

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

**RIGAUBERT AIME,**  
*Appellant*

v.

**DEPARTMENT OF  
CORRECTION,**  
*Respondent*

**Case No.: D-11-352**

**DECISION**

The Civil Service Commission (Commission) voted at an executive session on November 1, 2012 to acknowledge receipt of: 1) the Recommended Decision of the Administrative Law Magistrate dated August 14, 2012; and 2) the Appellant's Objections to the Recommended Decision.

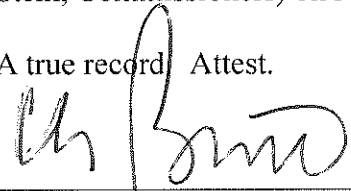
After careful review and consideration, the Commission voted to adopt the findings of fact of the Magistrate.

By a 4-1 vote, however, the Commission, pursuant to G.L. c. 31, § 43, voted to modify the penalty imposed from a 2-day suspension to a 1-day suspension. The reason for modifying the penalty is that DOC's decision to impose a 2-day suspension, as well as the magistrate's decision that the level of discipline was warranted, was based in part on a prior 1-day suspension which was overturned by the Commission in a prior decision.

The Appellant's appeal is hereby ***allowed in part*** and the 2-day suspension is hereby modified to a 1-day suspension.

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman - Yes; Ittleman, Commissioner - Yes; Marquis, Commissioner - Yes; McDowell, Commissioner - No<sup>1</sup>; and Stein, Commissioners) on November 1, 2012.

A true record Attest.

  
\_\_\_\_\_  
Christopher C. Bowman  
Chairman

<sup>1</sup> Commissioner McDowell voted no as she concluded that there was not just cause for disciplining the Appellant.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Regina Ryan, Esq. (for Appellant)

Earl Wilson, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-626-7200  
FAX: 617-626-7220  
WEBSITE: [www.mass.gov/dala](http://www.mass.gov/dala)

August 14, 2012

Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

**Re: Rigaubert Aime v. Department of Correction**  
**DALA Docket No. CS-12-190**  
**CSC Docket No. D-11-35**

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,

  
Richard C. Heidlage  
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Regina Ryan, Esq.  
Earl Wilson, Esq.

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**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

Division of Administrative Law Appeals

**Rigaubert Aime,**  
Petitioner

v.

Docket Nos. **CS-12-190**

(D-11-35 for Civil Service Commission)

**Department of Correction,**  
Respondent

Dated: **AUG 14 2012**

**Appearance for Petitioner:**

**Regina Ryan, Esq.**  
Louison, Costello, Condon & Pfaff, LLC  
101 Summer Street  
Boston, MA 02110

**Appearance for Respondent:**

**Earl Wilson, Esq.**  
Director of Employee Relations  
Department of Correction  
Industries Drive  
P.O. Box 946  
Norfolk, MA 02056

**Administrative Magistrate:**

**Sarah H. Luick, Esq.**

**Summary of Recommended Decision**

The Department of Correction had just cause for disciplining the Petitioner, a Correction Officer I, with a two day suspension without pay for failing to file a timely report about a breach of safety and security incident. He waited a week to file the report. The Petitioner could have but did not verbally present his concern of seeing two Correction Officers asleep on duty to his supervisors who were on the scene soon after his observations. The Petitioner has prior pertinent discipline that makes a two day suspension consistent with progressive discipline practices.

**RECOMMENDED DECISION**

Pursuant to G.L. c. 31, § 43, the Petitioner, Rigaubert Aime, is appealing the November

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30, 2011 decision of the Respondent, the Department of Correction (DOC), suspending him without pay for two days for failing to timely file a report on his observation of a breach of security and safety by two Correction Officers (CO) while he was on duty at the DOC Shattuck Hospital Correctional Unit (SHCU) on March 8, 2011. (Ex. 2.) The appeal was timely filed. (Ex. 1.) A hearing was held for the Civil Service Commission on April 27, 2012, at the offices of the Division of Administrative Law Appeals, 98 North Washington Street, 4th Floor, Boston, MA 02114.<sup>1</sup>

