

NO. 348482

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

JOHN INGERSOLL,

Appellant,

v.

CITY OF MATTAWA,

Respondent.

BRIEF OF RESPONDENT CITY OF MATTAWA

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I. INTRODUCTION

In this case, the City of Mattawa decided to terminate the employment of one of its police officers. The officer sought review of that decision through the Mattawa Civil Service Commission and then appealed to Superior Court. The Civil Service Commission found that the decision to terminate was not made for political or religious reasons and was made in good faith for cause. The Superior Court found that there was sufficient evidence to support the Commission's determination and that the Commission had not acted arbitrarily or capriciously.

II. RE-STATEMENT OF THE ISSUES

- A. Whether the Mattawa Civil Service Commission acted in an arbitrary and capricious manner when it duly considered, and made its decision based on, a careful consideration of the evidence presented?
- B. Whether the Civil Service Commission acted arbitrarily and capriciously when it considered Dr. Mays' psychological fit for duty conclusions where it was the Appellant who moved for the admission of Dr. Mays' report and where there was no objection to its admission on any basis, hearsay or otherwise?
- C. Whether the Civil Service Commission acted arbitrarily and capriciously when it found that Dr. Mays' report corroborated its findings based on the evidence presented?
- D. Whether the Civil Service Commission acted arbitrarily and capriciously when it did not turn a blind eye to, but instead

considered the behavior and demeanor of the Appellant during the course of the Civil Service Commission hearings, and whether such consideration by the Commission denied Appellant due process?

- E. Whether an internal inconsistency exists in the Commission's decision that somehow renders the Commission's decision arbitrary and capricious?

III. RE-STATEMENT OF THE CASE

In June, 2013 the City of Mattawa, through its then-Mayor Judy Esser,¹ made the decision to terminate John Ingersoll's employment with the City as a police officer because he was found to have violated Civil Service Rule X, Section 2, Cause of Disciplinary Action, subsections A, B, C, and K. CP 76 – 81, CP 976 – 977. Those subsections provide:

A: Incompetency, inefficiency, or inattention to or dereliction of duty.

B: Violation of law, or official rules or regulations, or orders, or failure to obey any lawful or reasonable direction when such failure or violation amounts to insubordination or serious breach of discipline.

C: Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of public or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself; or any

¹ Mayor Esser was in failing physical condition during the course of the Civil Service Commission hearing on this matter. She testified at the hearing against her doctor's advice and has since passed away.

willful violation of the provisions of Chapter 41.23 RCW or of these rules and regulations.

K: Any other act or failure to act which in the judgment of the Civil Service Commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

Mr. Ingersoll appealed the City's decision to terminate his employment to the City of Mattawa's Civil Service Commission, which is duly authorized, pursuant to express statutory authority, to investigate and conduct a hearing and to take evidence concerning whether the City acted properly in terminating Mr. Ingersoll's employment.

The Civil Service Commission convened a hearing that commenced on October 1, 2013 and was conducted over several days. During the hearing, Mr. Ingersoll asserted that two of the Civil Service Commissioners (comprising the three-member Commission) should have been disqualified from hearing the matter due to conflicts of interest or on appearance of fairness considerations. The Commission found that these Commissioners had no disqualifying conflicts of interest and that the appearance of fairness doctrine was not implicated; regardless, they could continue to hear the matter through the application of RCW 42.36.090.²

² On appeal to Superior Court, Ingersoll argued that the Civil Service Commission could not hear the matter due to actual conflict or an appearance of fairness problem. The Superior Court, on summary judgment, ruled against the Ingersoll on this issue. Ingersoll has now abandoned this argument.

After deliberation, the Commission issued its written decision on December 3, 2013 upholding the Mayor's decision to terminate. CP 8 – 10. The Commission concluded, among other things, that the “preponderance of the evidence establishes that as of June 3, 2013, Mr. Ingersoll was not fit for duty as a police officer and termination of his employment was appropriate under Civil Service Rule X, Section 2, subsections A, C, and K.” CP 10.

The Commission made specific findings as follows:

1. The conduct of Mr. Ingersoll during the hearing showed an immaturity and inconsistency regarding your ability to control your actions and emotions. This included comments during witness testimony, attempts to stare down citizens at the hearing and providing testimony totally denying any wrongdoing on his part.
2. Mr. Ingersoll's lack of acceptance that his wife and children were in a safe house, the location of which would not be disclosed, based upon his law enforcement training, should have been an acceptable explanation. The very nature of a safe house is anonymity. The Commission finds Mr. Ingersoll's conduct in attempting to locate the safe house was poor judgment and led to the making of a false missing person report. This conduct is consistent with findings in a fitness-for-duty examination regarding self-indulgent behaviors

and inconsistency regarding his position as a police officer.

3. Mr. Ingersoll's conduct in an incident involving two Hispanic gentlemen at Ken's Corner also evidences poor judgment. The Commission finds the incident shows a disregard for the boundaries between his private capacity and that of a police officer. Recognizing a police officer has police powers 24 hours of the day, does not justify seizing property and then leaving the scene of an incident without calling for assistance by an on-duty police officer. This conduct evidences the type of inconsistent police performance referenced in the fitness-for-duty letter of April 3, 2013.
4. Substantial testimony was heard regarding the testing on a DUI case. The Commission does not find the testing protocol to be the relevant issue; however, the Commission does find the testimonies of the other officers present indicate Mr. Ingersoll lacked self-control in dealing with this matter, which again evidences behavior described in the fitness-for-duty exam.
5. The Commission finds the report of Dr. Mays to be credible and the assessment to be consistent with conduct as stated above.

At the time that Mr. Ingersoll filed his appeal to the Mattawa Civil Service Commission, its rules provided at Rule X, Section 4, "[t]he

Commission's investigation shall be confined to the determination of the question of whether such termination . . . was or was not made for political or religious reasons and was or was not made in good faith for cause, and shall be conducted according to the provisions of RCW 41.12." CP 1599 – 1600.

The applicable RCW provision relating to Civil Service for City Police mirrors the Commission's rule and provides at RCW 41.12.090, in pertinent part, concerning the Commission's role as follows: "[t]he investigation shall be confined to the determination of the question of whether such . . . discharge was or was not made for political or religious reasons and was or was not made in good faith for cause."

The Civil Service Commission found that the decision was not based on political or religious reasons, that it was made in good faith, and that it was made for good cause. CP 8 – 10. The Civil Service Commission's decision is substantially supported by the documentary evidence, the evidence adduced during the hearing, and on the Commission's own observations of Mr. Ingersoll during the course of the hearing before it.

