

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

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

JORGE MONSALVE,
Appellant

v.

D-17-220

CITY OF HOLYOKE,
Respondent

Appearance for Appellant:

Shawn P. Allyn, Esq.
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98 Lower Westfield Road
Suite M
Holyoke, MA 01040

Appearance for Respondent:

Paul Payer, Esq.
City Solicitor
City of Holyoke
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Commissioner:

Christopher C. Bowman

DECISION

On October 27, 2017, the Appellant, Jorge Monsalve (Sgt. Monsalve), a sergeant in the City of Holyoke (City)'s Police Department (HPD), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City to suspend him for two (2) days. The appeal was timely filed and I held a pre-hearing conference at the Springfield State Building in Springfield, MA on November 8, 2017 and a full hearing at the

same location on January 10, 2018.¹ The full hearing was digitally recorded and both parties were provided with a CD of the recording.² As no written notice was received from either party, the hearing was declared private and all witnesses were sequestered. The parties submitted post-hearing briefs to the Commission on March 12, 2018.

FINDINGS OF FACT

Nineteen (19) exhibits were entered into evidence by the Appointing Authority (AA Exhibits 1-19)³ and four (4) exhibits (APP Exhibits 1-4)⁴ were entered into evidence by Sgt. Monsalve.

Based on the records submitted and the testimony of the following witnesses:

Called by the City:

- Rafael Roca, Holyoke Police Officer;
- Jeffrey Ortiz, Holyoke Police Officer;
- Manuel Reyes, Holyoke Police Lieutenant;
- James Neiswanger, Holyoke Police Chief;

Called by Sgt. Monsalve:

- Laurence Cournoyer, Holyoke Police Lieutenant;
- Jorge Monsalve, Appellant;

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

¹ The Standard Adjudicatory rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 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. If such an appeal is filed, these CDs should be used to transcribe the hearing.

³ The protective custody reports submitted by the City after the hearing were marked as AA Exhibit 19.

⁴ Appellant Exhibits 1-3 are the redacted protective custody reports referenced by counsel for the Appellant during the hearing and Appellant Exhibit 4 is the HPD SOP.

1. Sgt. Monsalve has been employed by the HPD since 2003. At the time this appeal was heard, he had served in the position of sergeant for approximately one (1) year. He has no prior discipline. (Stipulated Facts)
2. On October 15, 2016, Sgt. Monsalve was working the 12:00 Midnight to 8:00 A.M. shift. Among the police officers assigned to that same shift were police officers: Roca, Ortiz, Williamson and Colon. (Testimony of Sgt. Monsalve and Officers Roca and Ortiz)
3. At or about 12:27 A.M., police officers were dispatched to Taylor Street in Holyoke after a citizen called regarding a suspicious male walking down Taylor Street with a flashlight and crowbar looking into vehicles. (Testimony of Officer Roca)
4. Officer Roca, who was working his first solo patrol shift that night, responded to the call and proceeded to Taylor Street where he approached the southern end of Taylor Street and observed a vehicle driving (in the opposite direction) down Taylor Street with its headlights off. (Testimony of Officer Roca)
5. Officer Roca blocked the oncoming car with his cruiser to tell the driver his headlights were off and to inquire if the driver had seen anyone walking down Taylor Street. (Testimony of Officer Roca)
6. When Officer Roca approached the driver's side window of the vehicle, he smelled the odor of alcohol coming from inside the vehicle; and observed that the driver had glossy eyes and slurred speech. (Testimony of Officer Roca)
7. Officer Ortiz arrived shortly thereafter. He also smelled the odor of alcohol and observed that the driver's eyes appeared to be bloodshot. (Testimony of Officer Ortiz)
8. When Officer Roca stepped away from the vehicle in order to radio dispatch and ask them to run a query on the driver, he asked Officer Ortiz to watch the driver and for Officer Colon,

who had now arrived at the scene, to search Taylor Street for a crowbar or flashlight.

