s September/October 2015 Absences

17. On September 8, 2015, Mr. Freitas was ill and unable to report to work. He contacted Peter Freitas (no relation), another junior custodian co-worker on the second-shift at Keith Middle School. Peter Freitas agreed to relay Mr. Edward Freitas’s absence to Mr. Aguiar, their supervisor. Mr. Freitas continued to be ill the following day, September 9, 2015, and he followed the same procedure. (*Testimony of Appellant, Corbett, Benevides & Oliveira*)

³According to NBDS attendance records, after arriving at Keith Middle School in April 2014 Mr. Freitas took 5 approved sick days through the end of that school year. He took 3½ sick days over the summer of 2014, and took 14 sick days during the 2014-2015 school year. He took no sick leave during the summer of 2015. (*Exh. 16*)

18. According to the standard practice in effect at Keith Middle School, Mr. Aguiar and the other junior custodians on the second-shift filled in to perform Mr. Freitas's duties in his absence. Mr. Aguiar had no contact with Mr. Freitas, either on September 8th or 9th. (*Testimony of Aguiar & Appellant*)

19. On September 10, 2015, Mr. Corbett contacted Mr. Freitas by telephone to discuss his recent absence. During this telephone conversation, Mr. Corbett learned that Mr. Freitas did not know about the new sick day call-in procedure that had been put in place in July (this being the first time since July that Mr. Freitas had used sick leave.) Mr. Corbett stated that he would reissue the memo in case the initial one had gone astray. (*Testimony of Appellant & Corbett*)

20. Mr. Oliveira then issued another Memorandum to "All Custodians" dated September 10, 2015. Although the school year had begun, this Memorandum was also entitled "Summer Sick Call Procedure". The only substantive change in the Memorandum from the July 2015 version was the addition of a sentence stating that "a courtesy call or text should be placed to the school office, Senior Custodian or Principal." (*Exh. 19*)

21. Mr. Aguiar was not at work when the September 10, 2015 Memorandum was issued, and he never posted it in the custodian's office at Keith Middle School or provided copies to the custodians he supervised. (*Testimony of Aguiar & Appellant*)

22. Mr. Freitas's attendance record shows that his sick days for September 8 & 9, 2015 were approved. (*Exh. 16*)

23. Another Memorandum entitled "Sick Call Procedure" was issued by Al Oliveira to "All Custodians" dated September 21, 2015, to remain "in effect until further notice", with a separate document attached (dated 9/28/2015) entitled "Sick Call Procedure", which contained the same information reformatted into "bullet points". Mr. Oliveira intended that the attached document

would be distributed and posted for all custodians to see. (*Exhs. 20 & 21; Testimony of Appellant, Corbett & Oliveira*)

24. On September 30, 2015, Mr. Freitas saw the September 21, 2015 Memorandum and attachment on a desk in the custodian's office at Keith Middle School. (*Testimony of Appellant*)

25. Mr. Aguiar soon thereafter posted the document on a notice board in the custodian's office but did not make or distribute copies to the other custodians as Mr. Oliveira had expected. (*Testimony of Appellant, Oliveira & Aguiar*)

26. The following day, October 1, 2015, Mr. Freitas again was ill and unable to report to work. Now aware of the new call-in procedure, he knew that he needed to report his absence to Paul Corbett, but did not know the phone number he was supposed to call. He made several attempts to reach the custodians on the first-shift to get Mr. Corbett's phone number, without success. He contacted Peter Freitas, who did not know the number either, but Peter Freitas agreed again to relay Mr. Edward Freitas's absence to Mr. Aguiar. (*Testimony of Appellant, Corbett, Benevides & Oliveira*)

27. Again, Mr. Aguiar and the other junior custodians on the second-shift followed their standard practice and filled in to perform Mr. Freitas's duties in his absence. (*Testimony of Aguiar & Appellant*)

28. Mr. Freitas's attendance records show that his sick time for October 1, 2015 was approved. (*Exh. 16*)

29. By letter dated October 6, 2015, NBSD Employee Relations Specialist Kelly Benevides notified Mr. Freitas that he was required to attend an October 13, 2015 "meeting" to "discuss the several occurrences that you did not appear at work and did not call the sick call number and/or

your Supervisor” on September 8th and 9th, 2015 and October 1st and 2nd, 2015, and that the “outcome of this meeting may result in disciplinary action.” (*Exh. 14a*)⁴