The evidence produced at the hearing demonstrated that the Chief of Police investigated several areas of concern related to Mr. Ingersoll's service as a police officer for the City of Mattawa and that the Chief ultimately made a recommendation to Mayor Esser that she should conduct

a pre-termination (Loudermill) hearing. CP 1834:19 – 1835:5³. The Mayor, based on that recommendation, issued a notice of pre-termination hearing to Mr. Ingersoll on May 16, 2013. CP 76 – 81. The Loudermill notice advised Mr. Ingersoll of all the charges against him, and set a date and time for a hearing where Mr. Ingersoll and/or any legal representative on his behalf could present information and argument to rebut the charges against him. Id.

The Loudermill hearing was conducted on May 23, 2013. At that time, Mayor Esser, based upon her consideration of what Mr. Ingersoll provided to rebut the charges, and again, based on the recommendation of the Chief, decided to exercise her authority as the Mayor to terminate and did terminate Mr. Ingersoll. CP 1837:14 – 1839:5. A written notice of termination was provided to Mr. Ingersoll dated June 3, 2013. CP 82 – 83.

During the hearing before the Commission the Chief of Police testified that his paramount reason for recommending termination of Mr. Ingersoll was Mr. Ingersoll's dishonesty, which he described as occurring from the "get go," and as pervasive, which he believed impacted Mr. Ingersoll's ability to effectively serve as a law enforcement officer for the

³ The Record of the Proceedings (Transcript) before the Civil Service Commission is found at CP 1608 – 2252. There is an unofficial (not certified version of the transcript) appearing at CP 1250 – 1564. This unofficial transcript was not relied upon by the Superior Court in reviewing this matter.

City of Mattawa. CP 1935:1 – 16, CP 1931:1 – 3, 13 – 17.

The Chief indicated that the other areas of concern also factored into his recommendation but were “percentages” in the overall picture, and that the overriding concern related to Mr. Ingersoll’s dishonesty. Ultimately, the Chief, in his professional opinion, felt that Mr. Ingersoll could not be trusted and, as a consequence, could not serve as a police officer holding public trust. CP 1938:25 – 1940:22.

Concerning specific allegations set forth in the May 16, 2013, pre-termination notice, the following evidence was produced during the hearing:

1. Dishonesty on the job application.

Mr. Ingersoll applied for the position of police officer with the City of Mattawa in May 2009. CP 87 – 89. Mr. Ingersoll made statements within that job application that were not truthful. He failed to disclose that he had received a memorandum from Major David M. Germani entitled, “SPECIAL BOARD RESULTS, (TERMINATION NOTICE),” advising him that he was being terminated from his former position with the King County Sheriff’s Office. CP 90 – 91. Major Germani informed Mr. Ingersoll as follows:

In accordance with Field Training Manual Section 15.03.130, a Special Board was convened at Precinct 3 on Monday April 20,

2009, at 1200 hours, for the purpose of evaluating your performance to date in the PTO Program, and to determine an appropriate course of action. Present at this meeting were the Precinct Commander, Precinct FTO Captain, Precinct FTO Sergeant, and all your MPO and Deputy trainers. After a thorough review and discussion of your overall performance by all of your trainers, it was the unanimous consensus that your overall performance does not meet PTO program standards, and that you would not benefit from further training. It was further recommended that your employment with the Sheriff's Office be terminated.

CP 90, CP 1882:16 – 1883:22.

Despite the clear language of the Germani memorandum, Mr. Ingersoll testified that two of his nine training officers thought that his typing speed was not fast enough to timely complete police reports and that his typing ability was the basis for his recommended termination. Mr. Ingersoll had no explanation concerning the determination made that he “would not benefit from further training.” CP 2083:3 – 14, CP 2087:4 – 15, CP 90.

Mr. Ingersoll resigned in lieu of that termination. He failed to disclose that he “resigned in lieu” of termination from the King County Sheriff's Office; instead, he indicated that he left the position in good standing. CP 89, CP 1882:9 – 22, CP 2158:4 – 19.

Mr. Ingersoll alleged, without any corroboration, that he advised former Police Chief Jensen of the foregoing and that the former Chief told Mr. Ingersoll that he could indicate on his job application that he left his prior job in good standing and that the former Chief was not concerned about Mr. Ingersoll's termination/resignation from the King County Sheriff's Office. CP 2087:9 – 15.

Providing false information on a job application is sufficient basis alone to justify termination. Mr. Ingersoll signed the job application, which specifically provides:

I certify that all answers given by me are true, accurate and complete, I understand that the falsification, misrepresentation or omission of fact on this application (or any accompanying or required documents) will be cause for denial of employment or immediate termination of employment, regardless of when or how discovered.

CP 89.

2. Following a psychological examination of Mr. Ingersoll, a doctor determined that Mr. Ingersoll may not prepare accurate reports.

The Chief testified that part of the results from a "fit for duty" examination of Mr. Ingersoll corroborated his conclusion that Mr. Ingersoll cannot be trusted and is inherently dishonest. The Chief quoted from Dr. Mark Mays' fitness for duty evaluation as follows concerning Mr.

Ingersoll's ability to be truthful:

They lead me to conclude that John Ingersoll has a Personality Trait Disturbance, a pattern or behavior in which he behaves in impulsive, self-indulgent, and short-sighted ways, a pattern of behavior which makes him more likely than most people, particularly people in law enforcement, to not maintain appropriate limits, maintain consistent and appropriate behavior, show emotional constraint, or provide accurate reports. . . .

CP 1939:8 – 1940:22.

Additionally, Alan Key, an investigator engaged through the City's insurance risk pool, CIAW, concluded:

Overall Officer Ingersoll has shown a pattern of questionable behavior. In the City of Mattawa, due to having very few officers, it is critical that an officer be self-motivated and able to work with little to no supervisions. Officer Ingersoll's conduct suggests he is in need of significant supervision and monitoring. Additionally, the allegations related to his integrity, inter-departmental relationships, alcohol abuse, and emotional instability raise huge red flags regarding his credibility and ability to perform the essential functions of his job.

CP 389 – 390.

3. Domestic violence and abuse.

Regarding domestic violence, Tomi Ingersoll, Mr. Ingersoll's estranged wife, testified about an incident where Mr. Ingersoll became

enraged and physically pinned her to a bed. After pinning her there, he screamed profanities at her and later brandished a pistol, placing it to his own head while announcing, “I can’t deal with this. We’re going to fix this.” CP 1631:5 – 16. Tomi Ingersoll also testified concerning other incidences of abuse and testified that the Superior Court had issued an order preventing unsupervised visits by Mr. Ingersoll with their children based on its findings of such abuse. RP 1633 – 1635.

