

RECEIVED

JAN 21 2010

PUBLIC SAFETY CIVIL
SERVICE COMMISSION

BEFORE THE PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE

IN RE THE APPEAL OF:

STEVEN CASTELLO,

Appellant,

vs.

CITY OF SEATTLE, SEATTLE FIRE
DEPARTMENT,

Respondent.

No. 09-010

FINDINGS OF FACT,
CONCLUSIONS OF Law,
AND ORDER

INTRODUCTION

1. The Commission heard this matter pursuant to a Notice of Appeal filed by firefighter Steve Castello on August 28, 2009, claiming that the Seattle Fire Department's decision to remove him from the paramedic program for a period of one year constituted a demotion and a disciplinary transfer. Appellant also appeals a written reprimand that he received simultaneously with the removal. A full evidentiary hearing was held on December 8 and 11, 2009 before Commissioners Carroll, Johnson and Nark, with Commissioner Nark acting as Chairperson.

2. Attorney Gail Luhn represented Appellant. Fritz Wollett, Assistant City Attorney, represented the Fire Department. After considering the evidence in this case, including the testimony, documentary evidence and the proposed findings of fact and conclusions of law, the Commission by majority vote of those present enters the following Findings of Fact,

1 Conclusions of Law, and Order.

2 **FINDINGS OF FACT**

3 1. The Appellant, Steve Castello, has been employed by the Seattle Fire Department
4 in the classification of firefighter since 1981 and as a firefighter paramedic (FF/PM) since 1991.
5 FF/PMs are assigned to Battalion 3. Deputy Chief Angelo Duggins has command responsibility
6 for Battalion 3.

7 2. On August 18, 2009, Fire Chief Gregory Dean removed Appellant from his
8 paramedic duties and reassigned Appellant to an engine company for a period of one year. The
9 Fire Chief also gave Appellant an official reprimand. Exh. 5. The Fire Chief conducted a
10 *Loudermill* hearing with the Appellant and his union, Firefighters Local No. 27, prior to taking
11 these actions.

12 3. As a FF/PM, Appellant receives a 20% premium above the wage he would have
13 received as a firefighter. Appellant will continue to receive the 20% premium during his one
14 year absence from his FF/PM duties. Exh. 5, No. 517. However, the appellant will not have the
15 same overtime opportunities as he would have if he continued as a FF/PM. Exh. 3.

16 **A. Written Reprimand**

17 4. On June 13, 2009, Appellant responded to a Med 7 call on Interstate 5. His
18 partner on Medic 10 was FF/PM Mike McDonald. Medic 10 was accompanied by two
19 paramedic students. Exh. 6, Nos. 528-29, 532-533.

20 5. Also responding was Medical Services Officer (MSO) Michael Barokas in the
21 MSO vehicle, Medic 44. An MSO is a certified paramedic, holds the rank of Lieutenant and
22 commands a platoon of paramedics. Lt. Barokas is the MSO with responsibility for D platoon,
23 consisting of 18-20 medics, the shift to which Appellant was assigned. *Id.*, Nos. 528-29.

1 6. Lt. Barokas took command of the incident response. Lt. Barokas was the first
2 arriving paramedic and the commanding officer. During the response, Lt. Barokas contacted the
3 Harborview trauma doctor in order to inform the doctor of the nature of the treatment that he was
4 providing and to obtain approval. The doctor approved the treatment proposed by Lt. Barokas.
5 *Id.* Lt. Barokas communicated the treatment approved by the doctor to the students so that they
6 could proceed with multiple intravenous lines. Exh. 6, No. 528.

7 7. At the end of the response, while still on Interstate 5, Appellant and Lt. Barokas
8 engaged in the following exchange:

9 Appellant: “Lieutenant, please don’t do that again.”
10 Barokas: “I’m in charge and I will give the report.”
11 Appellant: “No, you’re not.”

12 FF/PM McDonald intervened and the verbal exchange ended. McDonald’s description of the
13 exchange is consistent with Lt. Barokas’ account but not Appellant’s. Exh. 6, Nos. 528, 531.