(Testimony of Officer Roca)

9. During this time, Officer Roca heard dispatch broadcast a message stating that the private citizen had called back and told dispatch that the driver who the police had stopped was the same suspicious person who the citizen had called about. (Testimony of Officer Roca)
10. At or around the same time, Officer Williamson and Sgt. Monsalve arrived at the scene on Taylor Street. At some point, Officer Williamson informed Officer Roca that the driver of the stopped vehicle was a Holyoke firefighter. (Testimony of Officer Roca)
11. After Sgt. Monsalve arrived, Officer Roca took a “back seat” to Sgt. Monsalve, his supervisor. (Testimony of Sgt. Monsalve)
12. When Sgt. Monsalve approached the driver’s stopped vehicle, he noticed a firefighter insignia on the rear window of the vehicle and thought that the driver looked familiar to him. When Sgt. Monsalve asked the driver why he looked familiar to him, the driver told Sgt. Monsalve that he was a Holyoke firefighter. (Testimony of Sgt. Monsalve)
13. At some point, Officers Colon and Ortiz reported that no crowbar or flashlight had been found on Taylor Street. (Testimony of Officer Roca)
14. Similar to Officers Roca and Ortiz, Sgt. Monsalve also smelled the odor of alcohol when he approached the driver. The driver acknowledged to Sgt. Monsalve that he had consumed alcohol earlier in the night. (Testimony of Sgt. Monsalve)
15. No officer on the scene performed a field sobriety test of the driver. Sgt. Monsalve did, however, ask the driver to walk over to the sidewalk, which the driver did with “no problem, no stumbling.” (Testimony of Sgt. Monsalve)

16. The driver told Sgt. Monsalve that his wife was at home and that he needed to drive his son to a hockey game out of state the next morning. (Testimony of Sgt. Monsalve)
17. Sgt. Monsalve made the decision to park the driver's car on Taylor Street and give the driver a ride home. (Testimony of Sgt. Monsalve)
18. Sgt. Monsalve proceeded to give the driver a ride home; gave the driver his keys back; and watched the driver open the front door of his home before Sgt. Monsalve drove away. (Testimony of Sgt. Monsalve)
19. After leaving Taylor Street, Officers Roca and Ortiz met up at a parking lot near an Italian Restaurant in Holyoke and began talking to each other while sitting in their cruisers facing opposite directions. (Testimony of Officers Roca and Ortiz)
20. At some point, while the two (2) officers were in the parking lot, Officer Roca saw the driver from Taylor Street (the Holyoke firefighter who had been given a ride home) drive by in his vehicle which had been parked on Taylor Street. (Testimony of Officer Roca)
21. Both officers activated their emergency lights and began a pursuit of the driver who was travelling at a high rate of speed. (Testimony of Officers Roca and Ortiz)
22. The driver "was absolutely trying to evade" the police officers and failed to stop at a red light during the pursuit. (Testimony of Officer Roca)
23. Shortly after Officer Roca called in the pursuit to dispatch, Sgt. Monsalve ordered the officers to discontinue the pursuit as he believed the driver's destination was reasonably known (his home). (Testimony of Sgt. Monsalve)
24. Officer Ortiz arrived at the driver's home first and Officer Roca arrived shortly thereafter. (Testimony of Officers Roca and Ortiz)

25. Officer Ortiz and Officer Roca approached the driver who appeared intoxicated. The driver took out his cell phone and refused an order to turn it over to the police officers. The driver told Officer Ortiz and Officer Roca that he was going to call a friend of his who is a detective with the Holyoke Police Department. (Testimony of Officers Ortiz and Roca)
26. After observing that the driver had become slightly aggressive and was refusing the order to turn over his cell phone, the officers placed the driver in handcuffs. (Testimony of Officers and Ortiz and Roca)
27. The driver chastised the police officers and told them that they should be looking for “drug dealers ... down in the Flats [of Holyoke]”. (Testimony of Officer Ortiz)
28. Sgt. Monsalve subsequently arrived at the driver’s home and observed the driver sitting on the ground in handcuffs with Officer Roca and Officer Ortiz standing nearby. When Sgt. Monsalve asked the officers what happened, they told Sgt. Monsalve that they had observed the driver drive past them; that they activated their emergency lights and began pursuing the driver who had “sped the whole way.” (Testimony of Sgt. Monsalve)
29. Sgt. Monsalve then asked the driver what occurred and the driver told Sgt. Monsalve that he retrieved his vehicle because he needed it to drive his son to a hockey game out of state the next morning. (Testimony of Sgt. Monsalve)
30. Sgt. Monsalve then “got on the phone” and contacted the lieutenant on duty, Lt. Laurence Cournoyer. Sgt. Monsalve told Lt. Cournoyer about the incident on Taylor Street; that the driver was a Holyoke firefighter; that he had given the driver a ride home; and about the officers’ subsequent pursuit of the driver. (Testimony of Sgt. Monsalve)
31. In response, Lt. Cournoyer told Sgt. Monsalve that he (Sgt. Monsalve) could “do nothing” and that the driver “just wanted his truck.” (Testimony of Sgt. Monsalve)