4. Use of position for personal gain or advantage and use of position to intimidate and threaten persons for personal gain or advantage.

The evidence demonstrated that Mr. Ingersoll used his position as a police officer to attempt to gather information for his personal benefit and that he used his position to intimidate and threaten various persons to gain personal advantage. Mr. Ingersoll attempted to gather information about his wife’s whereabouts through use of official police means for his own personal use and not for any legitimate police work. Investigator Alan Key found:

Officer Ingersoll’s wife and children had left him on or about May 25, 2012, and Officer Ingersoll filed a missing person’s report on June 8, 2012. The evidence discovered showed that by this time, Officer Ingersoll knew his wife and children left him and went to an emergency shelter. In fact, before the end of the night on May 25, 2012, Officer Ingersoll used the resources afforded him as

a Mattawa Police Officer to locate the shelter and made attempts to contact his wife. The Grant County Sheriff's Office was so concerned about this that they encrypted all information related to this situation, in an effort to prevent Officer Ingersoll from using the Spillman information system to locate his wife and children.

CP 388.

The Investigator further found:

Using or abusing his position or authority for personal purposes:

This allegation was verified by Sheriff's personnel who claimed Officer Ingersoll used the City's computer system and the County's MACC dispatch and 'Spillman' information system, along with his position as a police officer in an attempt to locate his wife after she left him. Officer Ingersoll denied engaging in these inappropriate behaviors.

CP 389.

Mr. Ingersoll himself testified that he called Chief Jensen at about 9:00 p.m. on May 25 to let him know that Mrs. Ingersoll was missing. Mr. Ingersoll testified that at that time Chief Jensen advised him that Mrs. Ingersoll and the children were at a safe house. CP 2200:21 – 2201:5.

By the time Mr. Ingersoll filed the missing person reports on June 8 (14 days after Mrs. Ingersoll left), Mr. Ingersoll knew that Mrs. Ingersoll and the children were not missing but simply had left the home. Mr.

Ingersoll himself testified that he received communication from his brother-in-law indicating that Mr. Ingersoll's daughter needed her asthma medication. Mr. Ingersoll prepared to deliver that medication but then received communication that the family had been moved to, according to both Mr. Ingersoll and his father, the "wet" side, which they took to mean the west side of the state. CP 2207:11 – 2208:23.

Mr. Ingersoll attempted to intimidate and threaten his neighbor, Mr. Richard Long, into signing an affidavit in Mr. Ingersoll's divorce case. In response, Mr. Long called the police and a Grant County Deputy Sheriff responded. The Sheriff's Deputy prepared an incident report. CP 563 – 565. Later, Mr. Long filed a written complaint with the City of Mattawa concerning Mr. Ingersoll's actions. He indicated that Mr. Ingersoll tried to pressure him into signing a declaration for Mr. Ingersoll's divorce proceeding and that when he refused to do so, Mr. Ingersoll issued threats against him and his family. CP 560 – 561.

Mr. Ingersoll offered the testimony of Jason Luurs to rebut this assertion. Mr. Luurs testified that he was there with Mr. Ingersoll on the day in question and that Mr. Long brought up the declaration on his own and became belligerent without any provocation. Mr. Luurs later testified that they were there for the purpose of asking Mr. Long to sign an affidavit. CP 2030:18 – 24. Mr. Ingersoll testified that he had documents in hand but

simply went by to say hello to Mr. Long. He testified that Mr. Long saw the documents and became angry without any provocation. CP 2220 – 2224. Further, Mr. Luurs admitted in his testimony that he “flipped” off and had a heated exchange with Mr. Long. CP 2023:17 – 2024:4.

5. Sexual harassment.

The evidence demonstrated that Mr. Ingersoll has previously received training related to sexual harassment. The evidence demonstrated that Mr. Ingersoll engaged in a pattern of inappropriate sexual harassment directed at City staff. Robin Newcomb, the City Clerk/Treasurer and Office Manager, and two female City Hall Staff members, Maybeline Panteleon and Anabel Martinez, testified that Mr. Ingersoll engaged in conduct that made them feel uncomfortable. They testified that as a group they formed a “pact” whereby they agreed not to be left alone after 4:00 p.m. each day as Mr. Ingersoll was scheduled to come by City Hall. CP 1787:16 – 25, CP 1739:10 – 13.

Robin Newcomb testified that Mr. Ingersoll showed a YouTube video of himself dressed only in Speedo-type swimwear to female office staff. Annabel Martinez also testified to the same. CP 1737:22 – 1738:16, CP 1799:1 – 21. They all testified that this made them uncomfortable. Mr. Ingersoll admitted showing the video, but only because he was proud of being on the “Discovery Channel.” Remarkably, although Mr. Ingersoll

was so proud of his moment of fame on the Discovery Channel, he did not offer to show the video to the Commission for its review.

One female office staffer, Anabel Martinez, testified that Mr. Ingersoll tried to get her to play a solitaire game on his phone, which used cards depicting Mr. Ingersoll unclothed from the waist up. CP 1798:9 – 20, CP 1738:22 – 1739:5, CP 1785:1 – 10. Mr. Ingersoll admitted having such a card game loaded onto his phone, but asserted that the pictures are so tiny that one could not see them from a distance. Notably, Ms. Martinez apparently had a close view of the phone and the phone app at some point as she accurately described what the cards looked like.

Anabel Martinez testified that Mr. Ingersoll made repeated advances toward her and repeatedly asked her for her phone number, which made her uncomfortable. Maybeline Pantaleon testified that Mr. Ingersoll asked her on numerous occasions for Anabel Martinez's personal phone number. CP 1784:13 – 24. Mr. Ingersoll testified that, yes, he did request Anabel's number, but only because he needed her for work-related interpretation. He acknowledged, however, that Ms. Martinez is not a certified interpreter for purposes of providing official interpretation related to police work.

Robin Newcomb testified that Mr. Ingersoll repeatedly asked her to touch his "abs," i.e. abdominal area. This made her uncomfortable. CP 1737:8 – 20. Ms. Pantaleon testified that she was present and overheard the

interaction where Mr. Ingersoll demanded that Ms. Newcomb touch his “abs.” CP 1783:18 – 1784:12, CP 1798:21 – 25. Although the issue of whether this could be accomplished while Mr. Ingersoll was wearing a bulletproof vest was raised, Mr. Ingersoll later testified that he was not on duty the day of this incident. He testified, however, that it was Robin Newcomb who reached out and kind of jokingly punched him in the abs.