14 8. When the medic units finished the call and returned to their respective quarters
15 proximate to Harborview Medical Center, Lt. Barokas approached Appellant and informed him
16 that he wanted to meet to discuss Appellant’s behavior during the response. He also asked
17 Appellant to provide him with a written statement of what occurred in accordance with Fire
18 Department protocol. Appellant drafted a short, nonresponsive statement dated June 15, 2009,
19 in which he stated that: “Lt. Barokas did not specifically state which of his [Barokas’]
20 inappropriate actions he wanted documented in letter form so I am unable to provide further
21 detail.” Appellant did not address the verbal exchange set forth above or specify what actions he
22 was objecting to on the part of Lt. Barokas. Exh. 6, Nos. 528-530.

23 9. Lt. Barokas conducted a fact finding meeting regarding the I-5 response with
Appellant on June 16, 2009, the next shift worked by D platoon.

1 10. During the fact finding meeting, Appellant told Lt. Barokas that Barokas
2 interfered with patient care, didn't know what the role of a student was and that his actions on
3 the scene were "grossly inappropriate." Appellant accused Lt. Barokas of going to the scene in
4 retaliation for Appellant's report to the Fire Department that Barokas had failed to comply with
5 the new controlled substances policy. At the end of the meeting, Appellant reiterated that "he
6 had nothing more to say to Lt. Barokas." Appellant was recalcitrant and non-cooperative during
7 the meeting. *Id.*

8 11. Appellant testified that he was in charge of the medicine at the scene and relied
9 upon statements from Michael Copass, M.D., Director of the Medic One program, that the medic
10 in the passenger seat is in charge of the scene. Appellant sent Dr. Copass a memorandum dated
11 May 13, 2009, raising questions about the command relationship between the MSO, Lt. Barokas,
12 and the medics during a response on May 12. Exh. 53. Appellant did not receive a written
13 response from Dr. Copass to his questions and Dr. Copass did not confirm Appellant's
14 contentions that he, not the MSO, was in charge. There is no evidence that Appellant attempted
15 to discuss and resolve the issue Appellant raised in his memorandum with Lt. Barokas prior to
16 his challenge to Lt. Barokas's authority during the June 13 response.

17 12. Training of students includes the opportunity for them to contact the trauma
18 doctor at Harborview and propose a course of treatment. However, paramedics, including the
19 MSO, have the discretion to contact the trauma doctor at Harborview and obtain approval for
20 medical treatment to be administered on the scene, even if students are present. Lt. Barokas had
21 the right to initiate the communication with the trauma doctor and did so. Exh. 6, No. 528.

1 13. When disagreements arise between paramedics at the scene, they should be
2 addressed and resolved after the patient has been delivered to the next level of care, not during
3 the emergency. Appellant erred when he challenged Lt. Barokas's actions during the emergency.

4 14. On June 16, 2009, Lt. Barokas initiated formal charges against Appellant and
5 recommended a one shift suspension for disorderly conduct and misconduct. Deputy Chief
6 Duggins and Assistant Chief of Operations William Hepburn concurred with the
7 recommendation. Fire Chief Dean reduced the proposed discipline to an official reprimand after
8 he reviewed a list of comparable offenses and concluded that the proposed discipline was too
9 severe. Exh. 5, Nos. 519-20; Exh. 10.

10 **B. Appellant's Placement on Paid Leave**

11 15. On June 16, 2009, Fire Chief Dean made a decision to place Appellant on a paid
12 administrative leave pending a fit-for-duty examination. He based that decision on three
13 different events: (1) Appellant's failure to report promptly to his command his discovery of
14 improperly secured controlled substances in the M44 vehicle used by Battalion 3 ("B-3") MSOs
15 between May 29 and June 2, 2009; (2) a complaint received from FF/PM Mitzi Simmons on
16 June 12, 2009 alleging that Appellant's actions were dangerous and jeopardized her safety; and
17 (3) the June 13, 2009 I-5 incident leading to the written reprimand. Exhs. 15, 55, 68. The B-3
18 office is part of the Medic One administrative offices which include Fire Department MSOs and
19 the Deputy Chief, as well as University of Washington personnel, including Dr. Copass.

