

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

RIGAUBERT AIME,
Appellant

v.

Case No.: D-12-46

**DEPARTMENT OF
CORRECTION,**
Respondent

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

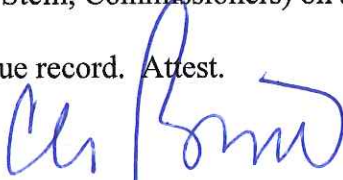
Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. The Commission received and reviewed the written objections of the Appellant and the Respondent's responses to the Appellant's objections.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Department of Correction to suspend the Appellant for three (3) days is affirmed and the Appellant's appeal is *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on January 9, 2014.

A true record. Attest.



Christopher C. Bowman
Chairman

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)

Julie E. Daniele, Esq. (for Respondent)

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

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

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Docket Nos.: D-12-46, CS-12-363

RIGAUBERT AIME,
Petitioner

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Petitioner:

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Administrative Magistrate:

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SUMMARY OF TENTATIVE DECISION

The Department of Correction had just cause to discipline the Appellant for causing a disruption of the efficiency of the Department facility after being properly relieved of duty, but after less senior staff. The Appellant was insubordinate to a superior officer. I therefore recommend that the Appellant's three-day suspension be upheld.

TENTATIVE DECISION

INTRODUCTION

The Appellant, Rigaubert Aime, pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission) on February 10, 2012, claiming that the Department of

Correction (Department or DOC) did not have just cause to suspend him for three days without pay for violating General Policy I and Rules 1, 6(a), 6(b), 6(d), and 19(d) of the Department's Rules and Regulations.

The Appellant filed a timely appeal. A pre-hearing conference was held on March 20, 2012 at the offices of the Commission, One Ashburton Place, Room 503, Boston, MA 02108. On June 11, 2012, pursuant to 801 CMR 1.01(11)(c), a Magistrate from the Division of Administrative Law Appeals (DALA) conducted a full hearing at DALA, One Congress Street, Boston, MA 02114, in accordance with the Formal Rules of the Standard Rules of Practice and Procedure. 801 CMR 1.01.

The Appellant testified on his own behalf and called Sergeant Sondra Dyke of the Department's Lemuel Shattuck Hospital Correctional Unit. The Respondent called Lieutenant Douglas Adams, Lieutenant Michael Jeghers, Sergeant Philip Heeks and Correction Officer Patricia Robinson, all from the Lemuel Shattuck Hospital Correctional Unit. The witnesses were sequestered.

Seven exhibits were admitted into evidence. I admitted the Appellant's Discipline Appeal Form as Exhibit 8. I admitted the Stipulated Facts, signed by the parties at the March 20, 2012 pre-hearing conference, as Exhibit 9. The hearing was digitally recorded. As no notice was received from either party, the hearing was declared private.

The parties submitted their post-hearing briefs on July 18, 2012, whereupon the record closed.

FINDINGS OF FACT

Based on the documents entered into evidence and the testimony of the witnesses, I make the following findings of fact:

A. Background

1. Appellant has worked for the Department as a Correction Officer I since 1986. At all times relevant to this appeal, he was assigned to the Department's Lemuel Shattuck Housing Correctional Unit ("Shattuck"). (Testimony of Appellant.)

2. Although the Appellant's regular shift was the 11:00 p.m. to 7 a.m. shift, the shift actually began at 10:50 p.m. and ended at 7:05 a.m. (Exhibit 3; Testimony of Appellant, Testimony of Jeghers, Testimony of Adams.)

3. Correction officers may not leave at the end of the shift unless relieved by the on-coming correction officer assigned to that particular post, or with permission from a superior officer. Per the Department's standard procedures, on-coming officers relieve officers by assigned posts, not by seniority. Pursuant to the Union contract, if a correction officer failed to appear for duty on the on-coming shift, the correction officer with the least seniority on the current shift would be forced to work overtime. (Testimony of Jeghers, Testimony of Adams, Testimony of Appellant.)

B. Appellant's Disciplinary History

4. On March 29, 2004, the Appellant received a five-day suspension for being away from his post and sleeping while on duty. (Exhibit 7.)

5. On December 4, 2009, the Appellant received a letter of reprimand for physical contact with an officer. (Exhibit 7.)

6. On December 7, 2010, the Appellant received a letter of reprimand for failing to document an incident about a possible inmate suicide. (Exhibit 7.)

7. On September 28, 2011, the Appellant received a two-day suspension for failing to report in a timely manner that other correction officers were sleeping while on duty. (Exhibit

7.)¹

8. On February 2, 2012, the Appellant received a three-day suspension for being disruptive toward a lieutenant. He was then transferred from the Shattuck to the Department's Boston Pre-Release Center (BPRC). (Exhibit 7.)

C. *The Instant Discipline*

9. On June 25, 2010, the Appellant was working his regularly assigned shift at the Shattuck. He was the most senior correction officer on duty, and was assigned to the 8 North Unit Outside Corridor. (Exhibit 3; Testimony of Appellant.)

