

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. SUCV2010-04704-A

DENNIS HANSBURY,
Plaintiff

NOTICE SENT
01.04.12
L.C.C.+P.
S.C.P.
MASS. A.G.
C.B.

V.

JAN 05 2012

DEPARTMENT OF CORRECTION and
CIVIL SERVICE COMMISSION,
Defendants

(LAT)

MEMORANDUM OF DECISION ON PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS

The plaintiff, Dennis Hansbury ("Hansbury"), brings this action against the defendants, the Department of Correction ("DOC") and the Civil Service Commission ("Commission") seeking review pursuant to G. L. c. 30A § 14 of a decision of the Commission affirming the DOC's implementation of a thirty day suspension against Hansbury. The Commission's decision upheld the DOC's determination to suspend Hansbury for lying to a DOC investigator during an investigation into whether or not Hansbury had assaulted an inmate. For the reasons set forth as follows, the plaintiff's motion is **Denied**; and the defendants' request to enter judgment on the pleadings on their behalf is **Allowed**.

Factual Background

The administrative record before the court shows the following facts. Hansbury began working for the DOC on November 3, 1991 at the Massachusetts Correctional Institution in Concord ("MCI Concord"). He has been disciplined by the DOC on several occasions. On February 12, 1992, the DOC terminated Hansbury's employment because he failed to notify

DOC officials of his arrest in Maine for driving under the influence. Hansbury's arrest for this violation had occurred prior to his employment at the DOC but the trial took place after he started working for the DOC. Hansbury had informed his DOC supervisor of the trial, and his termination was rescinded on June 25, 1992. On October 10, 1998, Hansbury received a formal letter of reprimand for leaving work before the end of his shift. On April 23, 1999, the DOC suspended Hansbury for one day for leaving work a half an hour early without permission. Hansbury received another formal letter of reprimand on August 25, 1999, when the DOC found contraband in his personal bag. The DOC terminated Hansbury a second time on November 15, 1999, for failing to report that he had received a package from an inmate's family at his home and had then introduced contraband into MCI Concord. The DOC reinstated Hansbury nine months later without back pay, and this decision was upheld by the Commission.

On December 18, 2003, Hansbury worked his regular shift as a Recreation Officer II in the gym at MCI Concord. The gym was "particularly loud and chaotic" that evening because one hundred and eighty-nine inmates had been removed from their cells so that corrections officers could search the housing units at the facility. At the end of recreation period, the inmates became disorderly and Hansbury ordered them to form a single line. When several inmates attempted to cut the line, Hansbury sent them back and a number of inmates became agitated. Later that evening, at approximately 8:40pm, CC, an inmate, went to the Health Services unit and alleged that a corrections officer had punched him in the face. Another inmate, GW, informed Captain Zamaitis, of the DOC, that a recreation officer had punched CC, and Captain Zamaitis relayed this information to Inner Prison Security ("IPS") Sergeant Charles Hill. Sergeant Hill and another IPS officer, William Farley, interviewed CC and observed that he had a small laceration

on his inner upper lip. After initially denying any incident with an officer, CC then told them that he had called the recreation officer "a piece of shit" for not returning his ID card, per usual gym procedure. According to CC, Hansbury called him back into the gym and then Hansbury punched CC in the mouth.

The next day, IPS Sergeant Anthony Ciccone began an internal investigation. When Sergeant Ciccone interviewed Hansbury, Hansbury stated that he did not recognize a photograph of CC, and he also now denied that he had had any contact with CC that night. Ciccone examined Hansbury's hands and found a small abrasion on his index finger "consistent to a hangnail." Hansbury's testimony conflicted with the testimony of two other correctional officers interviewed during the investigation. Officer Hoey, who was at the door of the gym, reported that he had observed Hansbury call two inmates back to the gym, neither of whom was CC. Officer Larson told Officer Hoey the comment that CC had made about Hansbury, and Hoey had relayed that information to Hansbury who then called CC back to the gym. However, Officer Larson stated that he did not see subsequent interaction between CC and Hansbury because he was outside of the gym at that time. Sergeant Ciccone interviewed a number of officers who had been posted near the Health Services Unit, and they all testified that CC had looked agitated and was claiming that he had been hit in the mouth. Additionally, Officer Rose Boucher and Officer Collins interviewed, JR, an inmate, who told them that CC had told him that a recreational officer had punched him in the mouth.

Sergeant Ciccone issued an internal investigation report which was forwarded to DOC Commissioner Kathleen Dennehy. The report stated that Hansbury had lied to the investigator when he had denied having had any interaction with CC on December 19, 2003. Superintendent

Peter Pepe Jr. of the DOC determined that Hansbury's deliberate act of misleading the investigator cast doubt on Hansbury's credibility, and the injury to CC's upper lip suggested that Hansbury had assaulted CC. After a hearing, the DOC recommended that Hansbury receive a thirty day suspension for lying to investigators. On July 13, 2004, Commissioner Dennehy adopted the recommendation and notified Hansbury of his suspension. Hansbury appealed his decision to the Commission, which conducted a hearing on June 5, 2008. On November 23, 2010, a majority of the Commission, affirmed the DOC's thirty day suspension of Hansbury, with two of the five members dissenting.