20 16. The Fire Chief's concern about Appellant's failure to promptly report the
21 discovery of improperly secured controlled substances in the M44 vehicle arose from a
22 memorandum issued by Michael Copass, M.D., on June 1, 2009 entitled "Control of Morphine,
23 Valium and Phenobarbital." Dr. Copass is a Professor of Medicine at the University of

1 Washington. He is also the Medical Director of the Seattle Fire Department Medic One program
2 and is responsible for seeing that paramedics, who practice medicine under the authority of Dr.
3 Copass' license, engage in safe and effective medical treatment. Dr. Copass's June 1 directive
4 set forth procedures for securing controlled substances and procedures for reporting violations of
5 that policy. A draft policy was issued on May 29 and finalized on June 1. The policy contained
6 specific instructions on reporting violations to the MSO, the Medical Administrator or to the
7 Medical Director. Exh. 54.

8 17. When the draft policy was issued, Appellant began to enter the M44 vehicle to see
9 if the MSO on duty at that time was complying with the policy. On four different occasions
10 between May 29 and June 2, Appellant searched the M44 vehicle. Three times he found
11 violations of the policy. He did not search any other medic vehicle. Rather than immediately
12 reporting them, Appellant compiled these violations into one memorandum dated June 2 in
13 which he reported these violations to Dr. Copass. Exh. 55. As a result, each MSO who was
14 implicated in violation of the policy received a Formal Counseling from Deputy Chief Duggins.
15 Each MSO admitted that the violations had occurred but questioned Appellant's motivation in
16 searching their vehicle and his failure to report the violations immediately. Exhs. 38, 41.

17 18. Appellant testified that he did not report the violations immediately because the
18 first two violations occurred when a draft policy was in effect, before the policy was finalized.
19 Appellant did not explain why he was searching the M44 vehicles before the policy was finalized
20 or why he did not search other medic apparatus.

21 19. At the time he made the decision to place Appellant on administrative leave, Fire
22 Chief Dean was in receipt of a memorandum dated June 15, 2009 from Deputy Chief Duggins
23 that set forth Duggins' expectation that any paramedic who discovered a violation of the policy

1 would bring the matter immediately to the attention of the on-shift MSO rather than waiting a
2 number of days after inspecting the apparatus over the course of every shift. The Fire Chief
3 shared Deputy Chief Duggins' concerns regarding Appellant's failure to comply promptly with
4 the provisions of Dr. Copass's memorandum. Exh. 6, No. 537.

5 20. FF/PM Mitzi Simmons is also assigned to B-3 on D platoon. Simmons sent the
6 Fire Chief a letter dated June 12, 2009 entitled "Urgent Safety Complaint" in which Simmons
7 outlined a lengthy list of concerns about Appellant's behavior that Simmons characterized as a
8 threat to her personal safety. Exh. 68. After meeting with his staff and legal advisor on June 16,
9 Chief Dean decided to retain an outside investigator to determine if Simmons' safety complaint
10 was valid. Exh. 15.

11 21. At the behest of the Fire Chief, Deputy Chief Duggins directed Lt. Barokas to go
12 to Fire Station 31, where Appellant was assigned on the June 16-17 shift, and relieve Appellant
13 of duty, place him on paid administrative leave and direct him not to enter any fire facility or to
14 contact any Fire Department employee on duty. Duggins also asked Barokas to provide
15 Appellant with the charges for the I-5 incident and Formal Counselings for two other violations
16 of Fire Department rules engaged in by Appellant on June 13.