10. On June 25, 2010, Lieutenant Michael Jeghers was the shift supervisor command for the North Unit 11:00 p.m. to 7 a.m. shift. (Exhibit 3; Testimony of Jeghers.)

11. Lt. Jeghers has been employed by the Department for twenty-five years. He has been assigned to the Shattuck for ten years. (Testimony of Jeghers.)

12. The correction officer assigned to the Outside Corridor for 7:00 a.m. to 3:00 p.m. shift, Mariano Cepada, did not appear. Because there was one extra officer on duty for the 7:00 a.m. to 3:00 p.m. shift, Sergeant Sondra Dyke, Lt. Jeghers was not concerned. (Exhibit 3; Testimony of Jeghers.)

13. At 6:50 a.m., Lt. Jeghers released Correction Officers Wayne Chan and Isacc Ogunlege, both of whom had less seniority than the Appellant. (Exhibit 3; Testimony of Jeghers, Testimony of the Appellant.)

14. The Appellant was upset that Chan and Ogunlege were let go before he was

¹ The Appellant filed an appeal with the Commission, which reduced the two-day suspension to one day. *Aime v. Department of Correction*, Docket Nos. D-11-352, CS-12-190, Recommended Decision, (August 14, 2012), *adopted by Final Decision*, 25 MCSR 508 (2012).

On March 29, 2011, the Department suspended the Appellant for one day for insubordination. The Appellant's appeal to the Commission was allowed. *Aime v. Department of Correction*, 25 MCSR 189 (2012).

relieved. (Exhibit 3, 4 and 6; Testimony of Jeghers, Testimony of Dyke, Testimony of Heeks, Testimony of the Appellant.)

15. Correction Officer Patricia Robinson was assigned to the 8 North Unit Control Room. The Appellant approached the gate to the Pedestrian Trap and asked Robinson where his relief was. Robinson informed the Appellant that she did not know. Robinson then asked Lt. Jeghers who would relieve the Appellant. At that time, the lieutenant was examining the roster to make sure there were no errors. (Exhibit 3; Testimony of Robinson.)

16. The Appellant enlisted the aid of Sgt. Dyke and Sergeant Philip Heeks in order to find out what was going on. (Exhibit 3; Testimony of Robinson, Testimony of Heeks, Testimony of Dyke.)

17. Sgt. Dyke asked Lt. Jeghers about the whereabouts of the Appellant's relief. (Exhibit 3; Testimony of Dyke, Testimony of Jeghers.)

18. In the past, Sgt. Dyke had filed complaints about Lt. Jeghers which the Department found to be unfounded. (Testimony of Dyke.)

19. Sgt. Dyke asked Lt. Jeghers if she could relieve Appellant. Lt. Jeghers asked Sgt. Dyke to wait a minute because he needed to determine where to place her, the only sergeant assigned to the shift. Lt. Jeghers then ordered Sgt. Dyke to relieve the trap officer, Correction Officer Jennifer Mitchell, who in turn would relieve the Appellant. (Exhibit 3; Testimony of Dyke, Testimony of Jeghers, Testimony of Robinson.)

20. Between 6:52 a.m. and 6:55 a.m., Mitchell relieved the Appellant. (Exhibits 3 and 4; Testimony of Appellant, Testimony of Jeghers, Testimony of Robinson.)

21. Lt. Jeghers then heard the Appellant making statements that other officers had been allowed to leave before him. As Robinson opened the gate to let the Appellant into the

Pedestrian Trap, Lt. Jeghers asked Robinson to send the Appellant to the Control Room so that the two of them could discuss the matter. The Appellant appeared very disgruntled and upset. (Exhibit 3; Testimony Jeghers.)

22. When Robinson let the Appellant into the Control Room, she heard Lt. Jeghers saying, "What time do you work until?" and the Appellant replying, "Where are you going with this?" When Robinson left the Control Room and re-entered the Pedestrian Trap, the Appellant and Lt. Jeghers were left alone in the Control Room. (Exhibit 3; Testimony of Robinson, Testimony of Jeghers, Testimony of Appellant.)

23. In the Control Room, Lt. Jeghers informed the Appellant that he was on duty until 7:05 a.m., and that there was no need for negative comments to other correction officers, including Mitchell and Robinson. The Appellant said that the lieutenant had disrespected him by allowing junior correction officers to leave before him. Lt. Jeghers told the Appellant, "Just go home; it's before 7:00 a.m." (Exhibit 3; Testimony of Jeghers.)

24. As the Appellant left the Control Room, he yelled, "He called me a fuck, he disrespected me." He repeatedly yelled and screamed, "You disrespected me," as he entered the Pedestrian Trap area. Lt. Jeghers then ordered the Appellant to write a report on the disrespect the lieutenant had extended to him. The Appellant became more infuriated. (Exhibit 3; Testimony of Jeghers, Testimony of Heeks, Testimony of Robinson, Testimony of Appellant.)

