

The Commonwealth of Massachusetts
Commission Against Discrimination
One Ashburton Place, Boston, MA 02108
Phone: (617) 994-6000 Fax: (617) 994-6024

JUL 03 2013

- DISMISSAL and NOTIFICATION of RIGHTS -

To: Scott J. Ogden

G.L.c. 4, § 7(26)(c)

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Case: Scott J. Ogden v. Town of Tisbury - Tisbury Police
Department

MCAD Docket Number: 12BEM00152

EEOC Number: 16C-2012-00753

Investigator: Sarah Biglow

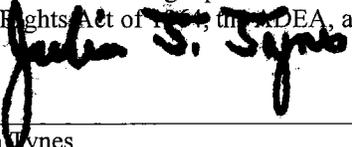
Your complaint has been dismissed for the following reasons:

- The facts alleged fail to state a claim under any of the statutes the Commission enforces.
- Respondent employs less than the required number of employees.
- Your complaint was not timely filed with the Commission, i.e. you waited too long after the date(s) of the alleged discrimination to file. Because it was filed outside the time limit prescribed by law, the Commission cannot investigate your allegations.
- You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conference, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your complaint. You have had more than 30 days in which to respond to our written request.
- The Commission's efforts to locate you have been unsuccessful. You have had at least 30 days in which to respond to a notice sent to your last known address.
- The Respondent has made a reasonable settlement, offering full relief for the harm you alleged. 30 days have expired since you received actual notice of this settlement offer.
- The Commission issues the following determination. Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes a violation of the statutes. This does not certify that the Respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this complaint.
- Other (briefly state)

- NOTICE of APPEAL -

If you wish to appeal the dismissal of your complaint and believe that the above stated reason for dismissal is incorrect, you may appeal to this Commission within 10 days after receipt of this notice. You or your attorney must make your appeal of the dismissal in writing to the appeals clerk of this Commission. **Attention: Nancy To.**

All employment complaints, where applicable, were filed by the MCAD with the Equal Employment Opportunity Commission. Our finding, which will be forwarded to its area office, JFK Federal Building, Boston, MA will be given substantial weight provided that such findings are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the ADA, and/or the ADA, as amended.


Julian Vynes
Investigating Commissioner

6-28-13
Date

Cc:

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Town of Tisbury - Tisbury Police Department
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INVESTIGATIVE DISPOSITION

Case Name: Scott J. Ogden v. Town of Tisbury - Tisbury Police
Department
MCAD Docket No.: 12BEM00152
EEOC Docket No.: 16C-2012-00753
No. of Employees: 20 +
Investigator: Sarah Biglow, Compliance Officer
Recommendation: **Lack of Probable Cause**

Introduction

On January 25, 2012, Complainant filed a charge against Respondent, alleging retaliation in violation of MGL c.151B, section 4, paragraph 4 and Title VII of the Civil Rights Act of 1964.

Complainant's Allegations

Complainant was hired in December 2002 and last held the position of Patrolman. Complainant alleges he was listed as a witness in another officer's April 2009 MCAD sexual harassment complaint. Complainant alleges he supported this officer prior to filing of the complaint, as far back as March 2008. Complainant also alleges in January 2009, he received a suspension and other discipline in retaliation for supporting the other officer. Complainant alleges he grieved the discipline and it was overturned. Complainant alleges since January 2009, he has been scrutinized more than other officers, including being questioned about camera footage on his dashboard camera in October 2009 and being accused of erratically driving his personal vehicle in December 2009.

Complainant alleges on November 29, 2011, the Chief of Police informed another officer that there would be job openings in the next three years and that Complainant's name specifically came up as an officer who would no longer be employed. Complainant alleges in July 2011, he was involved in responding to a domestic violence scene with two other officers who were involved in supporting the officer who filed the harassment complaint with the Commission. Complainant alleges he was questioned and asked to provide a report of what happened and that on December 8, 2011 he was given a 5-day suspension for the incident in July. Complainant alleges he was never told he could be subject to discipline. Complainant also alleges on December 27, 2011, a less senior officer was promoted to the position of Acting Sergeant. Complainant alleges on December 30, 2011, the Chief reinstated annual evaluations for all officers and on January 23, 2012, Complainant received a poor evaluation. Complainant alleges he should have been evaluated on his anniversary date of December 1, 2012.