Various documents are in evidence. (Exs. 1 – 9.) The hearing was digitally recorded. The Respondent presented the testimony of Lieutenant Harold K. Wilkes, formerly with the DOC Internal Affairs Unit, and Sergeant Phillip Heeks of the DOC SHCU and the Petitioner's supervisor. The Petitioner testified on his own behalf, and presented the testimony of Lieutenant George Wells of the DOC SHCU. The Petitioner testified at his G.L. c. 31, § 41 Appointing Authority (Respondent) hearing held on October 24, 2011. The Respondent filed a pre-hearing statement. (Ex. A.) The parties entered into some stipulations of fact reached at the January 17, 2012 pre-hearing conference before the Civil Service Commission that were read into the record. Both parties made closing arguments on the record and filed briefs by June 6, 2012. The hearing was private as no written request was received for the hearing to be public.

### FINDINGS OF FACT

Based on the testimony and documentary evidence presented, and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. Rigaubert Aime has been a CO I with DOC from September 1995. He has spent his career at the DOC SHCU. This is a DOC unit within the Lemuel Shattuck Hospital

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<sup>1</sup> The Division of Administrative Law Appeals has since moved to One Congress Street, 11th Floor, Boston, MA 02114.

where inmates who need long term care are treated, and where inmates can receive outpatient services. CO Aime is knowledgeable about the responsibilities of a CO working at this facility, and has received various trainings and been provided with various rules, regulations, policies and post orders pertinent to his work (Exs. 6, 7 & 8. Testimony.)

2. CO Aime is aware of a chain of command to report verbally and in writing to his supervisors, any issues that pose a threat or potential threat to the safety and security of the DOC SHCU. (Exs. 6, 7 & 8. Testimony.)
3. CO Aime's record of discipline by March 29, 2011 included a one day suspension without pay for being insubordinate on March 8, 2011 to DOC Deputy Superintendent Manning when she sought his presence at a meeting in her office that was not disciplinary in nature. He would not go without union representation. This conduct was found to be in violation of Rule 6. Interpersonal Relationships Among Employees at (a) and (d), and at Rule 19. Administrative Procedures at (d). (This discipline is being appealed.) He received a letter of reprimand on December 7, 2010 for his conduct on December 10, 2009 in connection with an inmate's suicide attempt while he was assigned to that inmate on a "One-to-One Mental Health Watch." He was found not to have documented the incident. This conduct was found in violation of Rule 10. Institution Discipline at (c), in violation of Post Order #10, Section 1, One on One Coverage, and Section 4, Special Instructions. When the discipline was imposed, CO Aime was on an extended leave of absence but was informed of the letter of reprimand and its contents. CO Aime received a letter of reprimand for his conduct on June 19 and 21, 2009 involving a dispute with another CO. He was found to have violated the Rules and Regulations' General Policy, Rule 6. Interpersonal Relationships Among Employees at

(a), (b) and (c), and Rule 19. Administrative Procedures at (c). CO Aime received a five day suspension without pay on March 29, 2004 for his conduct on October 22, 2003 when he was found asleep in a chair outside his post. His sleeping was detected by a nurse who found the West Wing Gate at his post was left open. This was found "to be a serious breach of security," and conduct in violation of Rule 7. General Conduct-Employees at (c), Rule 12. Care, Custody, Safety and Good Order at (a), and Rule 13. Institution Requirements at (b). (Ex. 9.)

4. CO Aime had been experiencing difficulty working under the supervision of Lieutenant Frederick Hawkins. He felt he was singled out for disparate treatment by Lt. Hawkins. CO Aime had no significant issues with his first line supervisor, Sergeant Phillip Heeks. From the start of his interactions with Lt. Hawkins, CO Aime felt that Lt. Hawkins would inappropriately joke with him about his work performance. In September 2009, CO Aime was taken by ambulance from work with chest pains and high blood pressure. CO Aime understood, whether correct or not, that Lt. Hawkins had remarked when this occurred that if CO Aime didn't want to work at DOC SHCU he could go elsewhere. CO Aime told his coworkers what he understood Lt. Hawkins had said about him, but CO Aime never filed a report about the incident, never told this to his immediate supervisor, and never discussed the comment with Lt. Hawkins. CO Aime also felt that Lt. Hawkins had turned against him over an incident involving an inmate. CO Aime spoke with Captain Donna Driscoll within his chain of command at DOC SHCU about the difficulties he was having in working with Lt. Hawkins. She recommended that he keep a log of the issues he was having. He reported to Capt. Driscoll the disparaging comment he understood Lt. Hawkins had made when he was taken by ambulance from the facility.