30. After the October 13, 2015 “meeting”, with the approval of the NBSD Human Capital Services Department, Mr. Oliveira issued a letter of discipline dated October 19, 2015 to Mr. Freitas which imposed a five-day suspension for failure to appear at work without calling “the sick call number and/or your Supervisor” and, instead, had “elected to contact a fellow worker.” Mr. Oliveira’s letter also discredited Mr. Freitas’s claim that he did not have Mr. Corbett’s contact information because “two memos were sent to all Custodians through interoffice mail and two memos are currently posted on Custodial office wall.” Finally, Mr. Oliveira noted that Mr. Freitas had been previously suspended for two days “for a similar incident, taking time off from work without prior authorization or notification.” (*Exh. 14b; Testimony of Oliveira*)

31. When he issued the October 19, 2015 letter of discipline, Mr. Oliveira had not spoken with Mr. Peter Freitas, but Mr. Peter Freitas did later confirm that Mr. Edward Freitas had, in fact, asked him to report Mr. Edward Freitas’s absences on his behalf. (*Testimony of Oliveira*)

32. This appeal duly ensued. (*Exh. 23*)

APPLICABLE CIVIL SERVICE LAW

A tenured civil service employee may be suspended for “just cause” after due notice and hearing upon written decision “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

⁴ I noted at the Commission hearing that the disciplinary notice and process used by the NBSD did not appear to conform, in substance or form, to the requirements of G.L.c.31,§41-43 but, as the Appellant has not raised any procedural error in his appeal, the notice deficiency was not before the Commission in this matter.

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’ ” 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” which govern 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.

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”)

“[T]he power to modify is at its core the authority . . . to temper, balance, and amend. The power to modify penalties permits the furtherance of uniformity and equitable treatment of similarly situated individuals. It must be used to further, and not to frustrate, the purpose of civil service legislation, i.e., ‘to protect efficient public employees from partisan political control’ . . . and ‘the removal of those who have proved to be incompetent or unworthy to continue in the public service’ [Citations]”

Id., (*emphasis added*). 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 NBSD failed to establish by a preponderance of the evidence the charges that Mr. Freitas twice violated a newly adopted policy or rule established by the NBSD in July 2015 that required him to contact the Supervisor of Custodians to inform him he would be absent from work, rather than rely on his past practice of calling his direct supervisor or using a co-worker to relay that information to his direct supervisor. As to Mr. Freitas’s absences on September 8 and 9, 2015,

Mr. Freitas had no knowledge of the new policy and the NBSD had no just cause to discipline him for following what had been his usual procedure on that occasion. By the time of his October 1, 2015 absence, however, Mr. Freitas had known for several weeks that the new policy was in effect and he ought to have realized that he should no longer rely on a co-worker to comply with the new requirement. His lack of diligence in this respect warrants some level of discipline. Accordingly, I conclude that the appeal should be allowed, in part, and the discipline modified to a two-day suspension.

First, as to the September 8 and 9, 2015 sick leave, Mr. Freitas had no knowledge that a new call-in procedure had been put into effect. The July 2015 Memorandum was neither posted by Mr. Aguiar nor delivered to the Keith Middle School's custodians, nor were steps taken to confirm that was done, as Messrs. Corbett and Oliveira had thought. In addition, the policy was only effective for the summer. Mr. Freitas had no reason to have learned about it, especially since he did not take any sick time during the period that the July 2015 memorandum was meant to be in effect. In fact, on September 10, 2015, after Mr. Freitas returned to work following his two-day absence, Mr. Corbett had a conversation with Mr. Freitas during which he learned that Mr. Freitas had not been informed of the new policy. I find it significant that, as result of that conversation, Mr. Corbett thereafter circulated another memorandum on the new policy and took no immediate steps to reprimand Mr. Freitas or initiate any discipline action at that time.

Second, both before and after the announcement of the July 2015 call-in procedure, Mr. Freitas was not the only custodian who had become accustomed to following a different routine when calling in to take a sick day. Some custodians, including Mr. Aguiar and Mr. Corbett (when he was a senior custodian), called the school and spoke to the Principal's Office, some called the school's Senior Custodian, and some called the School Dispatcher. Even after the new

policy had been circulated, according to Mrs. Drapeau, some custodians still called the School Dispatcher instead. For example, the dispatch notes (Exh. 22) showed that, even on October 1, 2015, another custodian (assigned to Congdon) had called-in sick to the School Dispatcher, not to Mr. Corbett.