All three females at City Hall testified that Mr. Ingersoll made comments about his mother commenting about how “well-endowed” he was. CP 1738:18 – 21. Mr. Ingersoll did not address this in his testimony.

6. Insubordinate and unprofessional conduct.

The evidence demonstrated that Mr. Ingersoll is volatile, unprofessional, and insubordinate. Mr. Ingersoll’s interaction with his superiors, his co-workers and with the public is volatile, unpredictable, and unprofessional. This was corroborated by his demeanor exhibited during the course of the Civil Service Commission hearing.⁴

⁴ Appellant may argue that there is no evidence of such demeanor during the hearing before the Civil Service Commission, as it is not apparent in the transcript of the proceeding. This Court should take cognizance of the fact, however, that actions are not readily subject to audio recording but still may be viewed and perceived by the trier of fact. Mr. Ingersoll roamed about the hearing chambers in an effort to intimidate persons within, particularly those scheduled to testify. See, for example, CP 1875:20 – 1876:7. Mr. Ingersoll is noted as the “unidentified speaker.” Mr. Ingersoll’s counsel at the hearing incited Mr. Ingersoll’s behaviors to some extent through his conduct. For example, Ingersoll’s counsel challenged a witness to a “fight” on the record – see CP 1699:5 – 13.

7. False Missing Person Reports and failure to withdraw those reports.

Mr. Ingersoll himself testified that he called Chief Jensen at about 9:00 p.m. on the day that his wife and children left, to let the Chief know what was going on and to take some time off. Mr. Ingersoll testified that at that time Chief Jensen advised him that Mrs. Ingersoll and the children had left for a safe house. CP 2200:21 – 2201:5.

Clearly, by the time Mr. Ingersoll filed the missing person reports on June 8, 2012 (14 days after Mrs. Ingersoll left), Mr. Ingersoll knew that Mrs. Ingersoll and the children were not missing but simply had left the home.

Mr. Ingersoll submitted missing person reports despite having information that his wife and children were not missing, but in fact had voluntarily left the home and traveled to a safe house. CP 551 – 553; CP 2207:11 – 2210:6. In the missing person reports, under the heading “Circumstances of Disappearance,” Mr. Ingersoll wrote “unknown.” At this time he knew that his wife and children had left him for a safe house and he knew how safe houses operated. CP 551 – 553, CP 2211:9 – 25. Mr. Ingersoll then signed the document attesting as follows: “I certify that the above information is true and correct to the best of my knowledge and the information herein has been given by me to this police agency.” CP 551 – 553.

Even after Mr. Ingersoll received marital dissolution paperwork from his wife, Mr. Ingersoll did not withdraw the missing person reports. CP 2212:2 – 8. Mr. Ingersoll testified that he never withdrew the missing person reports but instead Sergeant Lewis, with the Moxee Police Department, had the reports withdrawn. CP 2212:9 – 12.

8. Off duty conduct amounting to inappropriate conduct with citizens.

The evidence demonstrated that Mr. Ingersoll engaged in off duty misconduct through inappropriate contact with citizens. Mr. Ingersoll testified that he had an altercation with two Hispanic individuals whom he first saw inside a store purchasing beer, and then later saw standing near a car wash with their purchase in hand but bagged. He testified that this occurred while he was off duty. He testified that although they had not started to drink the beer in public, he nonetheless approached them to advise them not to drink in public. At that point no crime was being committed that would justify any police contact with the individuals. CP 2165:15 – 2169:24.

Mr. Ingersoll testified that the individuals did not comply but instead questioned him concerning who he was. Mr. Ingersoll testified that he told them he was the police and showed them his badge, and testified that since they had asked for his identification he might as well ask them for their

identification. CP 2169:17 – 25. At this point, the individuals still had not committed any crimes and were not required to produce any identification for Mr. Ingersoll. CP 2170 – 2171.

Mr. Ingersoll testified that when the individuals went to produce identification, one of the individuals produced two identification cards (Mr. Ingersoll could not recall what type of ID these were) and handed one to his companion. Mr. Ingersoll testified that he could see what he believed were two fake social security cards in one gentleman's wallet. He demanded that the individuals turn over the social security cards to him. There is conflicting testimony concerning whether he demanded that the entire wallet be turned over to him or whether he demanded just the social security cards. At this point, these individuals still had not engaged in any criminal activity. They had not used any false identification in an attempt to mislead anyone. *Id.*

Mr. Ingersoll testified that the individuals gave him the social security cards but then tried to get them back. Mr. Ingersoll testified that he employed an arm brush to push aside the arm of one person attempting to grab the cards and then left the area. There is conflicting testimony concerning whether there was an arm brush or whether Mr. Ingersoll punched the individual in the chest. CP 397, CP 1849:20 – 22.

Mr. Ingersoll testified that he then came to the station where he

advised Officer Valdivia of what had occurred. Meanwhile, according to the testimony of Officer Valdivia and Officer Chiprez, they received a call from individuals wishing to report a theft. They learned that the persons reporting the theft were actually the persons from whom Mr. Ingersoll had just taken the social security cards. CP 1695:6 – 1697:24. According to the persons reporting to the officers, Mr. Ingersoll displayed a badge and a weapon and demanded to see their identification, demanded, and then took their wallets, including the social security cards. CP 1848:20 – 1849:22. They further reported that when one of them attempted to retrieve the wallets, Mr. Ingersoll struck that person in the chest with his fist and left the scene. CP 1849:20 – 22. When Officers Valdivia and Chiprez realized that Officer Ingersoll was involved they notified their Chief and took no further action on the case. CP 1697:25 – 1699:21, CP 1850:1 – 15.

Mr. Ingersoll testified that it was his intention to go to the office and get an on-duty officer to assist with the fake social security card matter. He testified that he left the area because he was not equipped to properly handle the situation and that he believed he could follow up on the matter at a later time. Mr. Ingersoll testified that although his father was in a car about 20 - 30 feet away from the incident, he did not take a witness statement concerning what his father witnessed. Mr. Ingersoll testified that he does not know whether the two individuals were ever charged with any crime.

CP 2170:8 – 25; RP 2171:1 – 2174:17.

Mr. Ingersoll's off duty conduct was inappropriate under the circumstances. Officers Valdivia and Chiprez both testified that they do not engage in police enforcement work while off duty unless it is necessary to address serious criminal conduct. CP 1699:23 – 1700:11. Off-duty officers should call for on-duty officer assistance under the circumstances. CP 1873:3 – 18. To rebut this, Mr. Ingersoll offered what he claimed was current SOP (Standard Operating Procedure) for the Police Department that he asserted stands for the proposition that an off-duty officer may take enforcement action if necessary under the circumstances. Here, however, no crime was being committed that would justify the initial contact. Police are prohibited by the 4th Amendment of the United States Constitution from making any intrusive contact without probable cause to believe that a crime is being committed. Throughout the entire episode, no crime was ever committed.