CO Aime also felt disparate treatment from Lt. Hawkins in the summer of 2010 after Lt. Hawkins lost his election bid to become a union steward. He felt Lt. Hawkins was not just joking when he asked CO Aime why he had not voted for him. CO Aime told this account to Capt. Driscoll. CO Aime would not write a report about any particular encounter he had with Lt. Hawkins. He also did not report any of the incidents concerning Lt. Hawkins to Sgt. Heeks.<sup>2</sup> CO Aime claimed that his need to be on a two-month leave of absence due to anxiety and stress was due to the mistreatment he received at work from Lt. Hawkins. He was out from work November 19, 2010 until February 14, 2011. (Ex. 9. Testimony.)

5. When CO Aime returned to work, he was able to perform only limited assignments because he did not qualify to use a firearm. He was upset receiving the West Wing Gate assignment and felt Lt Hawkins was again mistreating him. Thereafter, he filed an MCAD complaint about his treatment at DOC. On March 1, 2011, Lt. Hawkins was doing his rounds and walked through CO Aime's post. He asked him how he was doing. CO Aime did not respond. Lt. Hawkins asked him again, explaining that he was asking him this question as his Shift Commander about any issues he was having at his post. CO Aime again did not respond. CO Aime did not respond because he felt Lt. Hawkins had not asked him this question in good faith and was just trying to verbally belittle him. He felt Lt. Hawkins had no regard for how well he was doing in this assignment because Lt. Hawkins had assigned it despite knowing CO Aime did not want the assignment. As a

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<sup>2</sup> Sgt. Heeks gave believable testimony, consistent with his investigation interview answers (Ex. 4.), that CO Aime had not told him about specific incidents of mistreatment by Lt. Hawkins or that Sgt. Heeks ever corroborated such claims by agreeing with CO Aime that Lt. Hawkins had been mistreating him. For instance, CO Aime claimed that in and around October 2010, Sgt. Heeks had confirmed that Lt. Hawkins was out to break CO Aime psychologically and that Sgt. Heeks reported to CO Aime that management was aware of this threat and would do nothing. Sgt. Heeks credibly denied telling this to CO Aime.



result, Lt. Hawkins conducted a survey of the West Wing Gate area and left. (Ex. 4. Testimony.)

6. CO Aime was working at the West Wing Gate on the 11:00 PM to 7:00 AM shift when around 5:20 AM on March 8, 2011, he thought he saw two COs sleeping in chairs in the corridors that connect to his Gate area. He thought he saw both of them with their eyes closed. He made these observations within about a minute of time with each CO observed in an asleep state for about twenty seconds. To CO Aime, both COs looked slumped down in the chairs and not alert. Lt. Hawkins entered the area to do his rounds very soon after CO Aime's observations. CO Aime thought he saw Lt. Hawkins physically shake CO Conroy in the chair in one of the corridors to awaken him. Lt. Hawkins next walked into the Gate area where CO Aime was on duty. He said nothing to CO Aime and CO Aime said nothing to him. Lt. Hawkins walked into the other corridor, and CO Aime thought he saw Lt. Hawkins shake CO Craven to awaken him. If any statements were exchanged between Lt. Hawkins and CO Conroy and then with CO Craven, CO Aime did not hear what was said. He saw Lt. Hawkins just leave the area to continue his rounds. A short time later, CO Aime saw Sgt. Heeks in the corridors where CO Conroy and CO Craven had their posts. He felt Sgt. Heeks was jokingly reprimanding them for being asleep at their posts by using words to the effect of "Daddy sent me to talk to you guys." CO Aime did not stop to tell Sgt. Heeks what he had observed before Lt. Hawkins entered the area. (Ex. 9. Testimony.)
7. CO Aime did not consider filing a report about seeing the two COs asleep on duty even though he understood that being asleep at your post is a breach of safety and security, a serious matter. He reasoned that in any event, Lt. Hawkins had seen them asleep, and