Respondent's Position

Respondent denies Complainant's discrimination allegations.¹

Summary of Investigation and Analysis

Retaliation

Complainant alleged Respondent retaliated against him for supporting a fellow officer's sexual harassment complaint. Specifically, Complainant alleged he received a suspension in January 2009, and was disciplined in October 2009 regarding camera footage in his cruiser and for erratically operating his personal vehicle in December 2009. Complainant alleged he was given a 5-day suspension in December 2011, a less senior officer was promoted on December 27, 2011 to Acting Sergeant and he received a low performance evaluation on January 23, 2012.

Respondent stated that it was not aware of Complainant being involved in the other officer's MCAD sexual harassment complaint. Even if Complainant did cooperate with an MCAD investigation, Complainant failed to provide sufficient evidence to show that Respondent was aware of this cooperation, or that its actions were based on retaliatory animus. Additionally, the only discipline Complainant received between this other officer filing her complaint and his December 2011 suspension was a general counseling for operating his department vehicle without sirens during a call in October 2009. Complainant cited a suspension from January 2009 however it was later removed from his file in April 2009 after Complainant challenged the discipline and brought it to the Board of Selectmen. The Board agreed to remove the discipline from Complainant's file. Complainant stated during the Investigative Conference that another officer had not been disciplined for failing to attend to a mental health patient. Respondent stated to the Commission that this officer was given a general counseling, the same response Complainant received for the October 2009 incident.

Complainant and other officers were involved in an incident during July 2011, for which they were later disciplined. Respondent provided copies of its domestic violence and sexual assault policies which lay out how officers should respond in such situations which were in place at the time of the July 2011 incident. Investigation reveals sufficient evidence to support that Complainant violated department policy regarding response to domestic violence, including when children are involved. Respondent also provided a copy of the arbitration decision which upheld Respondent's suspension action and found that Complainant's actions violated department policy.

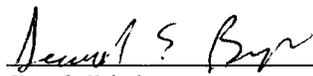
¹ On May 11, 2012, the Respondent's Position Statement and Exhibits were placed under Protective Order, and made unavailable for public inspection. Since this Investigative Disposition may be subject to public records requests, the Respondent's Position has been omitted.

Respondent provided copies of Complainant's 2011 evaluation in which he was rated as 92 out of 125, in the average range. Respondent asserts this is in line with Complainant's previous evaluations. Upon review of the evaluations provided, the Commission learned that Complainant's prior ratings were consistent with what he received in 2011. In his rebuttal, Complainant raises that he was given 20 bonus points on his 2011 evaluation which would have been 72 otherwise. Upon further investigation, Respondent stated that officers can receive bonus points for notable accomplishments and that Complainant received additional points on his 2011 evaluation for his work in the community relating to the Drug Task Force and his outreach to the local school.

Respondent provided legitimate reasons for Complainant's discipline and Complainant failed to show that any of the actions taken were either temporally or causally connected to any alleged protected conduct. Complainant fails to show that Respondent held retaliatory animus towards him. Therefore, a finding of lack of probable cause is recommended.

Conclusion

A finding of Lack of Probable Cause is recommended against Town of Tisbury - Tisbury Police Department for discrimination based on retaliation.



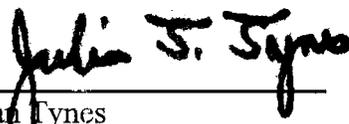
Sarah Biglow
Compliance Officer



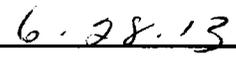
Lila Roberts
Enforcement Advisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B of the Massachusetts General Laws, and in conformity with the foregoing findings, I have this day determined that a **Lack of Probable Cause** is being rendered on this case. Complainant will be afforded the opportunity to appeal this decision.



Julian Tynes
Investigating Commissioner



Date