Third, as to Mr. Freitas's October 1, 2015 absence, he then did know that he was expected to call Mr. Corbett when he was unable to work due to illness but didn't know the number to call. I credit Mr. Freitas's testimony that, when he left duty on September 30, 2015, he expected to report to work the next day and had no intention to call in sick until the following morning when his shoulder began to bother him. I am persuaded that, as with all of Mr. Freitas's use of sick time, save for the two days in 2013 for which he received a two-day suspension, he never utilized sick time when he wasn't actually ill. Thus, although, in hindsight, it might have been prudent to do so, I do not find it unreasonable that he did not take note of Mr. Corbett's telephone number upon first seeing it on September 30, 2016 (which was, for him, the first such memorandum that was ever posted at Keith Middle School).

Fourth, to be sure, the NBSD's implementation of the new policy was less than seamless. There was no follow-up to ensure that custodians got the memo and had Mr. Corbett's new phone number easily accessible to them. The new policy was not actually posted at the Keith Middle School until September 30, 2015, at the earliest, which was the day before Mr. Freitas's October 1, 2015 absence. Nevertheless, based on his September 10, 2015 conversation with Mr. Corbett, Mr. Freitas, in fact, did have personal knowledge of the policy for several weeks, and knew that Mr. Corbett would be issuing a follow-up directive explaining the policy and that Mr. Corbett expected full compliance in the future.

Fifth, without actually knowing about the new policy, I find it reasonable for Mr. Freitas to have contacted Mr. Peter Freitas when he was sick, and reasonably relied on Mr. Peter Freitas to relay his absence to their supervisor, Mr. Aguiar. Peter Freitas later confirmed that he had agreed to report Mr. Edward Freitas's absence to Mr. Aguiar, but Mr. Oliveira only learned this to be true after the five-day suspension had been imposed. Thus, there is no dispute that Mr. Freitas did use the same routine he had been allowed to follow in the past, as he had claimed.

In sum, after taking into consideration all of the foregoing, I am persuaded that there is no just cause to impose discipline upon Mr. Freitas for his failure to follow the new policy and call Mr. Corbett to report his absences on September 8 and 9, 2015.

Mr. Freitas's absence on October 1, 2015, however, is different. Certainly, the NBSD could have done more to ensure that custodians complied with the new policy – for example, making sure that each custodian knew that the NBSD required strict compliance and, to that end, ensuring that each custodian was provided Mr. Corbett's new phone number to keep on his possession or at home. Nevertheless, Mr. Freitas also was less than diligent in the limited efforts he expended to get the report of his absence to Mr. Corbett. Although he did not personally know the number to call, he could have reached out to any number of other sources that would have been accessible to him, including the Principal's Office or the Facilities Department. He was already on notice from his conversation with Mr. Corbett and knew or should have known, that the prior practice of relying on Mr. Peter Freitas would no longer be satisfactory. In this regard, Mr. Freitas fell short of the obligations that Mr. Corbett and the NBSD reasonably were entitled to expect from him. For this reason, I find that just cause does exist to impose some level of discipline upon Mr. Freitas for his failure to make reasonable efforts to comply with the new call-in policy on October 1, 2015.

Mr. Freitas demonstrated that he “adheres to policy” throughout most of his work history, earning “Satisfactory” ratings in his 2015 personnel evaluation as well as all of his past reviews since 2004. The only exception was one “no-call no show” in 2001 and the two-day suspension for abuse of sick time in 2013. Taking all of the forgoing into account, I conclude that the Commission should exercise its discretion to modify the discipline in this matter from a five-day suspension to a two-day suspension as the appropriate remedial discipline to apply in this case.

CONCLUSION

Accordingly, for the reasons stated, the appeal of the Appellant, Edward Freitas, Jr., under Docket No. D-15-198, is ***allowed in part***. The discipline imposed by the NBSD is modified from a five-day suspension to a two-day suspension and, except as modified, Mr. Freitas shall be returned to his position without loss of compensation or other rights to which he is entitled under civil service law.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman [Absent], Stein & Tivnan, Commissioners on January 5, 2017.

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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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. 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:

Philip Brown, Esq. (for Appellant)

Jane Medeiros Friedman, Esq. (for Respondent)