that he likely told this to Sgt. Heeks. (Testimony.)<sup>3</sup>

8. Before his shift was to end at 7:00 AM, CO Aime learned around 6:00 AM, that DOC Lieutenant Douglas Adams wanted to interview him. This interview was unrelated to the sleeping COs. CO Aime wanted to have union representation at this interview. He was not able to secure a union representative in enough time to meet with Lt. Adams in any timely way. It was so late when the union representative arrived, that Lt. Adams called off the interview. Around this same time, DOC Deputy Superintendent Manning saw CO Aime and asked him to come to her office to a meeting. Deputy Manning felt CO Aime ignored her request by not addressing her and by just walking past her while shaking his head as if to answer no. When she instructed him not to walk away while she was addressing him, she felt CO Aime shook his head at her again to say no. He told Deputy Manning he could not meet without a union representative. Deputy Manning told him the meeting was not disciplinary in nature so that he had no right to union representation at it. Because of his ongoing refusal to meet under the conditions she set, Deputy Manning secured the Chief Union Steward for the meeting that lasted about fifteen minutes. Once it ended at about 7:15 AM, which was after the end of his shift, CO Aime just left work. He was feeling very stressed and mistreated. He was out for the following week as he had planned. (Ex. 9. Testimony.)
9. When he returned to work for the 11:00 PM to 7:00 AM shift that started on March 14, 2011, CO Aime produced an incident report on March 15, 2011 that he entered into the computer according to accepted procedures. He was not sure he had entered the report sufficiently into the computer, so he wrote a second version of the report. Both reports

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<sup>3</sup> Despite CO Aime's testimony and investigation interview account (Ex. 4.) that he was going to file a report on the sleeping COs, I do not believe on March 8, 2011, he had decided to do that.

contained the heading that he was reporting a breach of safety and security at 8 North at DOC SHCU on March 8, 2011. (Ex. 5. Testimony.)

10. Both of CO Aime's reports contained the following content:

I would like to bring to your attention the disparity of treatment that I have been receiving from Lt. Hawkins. Lt. Hawkins had wrote me up because he said I did not acknowledge him when he asked me how I was doing. However, on March 8, 2011, approximately at 5:20 AM as Lt. Hawkins was making his round on the 8 North Unit he saw CO Conroy sleeping on the outside post and CO Craven on the inside post and he did not write them up, but instead, he walked over to them to wake them up. Shortly thereafter, Sgt. Heeks came in the Unit and said to the Correction Officers Conroy and Craven that Daddy sent me in to talk to you guys ....

(Ex. 5.)

11. CO Aime raised the issue of the sleeping COs in his report to show how Lt. Hawkins was treating him differently than the other COs; that Lt. Hawkins will find fault in all CO Aime does, but will not even take action against CO Conroy or CO Craven seeing them asleep on duty. (Exs. 4 & 5. Testimony.)<sup>4</sup>

12. Once CO Aime's report was received, it triggered an investigation into his conduct in not timely reporting the sleeping COs, and to address whether he was subject to disparate treatment by Lt. Hawkins. Lieutenant Harold Wilkes (then a Sergeant) in the DOC Internal Affairs Unit was assigned to do the investigation which began on March 22, 2011. He interviewed CO Aime, Lt. Hawkins, Sgt. Heeks, CO Conroy, CO Craven, and Capt. Driscoll. He reviewed CO Aime's March 15, 2011 reports. (Exs. 4 & 5.

