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COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT

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CIVIL ACTION NO. 2016-01339-E

FEB - 1 2018

BRENDA JAMES

COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

VS.

CIVIL SERVICE COMMISSION and BOSTON POLICE DEPARTMENT

ORDER ON PARTIES' CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

In this action, plaintiff Brenda James ("plaintiff"), a former Boston police officer, seeks judicial review pursuant to G. L. c. 30A, § 14 of a decision of defendant Civil Service Commission ("CSC") upholding her termination by the appointing authority, defendant Boston Police Department ("BPD"). Both parties have moved for judgment on the pleadings under Mass. R. Civ. P. 12(c) and Superior Court Standing Order 1-96. After hearing, and for the reasons set forth below, the matter is **REMANDED** to the CSC for further hearing.

The BPD terminated the plaintiff for violation of various BPD rules and regulations, viz., filing a police report containing multiple false statements, including false allegations against her superior officer, Captain Paul Russell ("Capt. Russell"); filing false allegations of indecent assault against Capt. Russell with the BPD's Internal Affairs Division ("IAD"); seeking criminal charges against Capt. Russell based on false allegations; and testifying untruthfully under oath at a District Court Clerk-Magistrate's hearing on her application for a criminal complaint against Capt. Russell. After hearings held over three days, June 15, 2015; June 18, 2015; and September 11, 2015, before Hearing Officer Cynthia A. Ittleman ("Hearing Officer"), a CSC Commissioner, the CSC voted to deny the plaintiff's appeal of her termination, finding that the BPD had established just cause for the plaintiff's termination for filing false reports against Capt. Russell,

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seeking a criminal complaint against him for which a Clerk-Magistrate found there was no probable cause, failing to appear for an annual BPD hair drug test, and failing to report her change of address as required by BPD regulations.

The plaintiff attended the first and second days of the hearing but did not attend the third day, September 11, 2015, on which date she was scheduled to testify. On August 17, 2015, the plaintiff had presented the Hearing Officer with a letter explaining that her daughter was undergoing treatment for an “aggressive, very invasive” condition [cancer] that required “intense, immediate care.” The plaintiff also provided the CSC with two letters, which appear on pages 116 and 117 of the Administrative Record, that offered reasons for her inability to attend the final hearing date. One letter, dated September 3, 2015 (eight days before the final hearing on September 11th), from Cyllene Saintelien, PMHNP-BC¹, stated that the plaintiff “is a patient of NOVA Psychiatric Services and was last seen on 09/03/2015” and that she “is currently dealing with a stressful family situation,” *i.e.*, her “only daughter has an acute medical condition and is currently under critical care.” The second letter, dated August 18, 2015, was from Soraya Rendon, Administrative Coordinator to Kevin Emerick, M.D. (“Dr. Emerick”), at the Massachusetts Eye and Ear Infirmary; it said that the plaintiff’s daughter was under Dr. Emerick’s care and that, “[d]ue to the nature of [the daughter’s] illness, [the plaintiff] will need to take several weeks off work to care for her daughter.”

When the plaintiff failed to show on the third day of the hearing, September 11, 2015, the BPD moved to dismiss her appeal pursuant to the CSC hearing notice that stated that the failure to appear may result in dismissal of the appeal. Although the Hearing Officer denied the motion,

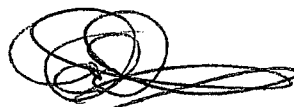
¹Psychiatric-Mental Health Nurse Practitioner-Board Certified.

it appears that she drew an adverse inference against the plaintiff for her non-appearance. Over the objection of the BPD, the plaintiff's attorney was permitted to admit into the record a transcript of the plaintiff's testimony at the BPD disciplinary hearing on the charges against her. The Hearing Officer indicated that the admission of the transcript would not constitute an appearance and that she would give it "the weight that it is due."

The court is troubled that the plaintiff was not granted a continuance in light of her daughter's documented health crisis. The CSC's decision turned in major part on the assessments of credibility of the parties involved in the charges against the plaintiff. The court is not unmindful of the fact that the plaintiff's version of the salient events here was discredited by no fewer than six individuals or entities (the IAD, Clerk-Magistrate, Deputy Superintendent Colm Lydon, Police Commissioner Paul Evans, the arbitrator, and the CSC). Nevertheless, the plaintiff appears to have had good cause for her failure to appear to testify; and her absence should not have been held against her.

ORDER

For all the foregoing reasons, it is hereby **ORDERED** that this matter be **REMANDED** to the CSC for the sole purpose of taking the plaintiff's testimony and possibly reconsidering its decision in light thereof.



Linda E. Giles,
Justice of the Superior Court

Dated: December 22, 2017