17 **C. Appellant's One Year Absence From Paramedic Duties**

18 22. After Appellant signed two Formal Counselings and the charge, Lt. Barokas
19 informed him that he was being relieved of duty and asked him to leave the premises. Lt.
20 Barokas was unable to finish telling Appellant the conditions of his leave, including the
21 prohibition on entering any Fire Department facility because Appellant interrupted him.
22 Appellant jumped to his feet and angrily shouted: "Fuck you...you are fucking pathetic...fuck
23 off!" Appellant left the room and grabbed his personal gear, gave Hauge his drug pack, stripped

1 to the waist in front of his superior officers in order to put on a t-shirt and proceeded to the
2 dining area to eat dinner. Deputy Chief Lomax called Deputy Chief Duggins and a decision was
3 made to allow Appellant to finish dinner and then to insist that he leave at once. Exhs. 6, Nos.
4 534-35; Exh. 9.

5 23. When dinner was over Deputy Chief Lomax met with Appellant and told him that
6 he had to leave the station. A discussion ensued in which Appellant threatened to "...burn Lt.
7 Barokas and the Fire Department in the process." Appellant left the station. Exh. 9.

8 24. During the course of events that evening at Station 31, Appellant displayed
9 extremely agitated and aggressive behavior, raised his voice and repeatedly used foul language
10 directed at Lt. Barokas. Lt. Barokas remained calm, collected and professional throughout his
11 interactions with Appellant. Exh. 9, No. 263.

12 25. That evening, following the incident, Lt. Barokas contacted Deputy Chief
13 Duggins and described Appellant's behavior. The following morning, June 17, Duggins
14 received a phone call at his residence around 7 a.m. from his administrative assistant, Carolyn
15 Barton, who was working at the B-3 administrative offices. Barton informed him that Appellant
16 had just parked in front of the B-3 office. Neither Barton, Lt. Barokas, who was finishing his
17 shift, or Deputy Chief Duggins could think of any legitimate reason for Appellant's presence.
18 Both Barton and Barokas went into their respective offices, locked their doors and
19 communicated by phone. Concerned for the safety of his staff, Duggins directed Barton to tell
20 Barokas to call 911 and request police presence. Barokas did so. By the time the police arrived,
21 Appellant had disappeared. Exh. 6, No. 535.

22 26. Appellant taught a class that morning and then attended a continuing medical
23 education class. Following that class, he entered the B-3 office on the south side of the facility

1 on Jefferson Street, where he met Deputy Chief Duggins who was about to exit the building just
2 before 4 p.m. Duggins asked Appellant to stop and told him that he needed to talk to Appellant.
3 Appellant kept going and yelled “Fuck you, I’m on my own time and don’t have to listen to
4 you.” Appellant went up the stairs to the second floor set of offices, continuing to swear at
5 Duggins, who followed him, trying to get Appellant to stop. Exhs. 8, 16.

6 27. On the second floor Duggins was able to tell Appellant that the conditions of his
7 paid leave included the ban on entering any Fire facility. Appellant continue to curse at Duggins,
8 saying “fuck you, you fucker, etc.” Lt. Barokas, who was working overtime to prepare his
9 statement regarding the events at Station 31 the night before, overheard Appellant yelling at
10 Duggins and came down the hall to support Duggins. Upon seeing Barokas, Appellant
11 challenged him, stating: “Especially you tough guy, MSO...come here and let’s see how tough
12 you are...you are fucking pathetic, all of you.” “Everyone of you is fucked up, all of you.”
13 Barokas was joined by MSO Lt. Fisk who heard Appellant use derogatory statements such as
14 “pathetic leadership, “power-trip idiots,” and “big tough guy” to Barokas, in addition to cursing
15 at the Deputy Chief. Exh. 6, No. 536; Exhs. 8, 8A.

16 28. Deputy Chief Duggins called 911 and reported the incident to the police. Upon
17 hearing that the police had been summoned, Appellant settled down, exited the building and
18 disappeared. Within a few minutes, following the arrival of the police, Appellant reappeared, got
19 out of his car and stated: “this is a mistake.” Duggins responded by telling the police that there
20 was no mistake. Appellant was calm and left the scene after speaking with police. Exh. 8.