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<sup>4</sup> CO Aime testified that he filed the report as soon as he could on March 15, 2011. He testified that he would have filed a report on March 8, 2011, but by the time he had the opportunity to do that, he had to go to an interview with Lt. Adams and then had a meeting with Deputy Manning. After these meetings, he testified that there was no time left in his workday for filing the report, and he was off from work the next week. I did not find this account credible. I found that he had not decided to file a report about the sleeping COs on March 8, 2011. He concluded both Lt. Hawkins and Sgt. Heeks knew the COs had been sleeping on duty, and because they were his superiors, he would not have to do more.

Testimony.)

13. During the Internal Affairs Unit interviews, CO Conroy and CO Craven both denied ever being asleep on the job and denied that Lt. Hawkins on March 8, 2011 ever shook either of them to wake them up. Lt. Hawkins denied he found either CO Conroy or CO Craven asleep at their posts. He denied shaking either of them to wake them up. He acknowledged that he will sometimes pat a CO on the shoulder during the 11:00 PM to 7:00 AM shift to recommend that the CO stand up, or change position to stay alert during this nighttime shift. Sgt. Heeks denied ever being informed that CO Conroy and CO Craven had been sleeping at their posts, and he denied in any way reprimanding either CO for such conduct on March 8, 2011. (Ex. 4.)<sup>5</sup>

14. During the Internal Affairs Unit interviews, Sgt. Heeks explained that Lt. Hawkins can use a micromanagement style in supervising staff. Sgt. Heeks reported that from his observations, he never saw Lt. Hawkins singling out any staff for disparate treatment, but will make it very clear to staff “when he is unhappy with someone.” Sgt. Heeks acknowledged that some staff have found it hard to work with Lt. Hawkins, and there is some staff “animosity” toward him. Capt. Driscoll reported that she had received “complaints” from staff that Lt. Hawkins had tried “to blame line staff for not reporting an incident involving an inmate to him ... when, in fact, he was made aware of the incident.” After the complaints were investigated, Lt. Hawkins received some discipline for his conduct. Capt. Driscoll also reported that some staff had complained that Lt. Hawkins had made “inappropriate comments to staff as a result of him not being elected as a union steward;” that they were receiving certain assignments for not voting for him.

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<sup>5</sup> Sgt. Heeks testimony at the hearing confirmed his Internal Affairs Unit interview information. I believed his account.

Capt. Driscoll asked for specific complaints in writing about this, but staff “were reluctant to do so.” During her Internal Affairs Unit interview, Capt. Driscoll specifically addressed issues between CO Aime and Lt. Hawkins. She opined that CO Aime feels Lt. Hawkins has been “personally targeting him.” She gave her assessment that Lt. Hawkins prevents CO Aime “from breaking general rules.” She gave an example of Lt. Hawkins upholding a rule against making personal telephone calls while on duty. CO Aime had complained that he let staff make such calls. Another complaint was that he forbid CO Aime from watching television while on duty which is not allowed to be done by staff. (Ex. 4.)

15. Video cameras were installed at all the Gates at SHCU in about 2007. They record activity in the corridors including where CO Conroy and CO Craven were located about 5:20 AM on March 8, 2011. Lt. Wilkes investigated whether such a video was available. It was not. The video is recorded over after fourteen days. There was no surviving video of that day and time to examine during the investigation. (Ex. 4. Testimony.)
16. Lt. Wilkes made findings and conclusions from his investigation on April 27, 2011. He found insufficient proof to sustain CO Aime’s claim that Lt. Hawkins had engaged in disparate treatment of him. He concluded that CO Aime had failed “to provide evidence or corroborating information to support his claim” that Lt. Hawkins had mishandled the incident of CO Conroy and CO Craven sleeping on duty. Lt. Wilkes found insufficient proof of this in light of the denials by Sgt. Heeks and COs Conroy and Craven that they were sleeping on duty. Lt. Wilkes opined that CO Aime had “failed to report his alleged observation [of COs Conroy and Craven asleep while on duty] to a supervisor or in an incident report until March 15, 2011.” Lt. Wilkes opined that this failure to report was in

violation of DOC Rules and Regulations at General Policy 1 and at Rule 10(b). (Ex. 4. Testimony.)<sup>6</sup>

17. By letter of September 28, 2011, CO Aime received notice that he was being suspended for two days without pay for violating DOC Rules and Regulations at General Policy 1 and Rule 10(b). SHCU Superintendent Raymond Marchilli determined that he had failed “to timely report that you observed coworkers were sleeping while on duty.”