9. False reporting of and filing of DUI charge.

The evidence demonstrated that Mr. Ingersoll intentionally disregarded four valid DUI samples that showed a person he arrested was under the legal limit. CP 2191:4 – 19, CP 2193:10 – 25. Upon arrest, that person was deprived of his right to be free from unlawful or warrantless seizure. Mr. Ingersoll testified that he administered the BAC test two times

and achieved four separate samples, all falling below .08, the legal limit. Officer Valdivia testified that he was present when the BAC test was administered, that the arrested person provided valid samples each time, and that the machine registered those samples as valid by providing a numerical printout of the alcohol level and an audible sound indicating receipt of a valid breath sample. CP 1680:5 – 1682:17, CP 1685:17 – 1686:13. Officers Valdivia, Chiprez, and Chief Turley all testified that where a person does not provide an adequate sample the machine will indicate an “invalid sample.” The machine will only provide a numerical readout if a valid sample is obtained. CP 1683 – 1685. If a valid sample is obtained, a person cannot be charged with a DUI based on a “refusal.” CP 1928:19 – 25.

Officer Valdivia testified that Mr. Ingersoll was “pretty close to being infuriated with this guy.” CP 1693:14 – 16. Officer Chiprez testified that Mr. Ingersoll was “red-faced” and “yelling” at the arrested person, Mr. Degante. CP 1853; RP 1854:1 – 8.

On cross examination, Mr. Ingersoll admitted that the machine will not provide a numerical readout for a breath sample that is too short (the sample has to be between 10-15 seconds in duration) and that any obstructions or other associated issues would also result in an invalid sample reading.

The evidence demonstrated that Mr. Ingersoll then falsified his officer's report by indicating that the wrongfully arrested person refused to provide breath samples. He did so despite receiving four separate, valid samples that all were within the .07 range. If Mr. Ingersoll is to be believed that a person can trick the BAC machine into giving a false reading, then the person Mr. Ingersoll was testing must have been extremely accurate in his ability to trick the machine as it provided four readings that were nearly identical.

The evidence demonstrated that Mr. Ingersoll then filed charges against the wrongfully arrested individual for the criminal charge of DUI and, as a consequence, the person was subjected to a license revocation hearing before the Department of Licensing. The charge of DUI carries with it the possibility of up to 364 days in jail and up to a \$5,000 fine. Subjecting a person who was not legally drunk to a DUI charge puts that person at peril of losing his right to liberty. Indicating that a person refused to submit to the BAC test is significant because it subjects that person to a license revocation hearing where a refusal to submit to a BAC breath test results in the revocation of a person's privilege to drive for one year. CP 2197:22 – 2198:8, CP 1855:1 – 11.

Under the Civil Service Rules and under the applicable RCW provisions, the Civil Service Commission is required to engage in an

“investigation” concerning Mr. Ingersoll’s termination. Mattawa Civil Service Rule X, Section 4, Rule XI, Sections 1 – 4; RCW 41.12.090. Here, the Civil Service Commission specifically made additional findings based on its direct observation of Mr. Ingersoll during the course of its investigation/hearing. The Civil Service Commission found “[t]he conduct of Mr. Ingersoll during the hearing showed an immaturity and inconsistency regarding your ability to control your actions and emotions. This included comments made during witness testimony, attempts to stare down citizens at the hearing and providing testimony totally denying any wrongdoing on his part.” Related to this finding the Commission also found “. . . the report of Dr. Mays to be credible and the assessment to be consistent with conduct as stated above.” CP 10.

The Commission, acting as the trier of fact, is in the best position to observe the demeanor of the witnesses, and in this case, the demeanor of Mr. Ingersoll during the course of this lengthy Civil Service Commission hearing.

Mr. Ingersoll appealed the Civil Service Commission’s decision to Superior Court. The Superior Court engaged in a three-day review of the record and then considered lengthy oral argument from both sides. The Superior Court then issued its written decision on August 10, 2016 (CP 3396 – 3398), which was incorporated into a Court order on September 16, 2016.

The Superior Court found in pertinent parts as follows:

[T]he Commission did make the following findings:

1. The conduct of Mr. Ingersoll during the hearing showed an immaturity and inconsistency regarding your (sic) ability to control your (sic) actions and emotions. This included comments during witness testimony, attempts to stare down citizens at the hearing and providing testimony totally denying any wrongdoing on his part.
2. Mr, Ingersoll's lack of acceptance that his wife and children were in a safe house, the location of which would not be disclosed, based upon his law enforcement training, should have been an acceptable explanation. The very nature of a safe house is anonymity. The Commission finds Mr. Ingersoll's conduct in attempting to locate the safe house was poor judgment and led to the making of a false missing person report. This conduct is consistent with findings in a fitness-for-duty examination regarding self-indulgent behaviors and inconsistency regarding his position as a police officer.
3. Mr. Ingersoll's conduct in an incident involving two Hispanic gentlemen at Ken's Corner also evidences poor judgment. The Commission finds the incident shows a disregard for the boundaries between his private capacity and that of a police officer. Recognizing a police officer has police powers 24

hours a day, does not justify seizing property and then leaving the scene of an incident without calling for assistance by an on-duty police officer. This conduct evidences the type of inconsistent police performance referenced in the fitness-for-duty letter of April 3, 2013.

4. Substantial testimony was heard regarding the testing on a DUI case. The Commission does not find the testing protocol to be the relevant issue; however, the Commission does find the testimonies of the other officers present indicated Mr. Ingersoll lacked self-control in dealing with this matter, which again evidences behavior described in the fitness-for-duty exam.
5. The Commission finds the report of Dr. Mays to be credible and the assessment to be consistent with conduct as stated above.

Dr. Mays explained in his opinion as follows:

Clinical psychologists measure things, much as one might measure how high it is an individual can jump. It is up to others to set the bar over which one must jump. My data indicates that John Ingersoll has measurable and likely ongoing difficulties in functioning, compatible with some of the allegations and reports made about his interpersonal difficulties, poor reputation, and aspects of his behavior which others describe as problematic but which he denies. Regardless of his history, the evaluation suggests the likelihood for future difficulties in consistent and appropriately functioning as a law enforcement officer (sic) are of a level as to

disqualify him from service is an administrative, not psychological, decision. I can say that most law enforcement agencies reviewing these results would consider John Ingersoll not to be qualified as fit for duty.