32. When Sgt. Monsalve told Lt. Cournoyer that he (Sgt. Monsalve) did not feel comfortable doing nothing, Lt. Cournoyer told Sgt. Monsalve that he could place the driver in protective custody or arrest him and that he (Lt. Cournoyer) would stand behind him either way.
(Testimony of Sgt. Monsalve)
33. Sgt. Monsalve then did a query of the HPD's internal database and learned that the driver had previously been arrested for OUI many years ago, but the database did not indicate what the disposition of that criminal matter was. (Testimony of Sgt. Monsalve)
34. When Sgt. Monsalve walked back to where the driver and the two officers were located, he asked the driver, in an incredulous tone, "You've had an OUI before?" (Testimony of Officer Roca)
35. Sgt. Monsalve asked Officer Roca if he was "O.K." with having the driver placed in protective custody (as opposed to arresting him). Officer Roca, who did not view it as his decision, said "yes". (Testimony of Officer Roca)
36. The driver was placed in protective custody and transported to the police station by Officer Ortiz. (Testimony of Officers Roca and Ortiz)
37. When Officer Ortiz entered the booking room with the driver, Lt. Cournoyer instructed him to "step out". (Testimony of Officer Ortiz)
38. When Officer Roca arrived at the police station and headed toward the booking room, he was told by Officer Ortiz that "they don't want us in there." (Testimony of Officer Roca)
39. The driver was processed and placed in a cell. He was not administered a breathalyzer test.
(Testimony of Lt. Cournoyer)
40. On October 15, 2016, Sgt. Monsalve submitted a Protective Custody Report which stated in full:

“[The driver] was encountered on [home address]. While speaking with him he had slurred speech and smelled of an alcoholic beverage. He was assisted to the Holyoke Police Department.”

(Exhibit 10 and Testimony of Sgt. Gonsalve)

41. Subsequent to October 15th, the Police Department received an inquiry from a local reporter regarding the October 15th incident involving the Holyoke firefighter, which prompted Chief Neiswanger to have Captain Febo of the Holyoke Police Department conduct a preliminary review of what occurred. (Testimony of Chief Neiswanger)
42. In a memorandum dated November 20, 2016, Captain Febo notified the Police Chief that he had conducted a preliminary investigation into this matter. Captain Febo concluded there was a violation of the Department’s Rules and Regulations and recommended a verbal reprimand be issued to Sgt. Monsalve. (AA Exhibit 12)
43. Chief Neiswanger reviewed Captain Febo’s memorandum and concluded that “this is greater than verbal reprimand for incompetency. Discipline to be determined.” The Police Chief referred the matter to Professional Standards for a full investigation. (Testimony of Chief Neiswanger and AA Exhibit 12)
44. Lt. Manuel Reyes of the Professional Standards Division conducted a full investigation and forwarded his findings to Chief Neiswanger on February 12, 2017. Lt. Reyes found that Sgt. Monsalve violated various HPD rules regarding competency, performance of duties and responsibility and protective custody. (AA Exhibit 13)
45. Specifically, Lt. Reyes found that Sgt. Monsalve violated Department rules by: a) failing to file criminal charges against the driver after he failed to stop for a police officer and was presumably operating under the influence; b) “taking the advice of Lt. Cournoyer who suggested that under these circumstances placing [the driver] under protective custody was a

viable option”; c) producing a very vague, indiscript (sic) and undetailed report”. (AA Exhibit 13)

46. A “Captain’s mast” was convened to review the findings of Lt. Reyes. “The Captains considered the number of rides home provided to other OUI offenders in Holyoke” and only sustained the charges related to the submission of reports. (AA Exhibit 15 and Testimony of Chief Nieswanger)

47. Chief Nieswanger, after reviewing the findings of Lt. Reyes and the recommendation of the Captains, concluded that Sgt. Monsalve violated the Department’s Rules regarding the filing of reports and competency, but did not violate rules regarding performance of duties. (AA Exhibit 15 and Testimony of Chief Nieswanger)

48. In a letter to Sgt. Monsalve dated October 3, 2017, Chief Nieswanger stated in part:

“As you are aware, policing is under the microscope and everything we do or don’t do do is magnified by social media and the media. It appears the culture and history in Holyoke is to sometimes offer people a ride home in lieu of arrest. Complicating that unwritten practice in this case is that a Lieutenant with the Holyoke Fire Department was stopped. Unless there are underlying mitigating factors (and I don’t believe that is the case here) I would advise (sic) you to make the arrest the first time you came in contact with [the driver]. The public perception of given (sic) him, a Fire Lieutenant, a ride home is that they would not be offered the same option. So as Chief, I cannot condone the ride that was first given to [the driver].