21 29. Lt. Barokas and Lt. Fisk submitted statements describing the incident at Battalion
22 3 to Deputy Chief Duggins. Exh. 6, No. 536; Exh. 8A. Duggins prepared his own statement and
23 filled out a workplace violence report describing Appellant’s behavior as comprised of verbal

1 threats and threatening behavior. Exhs. 8, 16. Ultimately, Duggins prepared a formal charge
2 alleging that Appellant had engaged in “disorderly conduct, misconduct.” Exh. 5, No. 521-22.
3 Duggins conducted a fact finding meeting with Appellant and his Union representatives on July
4 13. He recommended that Appellant receive a six shift suspension and be removed from the
5 paramedic program. *Id.*

6 30. By letter dated July 14, Fire Chief Dean sent copies of the charges as well as
7 supporting statements to Appellant and set his *Loudermill* hearing for July 20. Exh. 6.
8 Appellant appeared at the *Loudermill* along with four Union representatives, including two
9 Union vice-presidents, and one witness, Lt. Pete Ubaldi. Appellant attempted to fix the blame
10 for Appellant’s outbursts on Lt. Barokas. At various times during the *Loudermill*, Appellant
11 attempted to justify his eruptions by explaining that he was “off-duty” during the incident, and
12 tired from working five consecutive shifts, including his days of employment as a paramedic for
13 Bainbridge Island Fire Department. Fire Chief Dean did not find either explanation to be
14 acceptable or to justify Appellant’s conduct. Exhs. 11, 11A.

15 31. The Fire Chief questioned Appellant as to how the Fire Chief could return
16 Appellant to B-3 in light of his poor working relationship with the MSOs. Appellant informed
17 the Fire Chief that he considered the MSOs to be dishonest but that he avoided having contact
18 with them by not going to the B-3 quarters. He also stated that he bribed his partners with coffee
19 so that the other Medics would deliver necessary paperwork to B-3 quarters. Appellant did not
20 provide the Fire Chief with any evidence that he was willing to take steps to mend his broken
21 relationship with his superior officers. Fire Chief Dean could not transfer Appellant to some
22 other paramedic position because he would still have to interact with paramedics and the MSO
23 chain of command. *Id.*

1 32. Both Appellant and representatives of Local 27 agree that his outbursts on June
2 16 and June 17 were grounds for discipline.

3 33. The Fire Chief deliberated for about a month before deciding on the appropriate
4 discipline for the two charges. Fire Chief Dean has known Appellant for many years and
5 believes that he has a “fairly sterling personnel record.” However, he was concerned about
6 placing him back into the paramedic program given the seriousness of the friction between him
7 and his supervisors. The Fire Chief did not believe that the traditional discipline of suspension
8 would be effective. He did not want to lose a skilled paramedic. Fire Chief Dean determined
9 that the remedy with the best chance of succeeding would be to impose on Appellant a lengthy
10 absence from the program but without loss in pay and with automatic reinstatement into
11 paramedic status at the end of the one year absence period. Such a remedy would send a clear
12 message to the Appellant that he needed to change his behavior without hurting him financially.
13 The Fire Chief transferred Appellant to an engine company in the downtown area that would
14 provide him with substantial opportunities to maintain his emergency medical skills. Exh. 5,
15 Nos. 517-18; Exh. 4, No. 190.

16 34. In his disciplinary decision, the Fire Chief considered the presence or absence of
17 aggravating and mitigating factors as set forth in the POG. Among the factors in Appellant’s
18 favor was his length of service as a firefighter and as a FF/PM and his generally good personnel
19 record. Among the factors working against Appellant was his questioning of Lt. Barokas’
20 conduct during an emergency, his blatant cursing and insubordinate behavior toward his chain of
21 command which was detrimental to Fire Department morale and order, as well as his refusal to
22 take responsibility for his actions during the *Loudermill* meeting.

1 35. The Fire Chief considered the fact that Appellant apparently did not know that he
2 was not supposed to enter the B-3 quarters at the time of his outburst at Deputy Chief Duggins
3 and the MSOs as a potentially mitigating factor but he concluded that it did not excuse either
4 Appellant's behavior at Station 31 or at the B-3 quarters.

