

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

In the matter of the Appeal of)

GREGORY FLETCHER)

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

I. INTRODUCTION

This matter initially came before the Public Safety Civil Service Commission (Commission) in the appeal of Gregory Fletcher (Appellant) from his discharge by the City of Seattle Fire Department (Department). Following Appellant's appeal of the Commission's decision and remand by the King County Superior Court, the matter is again before the Commission.

1.1 Appearances

1.1.1 Appellant. The Appellant was represented by Attorneys George Merker and Mark McCarty of Reaugh, Fischnaller and Oettinger.

1.1.2 Department. The Department was represented by Marilyn Sherron, Assistant City Attorney.

1.1.3 Commission. Barbara Laners, Chairperson; Jason King and Daniel Oliver, Commissioners; Ruby Dell Harris, Secretary and Chief Examiner. Commissioner Jason King succeeded Commissioner Maura O'Neil, reviewed the file and is familiar with the facts and proceedings.

1.1.4 Witnesses. Witnesses for the Department were: Deputy Chief Steve Bailey and Fire Chief Claude Harris; Witnesses for the Appellant were: Maurine Bailey, Lt. William Buegel, Battalion Chief Ralph Maughn, Firefighter Brian Bunich, Capt. Lawrence Wick, Lt. John Dale, Lt. Ben St. Clair, Police Sgt. Rolph Towne, Dr. Rayburn Lewis, Jon Gillis, Vice-President of Seattle Firefighters' Local 27, and the Appellant.

1.2 Proceedings.

1.2.1 Original proceedings. By notice dated and effective April 12, 1990, Firefighter Gregory Fletcher was discharged from his employment with the Department for violation of Operating Instruction I 204 6.1 #3. False statements, Misrepresentation, Deceit, Concealment (2nd Offense) and #16 Violations of Civil Service Rule 5.05 C (1) (2nd Offense).

1.2.2 Appeal. Firefighter Fletcher sought judicial review of the Commission's decision. By Order of Remand, dated June 12, 1991, the Superior Court of the State of Washington for King County declared that "The part of the Commission's Order which suspended appellant from work for seven months, exceeded its statutory authority." It remanded the case for "entry of an order that is consistent with its findings of fact, and conclusions of law, and within its statutory authority".

1.2.3 The Commission requested briefs and heard oral arguments from the parties on August 24, 1993. The Commission was also presented with certain additional documents, but on September 16, 1993 rejected all the additional materials.



1.2.4 The Commission took "judicial notice" of its prior decisions and practices as set forth in paragraph 3.7 (e) as precedents for the sole purposes of evaluating the scope of its authority (Section 3.7), and of measuring the discipline in this case with other cases to preserve a pattern of equity and fairness in Commission decisions (Sections 3.9 and 4.0).

1.3 Summary of Positions.

1.3.1 Appellant. Mr. Fletcher contends that his termination by the Seattle Fire Department was inappropriate and not supported by the evidence or the procedures utilized during the termination process.

Specifically, the Appellant contends that he did not deliberately falsify his pre-hire medical history form and that the discipline imposed was disproportionate to discipline imposed in other similar cases.

1.3.2 Department. The Department asserts that the Chief of the Fire Department, Claude Harris, acted in good faith in discharging the Appellant for the reasons stated and that the discipline imposed was appropriate.

1.3.3 Options under Remand Order. Appellant's brief states that the Commission now has two options: Suspension without pay for up to thirty days, and reinstatement with back pay. The Department in its oral argument stated that the Commission has four options: Discharge; suspension without pay for a maximum of thirty days; reinstatement with back pay; and reinstatement without back pay.

1.4 Commission. Having considered the hearing record in this matter, including the credibility of witnesses and exhibits presented to us, and the arguments of the parties, and pursuant to our authority under Article XVI of the City Charter and Chapter 4.08 Seattle Municipal Code and subject to the constraints contained in the Order of King County Superior Court, dated June 12, 1991, we enter the following:

II. FINDINGS OF FACT

2.1 Prior to the time Firefighter Fletcher was hired by the Department on October 13, 1980, he did conceal information about a material medical condition.

2.2 On other occasions, he did knowingly drive Department vehicles without a valid driver's license and received Department discipline for that offense.

2.3 There is a pattern of concealing or misrepresenting relevant and material information regarding the work requirements of a Seattle Firefighter.

2.4 Few tasks in City service are as demanding and as dangerous as being a firefighter or as important to the public safety. Teamwork among the crew and informed judgment by those in charge is essential. A firefighter, who fails to disclose his or her infirmities that may affect his or her performance in an emergency may, under the hazardous conditions of a fire, put his or her own safety at unnecessary risk, endanger other firefighters, and most importantly, impair the ability of the Department to protect the health and safety of the public.

### III. CONCLUSIONS OF LAW

3.1 Gregory Fletcher is a civil service employee with the rank of firefighter. The Commission has jurisdiction over the subject matter of and the parties, to this action.