While Mr. Ingersoll may have a constitutionally protected property right in continued employment, see Danielson v. Seattle, 108 Wash.2d 788, 742 P.2d 71 (1987), the City of Mattawa notified him of the reasons for discharge and gave him an opportunity to respond to them. This satisfied any procedural due process to which he was entitled. See Hoflin v. Ocean Shores, 12 Wash. 2d 113, 847 P.2d 428 (1993).

As to sufficiency of the evidence upon which the Commission relied, their findings of fact are uncontested and accepted by the Court as verities. While the Commission did not find any specific instance of misconduct, it found Mr. Ingersoll had engaged in a pattern of conduct which displayed poor judgment, impulsivity, and lack of self-control. This was reflected in his psychological profile and he exhibited these traits even in his hearing. As a uniformed police officer, Mr. Ingersoll occupied a position of the utmost authority and responsibility. His actions, even when off duty, reflected not only on the City of Mattawa, but also on the law enforcement community at large.

Our government has a continuing need to ensure the fitness of its law enforcement officers. Having determined that Mr. Ingersoll was unable to control his impulses, the City of Mattawa was entitled to remove him from the force. This court finds that it was entitled to determine Mr. Ingersoll's

discharge was made in good faith for cause.
His appeal is denied.

CP 3397 – 3398.

Mr. Ingersoll now appeals to this Court.

IV. ARGUMENT

A. Standard of Review.

The judiciary will only review the actions of an administrative agency to determine if its conclusions may be said to be, as a matter of law, arbitrary, capricious, or contrary to law. Benavides v. Civil Service Commission of Selah, 26 Wn. App. 531, 534, 613 P.2d 807 (1980), citing; Helland v. King County Civil Service Comm’n, 84 Wn.2d 858, 529 P.2d 1058 (1975).

Appellate courts, in exercising independent judgment, “. . . apply the same standard of review directly to the record considered by the trial court.” Benavides, Id.

A Civil Service Commission’s decision will not be disturbed on appeal unless the decision is “arbitrary and capricious.” State ex rel. Perry v. Seattle, 69 Wn.2d 816, 420 P.2d 704 (1966); Butner v. Pasco, 39 Wn. App. 408, 693 P.2d 733 (1985).

RCW 41.12.090 provides:

The court of original and unlimited jurisdiction in civil suits shall thereupon

proceed to hear and determine such appeal in a summary manner; PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, or demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. (Emphasis in the original).

B. The Mattawa Civil Service Commission Did Not Act in an Arbitrary and Capricious Manner Because It Duly Considered the Evidence Presented to It and Made Its Decision Based on a Careful Consideration of the Evidence.

Ingersoll argues that the Civil Service Commission's decision affirming the Mayor's decision to terminate him was arbitrary and capricious "as a whole" Ingersoll asserts, "Ingersoll does not argue that the Commission failed to interpret correctly the evidence or improperly weighed the evidence. . . . Rather, Ingersoll challenges the Commission's decision as a whole to show that it was arbitrary and capricious as a matter of law." Appellant's Brief at 18. In reviewing this matter, this Court should conclude that the decision "as a whole" is not arbitrary and capricious because it is clear that the Civil Service Commission provided "due consideration" to all of the evidence before it. This is demonstrated by the record it produced and by its decision.

The Court in State ex rel. Perry v. City of Seattle, 69 Wn.2d 816, 821, 420 P.2d 704 (1966) noted:

A decision by an administrative commission is not arbitrary and capricious simply because a trial court and this court conclude, after reading the record, that they would have decided otherwise had they been the administrative commission. Where a tribunal has been established to hold inquiries and make decisions as to whether an employee shall be dismissed, review by the judiciary is limited to determining whether an opportunity was given to be heard and whether competent evidence supported the charge. State ex rel. Schussler v. Matthiesen, 24 Wash.2d 590, 166 P.2d 839 (1946), and cases cited therein. The crucial question is whether or not there is evidence to support the commission's conclusion. A finding or a conclusion made without evidence to support it, is, of course, arbitrary. State ex rel. Tidewater-Shaver Barge Lines v. Kuykendall, 42 Wash.2d 885, 891, 259 P.2d 838 (1953); but it is not arbitrary or capricious if made with **due consideration** of the evidence presented at the hearing. See Miller v. City of Tacoma, 61 Wash.2d 374, 390, 378 P.2d 464 (1963), and cases cited. The instant case meets this test. Neither the trial court nor this court can substitute its judgment for the independent judgment of the civil service commission. State ex rel. Wolcott v. Boyington, supra. (Emphasis supplied).

The Civil Service Commission gave due consideration to the evidence presented to it. It made determinations to dismiss some of the allegations that the City asserted based upon the evidence produced. The Civil Service Commission specifically addressed allegation 1, certain

paragraphs of allegation 2, and allegation 7 found in the pre-termination hearing notice provided to Mr. Ingersoll. With respect to the remaining allegations the Commission concluded, in summary fashion, “. . . the Commission finds these allegations were not supported by sufficient evidence or were known by the department and no prompt disciplinary action taken, the allegations are unrelated in time and content.” CP 9.

The Civil Service Commission then concluded, “[a]lthough the allegations set forth in these paragraphs do not support termination of employment for misconduct, the conduct in question does provide background evidence regarding fitness-for-duty and, for purposes of this decision, are considered by the Commission.” *Id.* Thus, the Commission dismissed some allegations for lack of sufficient evidence, but at the same time acknowledged that there was sufficient evidence supporting some of the allegations but that prompt disciplinary action was not taken at the time of that alleged misconduct. The Commission found that evidence was corroborated by Dr. Mays’ fitness-for-duty conclusions.

The Commission also made very specific factual findings as follows⁵:

1. The conduct of Mr. Ingersoll during the hearing showed an immaturity and inconsistency regarding your ability to control your actions and emotions. This

⁵ These findings all appear at CP 9 – 10.

included comments during witness testimony, attempts to stare down citizens at the hearing and providing testimony totally denying any wrongdoing on his part.

This finding is supported by the record developed before the Commission and also reflects the Commission's direct observations of Mr. Ingersoll, his conduct, and his demeanor at the hearings.

2. Mr. Ingersoll's lack of acceptance that his wife and children were in a safe house, the location of which would not be disclosed, based upon his law enforcement training, should have been an acceptable explanation. The very nature of a safe house is anonymity. The Commission finds Mr. Ingersoll's conduct in attempting to locate the safe house was poor judgment and led to the making of a false missing person report. This conduct is consistent with findings in a fitness-for-duty examination regarding self-indulgent behaviors and inconsistency regarding his position as a police officer.