Superintendent Marchilli acknowledged that CO Aime filed a report of this but not until March 15, 2011 on an event alleged to have occurred on March 8, 2011. Superintendent Marchilli determined that this late made report was not excused “because you were off duty that [next] week, and that you did not report it prior to the end of your shift because you were notified shortly after this incident that you would be interviewed regarding a different matter.” Superintendent Marchilli further noted that “the investigation does not support the underlying allegation, you have a duty to timely report occurrences which may affect the safety and security of the facility.” (Ex. 3.)

18. General Policy 1 of the DOC Rules and Regulations states in pertinent part:

Nothing in any part of these rules and regulations shall be construed to relieve an employee of his/her primary charge concerning the safe-keeping and custodial care of inmates or, from his/her constant obligation to render good judgment, full and prompt obedience to all provisions of law, and to orders not repugnant to rules, regulations, and policy issued by the Commissioner [of DOC], the respective Superintendents; or by their authority. All persons employed by ... [DOC] are subject to the provisions of these rules and regulations. Improper conduct affecting or reflecting upon any correctional institution or the ... [DOC] in any way will be exculpated whether or not it is specifically mentioned and described in these rules and regulations.

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<sup>6</sup> There has been an Office of Diversity review concerning the disparate treatment claim that resulted in recommendations to resolve the matter. This is set forth in Exhibit 4.

(Exs. 3 & 7.) Rule 10. Institution Discipline at (b) states:

When suspicious behavior is noted you should take steps to satisfy yourself that nothing is being done to jeopardize the good order or safety of the institution.

(Exs. 3 & 7.)

19. CO Aime appealed to DOC for a G.L. c. 31, § 41 Appointing Authority hearing. A hearing officer was designated to conduct the hearing that occurred on October 24, 2011. CO Aime testified at the hearing. A report on the hearing was provided to DOC Commissioner Luis Spencer on November 16, 2011. By letter of decision of November 30, 2011, CO Aime was notified that the two day suspension without pay was being upheld for the reasons initially provided. Commissioner Spencer noted: "The suspension was imposed as a result of you failing to report, in a timely manner, that you had observed two co-workers sleeping while they were on-duty." He found this conduct violated General Policy 1 and Rule 10(b) of the DOC Rules and Regulations. (Ex. 2.)
20. CO Aime timely appealed this decision to the Civil Service Commission for a G.L. c. 31, § 43 hearing. (Ex. 1.)

### **Conclusion and Recommendation**

DOC must satisfy a preponderance of the evidence standard to show just cause for suspending CO Aime. *Gloucester v. Civil Service Commission*, 408 Mass. 292 (1990). Just cause is found when an employee has engaged in "substantial misconduct which adversely affects the public interest by impairing the efficiency of public service. *Murray v. 2nd District Court of Eastern Middlesex*, 389 Mass. 508, 514 (1983); *School Committee of Brockton v. Civil Service Commission*, 43 Mass. App. Ct. 486, 488 (1997). On appeal, the Civil Service Commission determines whether or not the Appointing Authority had a reasonable justification for the action it took. *Watertown v. Aria*, 16 Mass. App. Ct. 331, 334 (1983). This means the

Appointing Authority's action had to be "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997), quoting *Wakefield v. 1st District Court of Eastern Middlesex*, 262 Mass. 477, 482 (1928); *Civil Service Commission v. Municipal Court of Boston*, 359 Mass. 211, 214 (1971). In making this determination, the Civil Service Commission cannot simply substitute its decision for that of the Appointing Authority. *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 304; *School Committee of Salem v. Civil Service Commission*, 348 Mass. 696, 699 (1965).

I conclude DOC had just cause for suspending CO Aime for two days for failing to file a timely report with his superiors about witnessing a breach of safety and security on March 8, 2011 at about 5:20 AM by seeing CO Conroy and CO Craven asleep on duty. No evidence shows that a timely report of such a dangerous situation would be one week after the event.