5 36. The Fire Chief did not find any prior offenses involving other firefighters to be
6 comparable to the facts in this case. Thus, he was left to fashion his own discipline in
7 accordance with the POG. Appellant's complaint regarding FF/PM Simmons' swearing at Dr.
8 Copass was not comparable to Appellant's behavior on June 16 and 17. Dr. Copass instructed
9 the Fire Department not to investigate the complaint or to take any action based on the complaint
10 because he considered the subject of the complaint to be a private conversation between himself
11 and Simmons. Exh. 20.

12 37. Fire Chief Dean considered, but rejected, Appellant's claim that the
13 recommendations for discipline were motivated by a desire to retaliate against him because he
14 uncovered and notified Dr. Copass about the MSOs' violation of the June 1 controlled
15 substances memorandum. The recommendations for discipline were caused by Appellant's
16 behavior on the June 13-14 and June 16-17 shifts.

17 38. The Fire Chief's letter of August 17, 2009 notifies Appellant of the discipline. It
18 informs Appellant that "Assuming your performance is satisfactory, you will automatically be
19 reinstated in the paramedic program at the end of this one year period." The effective date of the
20 transfer is September 2, 2009. Exh. 5, Nos. 517-18; Exh. 4.

21 39. On August 27, 2009, Assistant Chief Hepburn issued a memorandum addressed to
22 Deputy Chief Duggins entitled "Firefighter/EMT Steve Castello—Conditions." The
23 memorandum restricted Appellant from entering the Medic One administrative offices or

1 contacting any of the personnel in those offices, including University of Washington personnel.
2 It also barred Appellant from attending any paramedic continuing education classes, except that
3 Appellant may attend the morning session of the Tuesday Series. Fire Chief Dean's name does
4 not appear in the memorandum and he was unaware of its issuance or of the conditions therein
5 until sometime thereafter. Exh. 3.

6 40. When Fire Chief Dean became aware of the conditions imposed on Appellant set
7 forth in the August 27, 2009 memorandum during the one year absence period, he concluded that
8 the restrictions would unnecessarily interfere with Appellant's ability to reintegrate into the
9 paramedic program at the end of his absence period. The Fire Chief took steps to see that the
10 restrictions were amended. As a result, on November 6, 2009, Deputy Chief Duggins issued a
11 memorandum notifying Appellant that he could resume his participation in the paramedic
12 continuing education classes, the Tuesday Series, and enter the Medic One Administrative
13 Offices. Duggins and Appellant have met and discussed the memorandum and Appellant has
14 resumed his paramedic continuing medical education. Exh. 1.

15 41. The Fire Department will ensure that Appellant is considered on duty for the time
16 he spends to satisfy the prerequisites for recertification, including obtaining the necessary
17 number of intubations and IV catheter insertions. Appellant will be automatically reinstated
18 unless he engages in further conduct that results in discipline. Exh. 5, Nos. 517-18; Exh. 58, No.
19 322.

20 ANALYSIS AND CONCLUSIONS OF LAW

21 42. The Public Safety Civil Service Commission has jurisdiction over this matter
22 pursuant to Article XVI, § 3 of the Seattle City Charter and Seattle Municipal Code § 4.08.190E.
23 Under SMC 4.08.190, the Commission may affirm, reverse or modify the Department's decision.

1 43. PSCSC Rule 6.01 states that “any regular employee who is demoted, suspended,
2 or terminated may appeal such action to the Commission.”

3 44. PSCSC Rule 3, entitled “Definitions,” defines these terms:

4 3.19 DEMOTION: Removal of an employee from a higher to a
5 lower class of employment.

6 3.15 CLASS SERIES: Two or more classes which are similar as
7 to line of work but which differ as to degree of responsibility and
8 difficulty, and which have been arranged in a ladder of steps in a
9 normal line of promotion, such as Police Officer, Police Sergeant,
10 Police Lieutenant.

11 3.16 CLASS SPECIFICATION: A description of the essential
12 characteristics of a class and the factors and conditions that
13 separate it from other classes, written in terms of duties,
14 responsibilities, and qualifications.

15 45. Appellant alleges that he was subject to a demotion, a disciplinary transfer and a
16 written reprimand, all imposed in violation of the requirement that discipline be in good faith for
17 cause as defined by SMC 4.08.100.