This finding is amply supported by the record as discussed above. The Commission's conclusion that its finding is consistent with the finding in the fitness-for-duty examination is also supported in the record.

3. Mr. Ingersoll's conduct in an incident involving two Hispanic gentlemen at Ken's Corner also evidences poor judgment. The Commission finds the incident shows a disregard of the boundaries between his private capacity

and that of a police officer. Recognizing a police officer has police powers 24 hours of the day, does not justify seizing property and then leaving the scene of the incident without calling for assistance by an on-duty police officer. This conduct evidences the type of inconsistent police performance referenced in the fitness-for-duty letter of April 3, 2014.

This finding is again, amply supported by the record as discussed above.

The Commission's finding is consistent with the finding in the Mays fitness-for-duty examination.

4. Substantial testimony was heard regarding the testing on a DUI case. The Commission does not find the testing protocol to be the relevant issue; however, the Commission does find the testimonies of the other officers present indicate Mr. Ingersoll lacked self-control in dealing with this matter, which again evidences behavior described in the fitness-for-duty exam.

This finding is substantially supported in the record as discussed above. The Commission's finding is consistent with finding in the fitness-for-duty examination.

5. The Commission finds the report of Dr. Mays to be credible and the assessment to be consistent with conduct as stated above.

This finding is supported in the record. Dr. Mays' report was admitted as part of the evidence at the behest of Mr. Ingersoll and there was

no objection to its admission. At the commencement of the hearing before the Commission, each party submitted binders containing all of the documentary exhibits that each sought to be admitted into evidence. Ingersoll's documentary evidence appears in the Clerk's Papers as CP 575 – 1107. Dr. Mays' report is listed as Ingersoll's Exhibit No. 41 – see CP 577. The report was made a part of the record and appears at CP 872 – 887. The parties agreed that the documentary evidence each proposed for admission would be admitted absent any objections. CP 1616:2 – 15.

Ingersoll cannot now argue and has waived any argument concerning the admissibility of the report that he offered into evidence. The Commission's findings were not challenged and became verities on appeal. “. . . the Commission's unchallenged findings are verities on appeal.” Butner v. City of Pasco, 39 Wn. App. 408, 411, 693 P.2d 733 (1985).

Concerning the evidence that was deemed remote in time but still background evidence informing the decision of the Commission, no Washington court has addressed the issue, but there is a case arising out of Iowa that provides instructive analysis. In Civil Serv. Comm'n v. Johnson, 653 N.W.2d 533, 538 (Iowa 2002), the court held that an officer's prior disciplinary record may be considered “in determining whether the cumulative effect of an officer's misconduct is sufficient to warrant discharge.” That court also noted “protection of the public and furthering

the general good must be our paramount concern.” Johnson, 352 N.W.2d at 258. Here, the evidence, going back to when Mr. Ingersoll initially lied on his job application for the position demonstrated a pattern of behavior and conduct that is not fit for an officer of the law. This is corroborated by independent reports prepared by trained professionals and doctors. The City of Mattawa has an obligation to the public to ensure that its officers are fit for duty. Retaining an officer that is not fit for duty exposes the public to potential harm and exposes the City to potential liability for negligent retention. Given the evidence presented to the Civil Service Commission, it made the appropriate decision in good faith and for cause. Certainly, the decision was not arbitrary and capricious even though a court may disagree with it.

The Civil Service Commission considered the evidence in reaching its findings, conclusions, and decision. Ingersoll never challenged any of the Commission’s findings. The Commission’s decision is not arbitrary and capricious as a whole, or in any part.

C. The Civil Service Commission Did Not Act Arbitrarily and Capriciously When It Considered Dr. Mays’ Psychological Fit for Duty Conclusions Where the Appellant Moved for the Admission of the Dr. Mays’ Report and Where There was No Objection to Its Admission on Any Basis, Hearsay or Otherwise.

Although Ingersoll never challenged any of the Commission’s findings and has asserted that he “does not argue that the Commission failed

to interpret correctly the evidence or improperly weighed the evidence” (Appellant’s Brief at 18), he now argues that the Commission could not rely on Dr. Mays’ report to support its findings and decision because “no witness corroborated Dr. Mays’ unsubstantiated report or otherwise supported the Commission’s decision that Ingersoll was mentally unfit for duty” (Appellant’s Brief at 26-27).

This argument is quite remarkable since it was Ingersoll himself who introduced Dr. Mays’ report into evidence. It is also quite remarkable since the Commission made specific findings based on the evidence, which the Commission found were consistent with and corroborated Dr. Mays’ assessment, and those findings were not challenged. Ingersoll, having introduced the report into evidence and having not challenged the Commission’s findings supporting or corroborating the Mays report, has waived his ability to object now to the weight that the Commission provided to the Mays report.

Further, there was no evidence offered to refute the professional opinions set forth in Dr. Mays’ report. Mr. Ingersoll argued to the Superior Court (at page 8 of his Superior Court Appellate Brief), that a psychologist (Dr. Richard Stride) who examined him with respect to custody and parenting came to a different conclusion. The Stride custody evaluation has no relationship to and is entirely dissimilar to any evaluation of fitness-for-

duty to serve as a police officer. Moreover, the findings made and the conclusions reached in the Stride report actually corroborate and strengthen the findings that Dr. Mays made in his report. Stride concluded, among other things:

According to test results, interview, and personal history John may be in some denial about the extent of his potential to act out in socially inhibited ways at times

It is my clinical opinion that John uses denial as first line of defense against unwanted emotions and/or thoughts, and then resorts to projection. Both of these defense mechanisms are utilized to deal with past and present problems. Although he may appear on the surface to be passive there is evidence of a covert need to be in control that comes out (sic) various behavioral manifestations. John does not readily show these tendencies but they come out in behavioral and subconscious projections onto others. These projections may be manifested toward Tomi or other persons who may thwart his efforts.

CP 994.

D. The Civil Service Commission Did Not Act Arbitrarily and Capriciously When It Found that Dr. Mays' Report Corroborated Its Findings Based on the Evidence Presented.

As indicated above, the Civil Service Commission found that evidence produced at the hearing was corroborated by and consistent with Dr. Mays' conclusions reached in his report. Where the Commission's findings (which were not challenged) are supported in the record and where

they appear consistent with conclusions reached in the Mays report, which was introduced into evidence by Ingersoll and accordingly admitted by the Commission without objection from the City, it is not arbitrary or capricious for the Commission to find consistency in the evidence. As indicated above, under such circumstances the Court cannot substitute its decision for that of the Commission when the Commission has duly considered the evidence.