[The driver] was given a break the first time. He then went back to his vehicle, allegedly sped down the street, our officers started to pursue him which was called off by you (as it should have been) and he ran a red light. Your failure to arrest him the first time allowed him to operate recklessly a second time and actually put the public at risk. What would have happened if he hit and killed someone? The City of Holyoke would have been exposed to substantial liability if that happened. Drunk drivers kill tens of thousands of people a year all across the country. One of our jobs is to arrest drunk drivers and you failed to do so in this case, twice.” (AA Exhibit 15)

49. Chief Nieswanger suspended Sgt. Monsalve for two (2) days without pay. (AA Exhibit 15)

50. Sgt. Monsalve, pursuant to G.L. c. 31, § 41, filed an appeal with the City's Mayor, who is the Appointing Authority for the Police Department. The Police Chief recommended to the Mayor that he make an example of Sgt. Monsalve. (Testimony of Chief Nieswanger)

51. The City's Mayor upheld the two (2)-day suspension, stating in part that:

- “Your decision to drive [the driver] home on October 15, 2016 following a motor vehicle stop on Taylor Street was not a reasonable action in light of the facts that were known or should have been known at the time of incident.
- Your failure to ascertain facts regarding [the driver]'s failure to stop during pursuit by Officer Ortiz and failure to stop for a red light ... inhibited your capacity to discuss and determine the appropriate course of action upon arriving at the ... scene.
- Your decision to place [the driver] in protective custody was not a reasonable action given the totality of the circumstances.
- The report filed in this matter failed to provide an accurate and complete account of the incidents involving [the driver] on October 15, 2016.” (AA Exhibit 17)

52. Lt. Cournoyer received a written reprimand in connection with his conduct in this matter. (AA Exhibit 17)

53. Holyoke Police Department records show that, after October 15, 2016, Holyoke police officers failed to arrest and/or file criminal charges against the individuals involved in the following three (3) incidents:

12/3/16

A Holyoke Police Officer, at 2:13 A.M., came upon a firefighter sleeping in the driver's seat of a vehicle that was “on and running”. The firefighter admitted he had been drinking and did not want to drive. The police officer observed blood shot eyes, slurred speech and smelled the odor of an alcoholic beverage. The firefighter was placed in protective custody. No field sobriety test was completed and no criminal charges were filed. (APP Exhibit 2)

6/17/17

A Holyoke Police Officer was flagged down by a motorist who told the officer that he had just observed a vehicle hit a traffic light and take off. The police officer observed part of a front bumper of a vehicle and a traffic light that had been knocked down. The police officer searched for the motorist who fled the scene and eventually came upon a vehicle in a parking lot and observed the driver stumble out of the car with urine-soaked shorts. The motorist had a strong odor of alcohol on his breath, slurred his words and just stared at the police officer. Police officers observed damage to the front end of the car and empty beer cans in the vehicle. This motorist was placed in protective custody. No field sobriety test was completed and no criminal charges were filed. (APP Exhibit 3)

10/12/17

A Holyoke police officer responded to a call regarding a vehicle being struck in the parking lot of a bar in Holyoke. The police officer observed that a citizen [who appears to have been operating the vehicle that struck a parked car] had blood shot eyes, the odor of alcoholic beverages emitting from her person and unsteadiness on her feet. This citizen was placed in protective custody. No field sobriety test was completed; no criminal charges were filed; and the report submitted by the police officer is woefully inadequate, failing to identify that the intoxicated person was operating the vehicle, which now appears to be undisputed. (APP Exhibit 1)

54. It is not uncommon for Holyoke police officers to drive motorists home when they are suspected of operating under the influence, as opposed to conducting a field sobriety test and/or filing criminal charges against the motorist. (Testimony of Officer Roca, Officer Ortiz and Sgt. Monsalve)

Applicable Civil Service Law

G.L. c. 31, § 43 provides:

“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.”