18 46. The removal of Appellant from Firefighter/Paramedic to Firefighter did not
19 constitute a demotion within the meaning of PSCSC rules, because there was no reduction in
20 pay. A paramedic performs duties that fall within the firefighter class. When Appellant lost his
21 paramedic duties, he did not move from a higher to a lower class of employment. The FF/PM
22 duties are not a normal line of promotion for which testing is done in order to establish an
23 eligibility list for promotion. The classes of employment in the Fire Department are listed in
SMC 4.08.060 under the heading of Jurisdiction: Firefighter, Fire Lieutenant, Fire Captain,
Battalion Chief, Fireboat Pilot, Fireboat Engineer. Appellant continues to be employed in the
same class, whether he performs paramedic duties or not. He was not demoted as that term is
defined in the PSCSC’s rules.

1 discipline administered was fair in relation to the nature of the offense and
2 imposed with regard to the employee's record of service.

3 52. The seven factors are just that – factors to be considered under the
4 totality of the circumstances. The factors are not “essential elements of just
5 cause.” The absence of one factor does not necessarily mean the decision was not
6 made in good faith for just cause. Some misconduct, for example, would justify
7 immediate disciplinary action without prior notice.

8 A. Reasonable Notice to the Employee

9 53. Reasonable notice is whether the employer gave the employee
10 sufficient forewarning of the consequences of misconduct, i.e. notice of the rule
11 and the consequences of violations.

12 54. Firefighters are charged with knowledge of the Fire Department's
13 Policy Operating Guidelines (POG). The POG makes it an offense for a
14 firefighter to refuse to carry out a legitimate order. The POG also bars disorderly
15 conduct, defined as “abusive and/or improper language or behavior as defined
16 under a reasonable person standard.”

17 55. Appellant was on notice of the rule that he was required to carry
18 out orders and that he was not to swear at his officers. As a long term FF/PM, he
19 was also on notice that disagreements with his officer or other paramedics rising
20 from an emergency response should be resolved after the patient had been
21 delivered to the hospital.

22 56. The Commission finds that the Fire Department gave Appellant
23 reasonable notice and that this factor supports a finding of good faith for cause.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

B. Reasonableness of the Rules

57. The Commission finds that the disciplinary rules set forth in the POG are reasonable and that this factor supports a finding of good faith for cause.

C. Reasonable Investigation

58. Appellant’s conduct was directed toward members of his command and other individuals. Witnesses submitted statements documenting Appellant’s behavior. Appellant did not dispute that he made the majority of the statements which constitute the basis for discipline. Appellant was provided with the opportunity to submit statements. The Fire Department’s investigation uncovered the relevant facts upon which a decision as to whether to impose discipline could be made. There is no claim that the investigation was biased or unfair or missed relevant facts.

59. The Commission finds that the investigation was reasonable and that this factor supports a finding of good faith for cause.

D. Fairness of the Investigation

60. The fourth factor in assessing good faith for cause is whether the Fire Department’s investigation was conducted fairly and objectively.

61. For the reasons stated in the discussion of the reasonableness of the investigation, the Commission finds that the investigation was fair. There is substantial agreement on both sides as to Appellant’s conduct. No claim has been made that any witness’s testimony has been left out or misquoted.

E. Decision Based on Substantial Evidence

1 62. Fire Chief Dean's decision is based on substantial evidence,
2 including the statements of FF/PM McDonald, Lt. Barokas, Lt. Fisk, Deputy
3 Chief Duggins and Deputy Chief Lomax. Appellant claimed that the discipline
4 was in retaliation for the memoranda he wrote disclosing the MSOs' violation of
5 Dr. Copass's securing controlled substances memorandum. However, no
6 evidence exists to support his allegations and the incidents leading to the
7 challenged discipline occurred after he brought the noncompliance to the attention
8 of the Fire Department. The substantial evidence factor supports a finding of good
9 faith for cause.