Legal Standard

The standard of review which governs appeals of a decision by an administrative agency under c. 30A requires that it be set aside only if based upon error of law or if unsupported by substantial evidence. *Dube v. Retirement Appeal Board*, 50 Mass. App. Ct. 21, 23 (2000). In undertaking its review, the court is limited to the administrative record, c. 30A § 14(7), and the party appealing the agency decision bears the burden of establishing the invalidity of that decision. *Merisme v. Board of Appeal on Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1983). Further, a reviewing court is not permitted to substitute its own judgment for that of the agency. *Southern Worcester County Vocational Regional High School v. Alcoholic Beverages Control Comm.*, 386 Mass. 414, 420-21 (1984). A reviewing court may not displace an agency's choice between two fairly conflicting views, even though the court would justifiably have made a different choice were it deciding the matter *de novo*. *Zoning Board of Appeals of Wellesley v. Housing Appeals Comm.*, 385 Mass. 651, 657 (1982). Rather, the court in conducting its review must give due weight to the experience and specialized knowledge of

the agency, as well as the discretionary authority conferred upon it, and should defer to the agency on questions of fact and inferences drawn from the record. *Cobble v. Commissioner of the Dep't of Social Services*, 430 Mass. 385, 390 (1999), citing *Flint v. Commissioner of Pub. Welfare*, 412 Mass. 416, 420 (1992).

Ruling

This court's review of Hansbury's allegation against the Commission's final decision is based exclusively on the contents and analysis of the Commission's decision, since Hansbury has failed to provide any transcript of the hearing which would set forth the testimony upon which the administrative decision was based. Under the G. L. c. 30A standard of judicial review, the reviewing court must examine the entire record including evidence presented as detailed in the transcript to determine whether the agency based its decision on substantial evidence. *Covell v. Dep't of Social Services*, 439 Mass. 766, 782 (2003). The requirement that the party challenging the agency's decision submit a transcript of the hearing to support its claim that the evidence was insufficient is not a "hypertechnical requirement." *Id.* Based on Hansbury's failure to present the hearing transcript, any challenge to the Commission's decision addressed to this court is by necessity circumscribed, and indeed, the court is warranted in denying Hansbury's challenge outright. *Id.* at 748. Notwithstanding this procedural hurdle which limits the court's ability ever to conclude that the Commission's ruling did not rest on substantial evidence or was arbitrary and capricious, examination of the Commission's decision indicates that it was not erroneously rendered under the standard applicable pursuant to G. L. c. 30A.

The Commission's final decision was based on substantial evidence. The decision concluded that the DOC met its burden of proof to establish just cause for disciplining Hansbury.

The Commission's majority decision clearly stated that the evidence did not establish that Hansbury had physically mistreated an inmate on December 18, 2003, but the evidence did support the conclusion that Hansbury had lied during the investigation of that alleged incident. Specifically, the Commission examined the detailed investigatory report of Sergeant Ciccone, and focused on the contradictory statements made during interviews with Hansbury, Officer Hoey and Officer Larson. In his interview, Hansbury claimed he did not recognize a photograph of CC and he also asserted that he had not called anyone back to the gym once the inmates had exited. Officer Larson's responses to questions in his interview directly contradicted Hansbury's statements. Officer Larson identified CC in a photograph as the inmate who called Hansbury a "piece of shit" and recalled that the officer posted closest to the gym door had informed Hansbury of what CC said. According to Officer Larson, he had seen Hansbury then call CC back into the gym, but he was outside of the gym when CC actually entered. The Commission concluded that these irreconcilably inconsistent statements from Officer Larson and Hansbury in Sergeant Ciccone's report were sufficient proof that Hansbury had not been truthful when he was interviewed the day after the incident. The Commission did not believe that Hansbury had not recognized CC's photograph and his denial of having interacted, an event which Officer Larson clearly described in his contemporaneous interview statements. That conclusion is supported by the evidence available to the Commission.

Substantial evidence warranted the Commission's decision since the conflicting accounts offered by the corrections officers suggest that Hansbury was untruthful in his interview with Sergeant Ciccone. This court may not displace the Commission's choice between the two fairly conflicting views of Hansbury and Officer Larson, even were it the case that this court might

have made a different assessment were it deciding the matter *de novo*. See *Zoning Board of Appeals of Wellesley*, 385 Mass. at 657. Rather, this court defers to the Commission's determination on questions of fact in light of the Commission's specialized knowledge and experience. See *Cobble*, 430 Mass. at 390. In short, the Commission, in denying Hansbury's challenge to his thirty day suspension, did not reach a decision that was unsupported by substantial evidence nor did it commit error of law.

Order

The plaintiff's motion for Judgment on the Pleadings is **Denied**; Judgment on the Pleadings enters for the defendants.

Date: December 30, 2011



Thomas A. Connors
Justice of the Superior Court