CO Aime's defense for not making a timely report is insufficient to excuse his conduct. Having been a CO at SHCU for over twenty-five years, and having himself received a five day suspension for being found asleep on duty, I conclude that CO Aime knew well the significance of being sure to report COs asleep at their posts even for short time periods. He felt they were each asleep for about twenty seconds during the minute he observed them, and that they were not alert but were slumped down in their chairs. He thought he saw Lt. Hawkins shake CO Conroy to wake him upon encountering him slumped in his chair. Next, Lt. Hawkins passed by CO Aime in the West Wing Gate area before proceeding to the corridor where CO Craven was in his chair. It makes no sense why CO Aime never alerted Lt. Hawkins to what he felt he had observed. Next, Sgt. Heeks came to this area and CO Aime felt he heard him say to COs Conroy and Craven, "Daddy sent me to talk to you guys," to show that Sgt. Heeks had information that



they had been asleep at their posts, but were not going to be written up for what they had done. At that point, it also makes no sense why CO Aime did not tell Sgt. Heeks what he had observed. He knew Sgt. Heeks had not encountered the two COs sleeping, but the record does not show CO Aime had any issues like he had with Lt. Hawkins to make him leery of telling Sgt. Heeks what he thought he saw.

Having made no verbal report of what he felt he had seen, I conclude that CO Aime decided at that time not to file a report. He just accepted that this was another situation where his observations would not matter to Lt. Hawkins. I do not find credible CO Aime's claim that he intended to file a report before he left for the day, but was pulled off that task because he had to talk to Lt. Adams and then later, because he spoke with Deputy Manning, ending that talk about fifteen minutes after the close of his shift, and feeling by then too upset to write a report. If he felt so sure he saw two COs asleep on duty and that Lt. Hawkins had basically done nothing about it, it makes no sense that he never told Deputy Manning, or called in his observations of such a serious matter during the week he was out from work.

Moreover, I conclude that the March 15, 2011 reports were primarily intended to show his claim of disparate treatment by Lt. Hawkins. The problem is, the information involved a potential serious breach of safety and security if he was right that CO Conroy and Craven had been asleep. In his reports he offered no reason why he did not file a timely report, especially if he felt Lt. Hawkins saw the same thing and took no action to report the misconduct of COs Conroy and Craven. Regardless of whether or not he is afraid of Lt. Hawkins or finds it very difficult to work under his supervision, CO Aime was never threatened not to file a report of his observations by anyone. No evidence excuses his failure to file a timely report of a serious matter, or to at least make a timely verbal report to either Lt. Hawkins, or Sgt. Heeks, or Deputy

Manning, who are all in his chain of command at DOC SHCU. Even if CO Aime was mistaken in his observations, determining the underlying truth of whether or not the two COs were asleep does not provide a defense to CO Aime's misconduct.

This appeal does not involve having to determine whether or not there was any disparate treatment of CO Aime by Lt. Hawkins. The findings made address some of the concerns that CO Aime had about Lt. Hawkins on March 8, 2011, as well as some evidence about Lt. Hawkins' style of management that others besides CO Aime had some difficulty dealing with. As far as that information provides evidence to show that CO Aime was reluctant to take any action that might lead to Lt. Hawkins treating him unfairly in the future, it does not reach the level of any threat of immediate harm to CO Aime that would excuse his conduct over failing to timely report the misconduct he felt he saw involving COs Conroy and Craven. He was not in any way prevented from making a timely report of what he saw.

This failure to file a timely report about a safety and security breach is a serious matter. CO Aime would know this because he had received a five day suspension for being found asleep while on duty. He also has prior discipline that includes a reprimand for failing to adequately report an inmate's suicide attempt. Against this background of prior discipline pertinent to this appeal, I conclude that a two day suspension without pay is not excessive, and is consistent with progressive discipline principles.

For these reasons, I recommend that the Civil Service Commission affirm the action of DOC.

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

*Sarah H. Luick*

Sarah H. Luick, Esq.  
Administrative Magistrate

Dated:

**AUG 14 2012**