10 F. Similar Cases Treated Similarly

11 63. The issues for evaluating this factor and the next factor – penalty –
12 are highly related. The issue here is whether the Fire Department treated similar
13 cases of misconduct, if any, similarly in determining the level of discipline.

14 64. For the charge initiated by Lt. Barokas arising from Appellant's
15 misconduct at the I-5 emergency response, Fire Chief Dean reduced the discipline
16 from a recommended one shift suspension to an official reprimand. He did so
17 based on the comparable disciplines of other firefighters provided to him by Fire
18 Department Human Resources.

19 65. For the charge initiated by Lt. Barokas for Appellant's outbursts
20 during the June 16-17 shift, Fire Chief Dean had no comparable incidents to use
21 as precedent. No witness testified as to any remotely similar behavior by any
22 firefighter toward command staff. The incident involving FF/PM Mitzi Simmons
23 and Dr. Copass was not comparable because Dr. Copass instructed the Fire

1 Department not to investigate Appellant's complaint or take any action because it
2 was a private conversation between him and Simmons. Where available, the Fire
3 Department took comparable incidents into account. This factor supports the
4 conclusion that the discipline was in good faith for cause.

5 PENALTY

6 66. In determining whether the discipline is proportional to the
7 misconduct, the Commission considers whether the penalty is reasonably related
8 to the seriousness of the employee's proven misconduct and the employee's
9 record of service. The Fire Department's POG contains a similar requirement at
10 section 2.2. Exh. 12.

11 67. Fire Chief Dean's decision to remove Appellant from the program
12 for one year with full paramedic pay was a reasonable response to a situation
13 where Appellant had a poor working relationship with his chain of command.
14 The decision was intended to get Appellant's attention regarding the need to
15 change his behavior while not unduly punishing him financially. The Fire Chief
16 considered aggravating and mitigating factors as set forth in the POG, discussed
17 above in the Findings, ¶ 39. He considered the level of discipline for a lengthy
18 period of time, the Loudermill occurring almost one month before the letter
19 imposing discipline was sent. The gravity of the discipline is further mitigated by
20 the Fire Chief's promise to reinstate Appellant automatically to paramedic status
21 and ensure that he is able to receive the required training to obtain recertification.
22 This factor supports a finding that the discipline was imposed in good faith for
23 cause.

1 CONCLUSION

2 68. The Commission finds that Appellant was not demoted within the
3 meaning of the Civil Service rules and that a reprimand is not reviewable by this
4 commission. Additionally, even if the Commission were to decide this appeal on
5 the merits, the Commission finds that the Fire Department has established good
6 faith for cause in the removal of Appellant from paramedic status. Appellant's
7 behavior was unacceptable, totally inappropriate, insubordinate, and warranted
8 severe action. The discipline imposed by the Fire Chief was well within his
9 discretion considering the seriousness of Appellant's behavior. With satisfactory
10 performance during his one-year removal from paramedic duties, Appellant will
11 be reinstated in the Paramedic Program.

12 69. The behavior by the Appellant was inexcusable. The Commission,
13 however, would like to express that the SFD management might have avoided the
14 confrontation at the Battalion 3 Headquarters if during the "relief of duty"
15 meeting the night before, the Appellant had been given explicit written
16 instructions informing him of any workplace restrictions or policies being
17 implemented. Although the Commission understands that the Appellant's
18 behavior that evening made it almost impossible to verbally communicate these
19 types of instructions, clear written notice may have given him time to read and
20 understand the restrictions when he was of more even temperament and prevented
21 the later confrontation.

ORDER

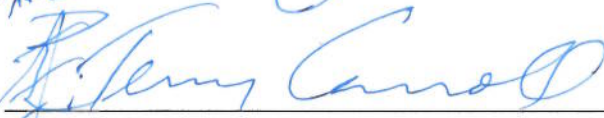
Appellant's appeal is hereby dismissed with prejudice.

Dated this 21st day of January, 2010.


PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE



Commissioner Herbert V. Johnson 1/21/10
Date

mc


Commissioner Terry Carroll 1/21/10
Date



Commissioner Joel Nark 1/21/10
Date