E. The Civil Service Commission Did Not Act Arbitrarily or Capriciously When It Considered the Behavior and Demeanor that the Appellant Exhibited During the Course of the Civil Service Commission Hearings in this Matter and Appellant Was Not Denied Due Process.

Ingersoll argues that the Commission could not consider his demeanor and conduct during the hearing when it made its decision because his demeanor and conduct during the hearing were not included in the Mayor's decision to terminate. Ingersoll argues the Commission's consideration of his demeanor and conduct at the hearing as additional evidence denies him due process. He argues that the Commission failed to notify him that his demeanor and conduct at the hearing could be relied upon by the Commission in making its decision. As the Court is aware, a trier of fact necessarily examines the demeanor, conduct, and behavior of a witness who appears before it to testify. A trier of fact cannot divorce itself from the observations it makes during a hearing before it. In fact, such observations often inform the trier of fact on issues of credibility and as to

the proper weight, if any, to provide to any particular witness's testimony. Ingersoll would have the Commission turn a blind eye to his inappropriate behavior during the course of the hearing.

The issue here, however, is whether the Commission could find that his demeanor and conduct at the hearing corroborated its findings that Civil Service Rule X, Section 2, subsections A, C, and K (incompetency, dishonesty, intemperance, discourteous treatment, acts injurious to public service, failure to properly conduct self, any other act sufficient to show offender to be unsuitable or unfit person to be employed in public service, among other things) had been violated and corroborated the conclusions reached in Dr. Mays' report. There is no Washington case on point in this regard. Ingersoll has cited no cases supporting the proposition that the Commission could not consider his demeanor, but instead cites to cases for the general proposition that due process requires that an individual be apprised of the allegations supporting the charges brought against him or her. In this matter, however, absent the ability to see the future, neither the City nor the Commission could foresee that Ingersoll would act in such a manner during the course of the hearing; thus, any prior notice was not possible.

The Commission is charged with conducting an "investigation" and one method by which it does so is through its hearing process. Matters

coming before the Commission's attention at the hearing are part of the evidence that the Commissioners consider during their investigation, including the actions and conduct of the appellant. The Commission cannot turn a blind eye and disregard its observations. There are cases that are analogous and may be instructive to the Court in this regard. For example, in an attorney discipline case, In re Disciplinary Proceedings of Sandra L. Ferguson, 170 Wash.2d 916, 2346 P.3d 1236 (2011), the Court noted that the Hearing Examiner who conducted the evidentiary hearing on the disciplinary matter could consider the demeanor of Ferguson at the hearing as a factor for the imposition of a sanction (suspension) as follows:

First, she expresses no remorse and consistently claims she has done nothing wrong and the case against her should be dismissed. In response to WSBA's investigation, she lashed out with a grievance of her own against another attorney. In addition, she displayed a hostile and obstructive demeanor before the hearing officer.

Ferguson, at 945.

The Commission properly considered Ingersoll's demeanor and conduct, particularly where such demeanor and conduct corroborates the evidence before it and is consistent with the Commission's conclusions. Regardless, even without the Commission's cognizance of the conduct and

demeanor of Ingersoll during the hearing, far more than sufficient evidence remains in this record to justify the Commission's decision.

F. The Commission's Decision Is Internally Consistent.

Ingersoll argues that there is internal inconsistency in the Commission's decision and that, therefore, it is arbitrary and capricious. First, there is no internal inconsistency and second, even if there was, it does not render the Commission's decision arbitrary and capricious.

The bases for termination are set forth in the Civil Service Rules. The pre-termination notice sets forth allegations that would support termination based on the Civil Service Rules. It is not necessary for the City to prove every factual allegation in order to support a Commission finding that a Civil Service Rule was violated. All that is necessary is for the Commission to find evidence supporting a finding of, for example, dishonesty or intemperance under Rule X, Section 2, subsection D, or any other act sufficient of itself to show the subject to be unfit for employment as a police officer under Rule X, Section 2, subsection K. Ingersoll argues that the Commission found that none of the conduct alleged to have occurred was supported by the evidence. This is not how the Commission ruled. Here, the Commission acknowledged that there was insufficient evidence to support some of the alleged conduct, but not all of it. It then made specific factual findings in support of the allegations against Mr.

Ingersoll, and Mr. Ingersoll failed to challenge those findings on appeal.

There is no internal inconsistency and the unchallenged findings the Commission did make fully support a conclusion that Civil Service Rules were violated.

Even if the structure of its decision is viewed as internally inconsistent, there is still sufficient and substantial evidence within the record, which the Civil Service Commission duly considered, supporting its findings and the conclusion that termination was proper.

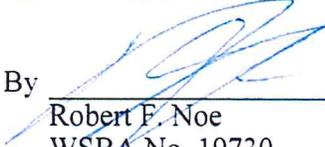
V. CONCLUSION

The Civil Service Commission carefully considered the evidence presented to it over a five-day hearing. Where it carefully considered the evidence and made a decision based on that evidence, its decision cannot be deemed arbitrary and capricious. The Commission could consider and give weight to Dr. Mays' report, particularly where conclusions within the Mays' report are corroborated by other evidence in the record and where it corroborates evidence within the record. Further, the report was entered into evidence at the behest of appellant. The Commission could not turn a blind eye to the conduct and demeanor it saw during the hearing and could properly consider the same when rendering its decision. The evidence taken as a whole supports the Commission's decision regardless of any perceived inconsistencies in its written decision.

Unless the Commission has acted arbitrarily and capriciously, there is no basis under which this Court should find the decision to be in error. The Commission's decision should be affirmed.

RESPECTFULLY SUBMITTED this 14 day of July, 2017.

KENYON DISEND, PLLC

By 

Robert F. Noe
WSBA No. 19730
Attorneys for Respondent City of
Mattawa

DECLARATION OF SERVICE

I, Sheryl Loewen, declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 6th day of July, 2017, I served a true copy of the foregoing *Brief of Respondent City of Mattawa* on the following counsel of record using the method of service indicated below:

Jason W. Anderson Rory C. Cosgrove Carney Badley Spellman, P.S. 701 Fifth Avenue, Suite 3600 Seattle, WA 98104-7010	<input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: anderson@carneylaw.com; cosgrove@carneylaw.com <input checked="" type="checkbox"/> E-filing through Washington State Appellate Courts Portal
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 10th day of July, 2017, at Issaquah, Washington.



Sheryl Loewen

KENYON DISEND, PLLC

July 06, 2017 - 1:24 PM

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