3.2 The notice and appeal to this Commission have been brought by the respective parties in a timely fashion.

3.3 Pursuant to the City Charter and Ordinance (SMC 4.08.100) the tenure of every person holding civil service employment shall be only during good behavior and acceptable performance. Firefighters may be suspended or discharged, only for cause.

3.4 The Department's investigation and disciplinary processes were conducted in an unbiased manner.

3.5 The decision of the Chief to discharge Firefighter Fletcher was made in good faith.

3.6 Firefighter Fletcher's concealment about his medical condition prevented his Lieutenant-in-charge and his Battalion officers from being fully informed about his limitations and it created unnecessary risks to himself and others that fortunately did not occur. Such a concealment or misrepresentation is so serious as to warrant a discharge and in future cases that discipline may be applied. The good order and discipline of the Fire Department cannot allow such misrepresentations or treat them as minor infractions.



3.7 The Commission has authority to order reinstatement without back pay:

a) Seattle Municipal Code (SMC) Section 4.08.070 H empowers the Commission "To hear and determine appeals or complaints respecting the administration of the chapter." SMC Section 4.08.100 authorizes the Commission in lieu of affirming the removal to modify an order "...by directing a suspension, without pay, for up to thirty days, and subsequent restoration to duty, or demotion in classification grade or pay." It requires immediate reinstatement only in those instances when the Commission finds that the Department's action was not made in good faith for cause. It makes no mention of back-pay as such.

b) The common law and labor arbitration cases established that back pay upon reinstatement is an equitable remedy. It is usually granted upon reinstatement, but may be denied when the circumstances so warrant. The doctrine of the common law and labor arbitrations applies here. Silence in an ordinance is usually taken as adopting the common law. SMC § 4.08.100 D made proceedings before the Commission an alternative to arbitration under collective bargaining agreements, and to serve that purpose the Commission needs, and by implication has, the authority of an arbitrator to reinstate without back pay.

c) Chapter 4.08 is intended to establish a civil service system that substantially accomplishes the purposes of RCW 41.08. Article XVI § 3 of the City Charter; SMC § 4.08.020. A civil service commission under RCW 41.08.090 may order reinstatement without back pay. The power to order reinstatement without back pay assists the Commission in accomplishing its duties, and in making Chapter 4.08 substantially accomplish the purposes of RCW Chapter 41.08, as contemplated by Article XVI § 3 and SMC § 4.08.020.

d) SMC § 4.08.100 A empowers the Commission to order a "...demotion in classification, grade or pay..." Denial of back pay upon reinstatement is a lesser included alternative to demotion in pay.

e) The Commission has from time-to-time denied back pay while ordering reinstatement, e.g., Police Officers Gregory Drury and Jerauld Bickle. The City Council has not amended Section 4.08.100 since its adoption in 1978 and thereby acquiesced in the Commission's interpretation of its authority.

3.8 The events leading to Firefighter Fletcher's discipline occurred prior to the date that the Americans with Disabilities Act applied to City service and that act does not apply to this case.

3.9 Reinstatement without back pay is the most appropriate discipline. It is in line with discipline applied in other cases for comparable conduct.



4.0 Discharge would be disproportionate to the discipline imposed in other similar cases. Awarding back pay for the period before Firefighter Fletcher's reinstatement would not reflect the seriousness of his conduct and would not be fair. It would be substantially more lenient than the discipline in other cases for comparable conduct. The Commission is not --- and should not --- be forced to make an either/or election between two choices that create inequity by being either too strong or too lenient when compared with past practices.

4.1 Based on the independent determination of the Commission, there was good cause for the imposition of discipline against Firefighter Fletcher but the Discharge action is amended to include the following order.

#### IV. ORDER

4.1.1 Sections 4.1.1 and 4.1.2 of the Commission's order, dated November 15, 1990 is revised as follows: Gregory Fletcher is hereby restored without back pay to duty in the classification of firefighter, effective November 15, 1990, the date of the Commission's order. This discipline conforms with Commission's precedents.

4.1.2 Section 4.1.3 of the Commission's Order, dated November 15, 1990 is withdrawn.

4.2 This order supersedes the Commission's order, dated November 15, 1990.

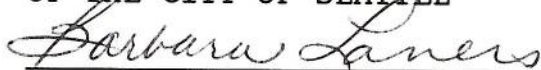
#### V. RECOMMENDATIONS TO THE DEPARTMENT

5.1 While we find that the signature clause on the preemployment medical form in use in 1980 did require full disclosure by the applicant, the Commission recommends that the medical history form be redesigned. It should include a clause stating that misrepresenting, falsifying, concealing, withholding or disguising information will subject the employee to discharge at any time during his/her employment.

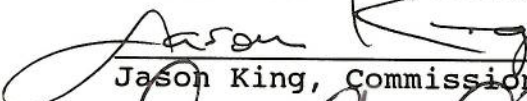
5.2 The charging officer should not also conduct the investigation for disciplinary purposes.

Signed at Seattle, Washington on November 10, 1993.

PUBLIC SAFETY CIVIL SERVICE COMMISSION  
OF THE CITY OF SEATTLE

  
Barbara Laners, Chairperson

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Daniel Oliver, Commissioner