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. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304 (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 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof by a preponderance of the evidence is satisfied “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).

Under section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew;” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. However, “[t]he commission’s task.. is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision’,” which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority; Id., quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

Analysis

The City has established, by a preponderance of the evidence, that Sgt. Monsalve's actions here constituted substantial misconduct which adversely affected the public interest. First, the protective custody report filed by Sgt. Monsalve was deficient. The report failed to provide many of the most relevant details of what occurred. After reviewing the many other protective custody reports filed by Sgt. Monsalve, and reviewing all of the other relevant evidence and testimony in the record, I have concluded that the failure to include this information was done to downplay, or mask, what really occurred here: a Holyoke firefighter, after being suspected of operating under the influence and *after evading Holyoke police*, was placed into protective custody, instead of being properly investigated for OUI or charged with attempting to evade police. Further, even given the inherent discretionary authority of police officers, the City has shown that Sgt. Monsalve violated the Department's rule related to competency by failing to take the reasonable steps that would be expected here, including, but not limited to, failing to administer a field sobriety test and/or arrest or charge the driver for evading police officers.

The Police Chief, via his credible testimony, and the City's Mayor, through written statements, both express legitimate concerns about the consequences of police officers failing to take more reasonable steps involving motorists suspected of operating under the influence, both in terms of public safety and the potential liability to the City. While, as referenced above, police officers are inherently granted discretion regarding when to effectuate an arrest, the sequence of events here, which included a Holyoke firefighter, who smelled of alcohol, evading police in an automobile that he retrieved after being given a ride home, cannot reasonably be considered the type of discretionary authority granted to police officers.

The record shows, however, multiple examples of even more glaring examples of a police officer's failure to take reasonable steps in response to serious OUI-related stops. One of the more egregious examples of this practice is detailed in an incident report filed by a Holyoke Police Officer in October 2017, a full year after the incident that is the subject of this appeal. In the October 2017 incident, a motorist struck a street light and fled the scene, leaving behind the remnants of the street light and pieces of the front end of his car. There were eyewitnesses to the accident and, shortly thereafter, the police officer came upon a vehicle that matched the description given by eyewitnesses, right down to the missing pieces of the front end of the car, which had been placed in the cruiser by the police officer. The motorist stumbled out of the vehicle with urine-drenched shorts showing classic signs of intoxication. No field sobriety test was done. No criminal charges were filed. Instead, the motorist was placed in protective custody. It is difficult to conjure up a more egregious example of an abuse of discretion by a police officer, aside from an incident that resulted in injury or death. Yet, no investigation or discipline was initiated against that police officer. That is not the type of "uniformity and equitable treatment" that the civil service law requires.

The decision not to impose similar discipline on the lieutenant here is another example of disparate treatment. I don't accept the City's argument seeking to justify a two-day suspension against Sgt. Monsalve while the lieutenant was given a far more lenient written reprimand, with no loss of pay. Contrary to the City's assertion, the lieutenant was indeed aware of the most relevant aspects of what occurred that night, including that the firefighter had been given a ride home earlier in the night and that the firefighter had sought to evade two (2) Holyoke police officers who had activated their emergency lights and pursued him at a high rate of speed. Further, I credit the testimony of Sgt. Monsalve that the lieutenant did not simply lay out three

options for Sgt. Monsalve (do nothing, place in protective custody or arrest) but, rather, the lieutenant first suggested that Sgt. Monsalve “do nothing” stating that the driver simply wanted to pick up his truck. It was only after Sgt. Monsalve, six months into his tenure as a sergeant, told the lieutenant that he was uncomfortable with that option, were the options of protective custody or arrest discussed.

Having found that Sgt. Monsalve engaged in misconduct, but also having found that the disciplinary action against him was a stark example of disparate treatment, intervention by the Commission is warranted in the form of a modified penalty. For this reason, Sgt. Monsalve’s appeal under Docket No. D-17-220 is hereby *allowed in part*. The two-day suspension is hereby reduced to a written reprimand, the same penalty administered to the lieutenant.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Camuso, Stein and Tivnan (YES) – Ittleman⁵ – (NO), Commissioners) on July 5, 2018.

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:
Shawn Allyn, Esq. (for Appellant)
Paul Payer, Esq. (for Respondent)

⁵ Commissioner Ittleman voted no as she does not believe a modification of the two-day suspension is warranted. Rather, the City’s decision should be affirmed without modification.