25. At this time, Sgt. Heeks was in the roll call room and Sgt. Dyke was in the Pedestrian Trap. When Sgt. Heeks heard the Appellant yelling, he left the work station in the roll call room and entered the Pedestrian Trap area in order to calm him down. Sgt. Dyke tried to calm the Appellant at first. Later, she said to the Appellant, "Just go next door, just go next door." Sgt. Dyke also told the Appellant not to listen to the lieutenant, that he had a right to go

to the superintendent. Every time the lieutenant tried to speak, Sgt. Dyke would talk over him, making the situation worse. Lt. Jegher reminded Sgt. Dyke that his orders were to be followed. (Exhibit 3; Testimony of Jeghers, Testimony of Heeks.)

26. Sgt. Heeks asked the Appellant to come into the roll call room and write his report. The Appellant replied that he preferred to go across the street to the Administration Department to write the report. (Exhibit 3; Testimony of Heeks, Testimony of Dyke.)

27. Lt. Jeghers then approached the Control Room window and ordered the Appellant to write the report in the roll call room. (Exhibit 3; Testimony of Jeghers, Testimony of Appellant.)

28. The Appellant then stated that he wanted to speak to the Superintendent. Lt. Jeghers then ordered the Appellant not to leave the 8 North Unit lobby but to await further instructions. (Exhibit 3; Testimony of Jeghers, Testimony of Appellant.)

29. Sgt. Heeks escorted Appellant out of the trap and had him sit on the bench. Appellant repeated that he wanted to write the report across the street. (Exhibit 3; Testimony of Heeks, Testimony of Appellant.)

30. The Appellant's tirade was witnessed by non-Department employees and at least one inmate. (Exhibit 4.)

31. At some point, Lt. Jeghers called Sgt. Heeks over to the Control Room window and asked him what the Appellant was doing. Sgt. Heeks replied that the Appellant wanted to go across the street to write his report. Lt. Jeghers instructed him to order Appellant to take a seat on the bench in the lobby of the 8 North Unit. Sgt. Heeks followed the order. (Exhibit 3; Testimony of Jeghers, Testimony of Heeks.)

32. Lt. Jeghers then contacted Superintendent Marchilli, and informed him that the

Appellant wanted to speak to him. The Superintendent declined and ordered that the Appellant and all correction officers involved submit reports before they went off duty. (Exhibit 3; Testimony of Jeghers, Testimony of Dyke, Testimony of Robinson.)

33. Lt. Jeghers entered the 8 North Unit lobby and ordered Appellant to return to the roll call room and write a report per the superintendent's order. (Exhibit 3; Testimony of Jeghers.)

34. The Appellant entered the roll call room at approximately 7:05 a.m. (Exhibits 3 and 4; Testimony of Appellant, Testimony of Jeghers.)

35. At approximately 9:20 a.m., Superintendent Marchilli called Lt. Jeghers because he had yet to receive the Appellant's report. The superintendent ordered Lt. Jeghers to tell the Appellant to contact him directly. Lt. Jeghers feared another face-to-face confrontation with the Appellant, and asked Superintendent Marchilli if he make the contact by telephone instead. The superintendent approved this, so Lt. Jeghers telephoned Mitchell at the Pedestrian Trap desk and asked to speak with Appellant. (Exhibit 3; Testimony of Jeghers.)

36. The Appellant refused to take Lt. Jeghers's call. He said he wanted witnesses to any conversations he had with the lieutenant. Lt. Jeghers ordered Sergeant Melvin Simpson to tell the Appellant to finish his report and call the superintendent. (Exhibit 3; Testimony of Jeghers.)

37. This was not Lt. Jeghers's first experience with the Appellant's anger when a junior officer was relieved before he was. One year before, the Appellant got into a scuffle with a junior correction officer who had punched out before him. Although the junior officer preceded him in the queue, the Appellant believed that he should have been able to punch out first. (Exhibit 3; *See supra* Finding of Fact 5.)

38. The Appellant finished his report shortly after 9:20 a.m. The length of his report was about half a page, or 305 words, and was dated June 25, 2010. (Exhibit 3; Testimony of Jeghers.)

39. On July 7, 2010, the Appellant submitted an addendum to his June 25, 2010 report:

Please be advised that @ approximately 7:05 a.m. while I was in the lobby of 8-North on my way to the Superintendent's Office Officer Patty Robinson was in the control room facing the lobby and Lt. Jeghers was standing behind her. While Lt. Jeghers was standing behind Officer Robinson, he was agonizing me by whispering fuck you to me numerous times. I approached the control room window and I told Officer Robinson to turn around so she could see him whispering fuck you to me. Officer Robinson said she was not able to hear him. I should not have to be subjected to this kind of treatment while I am @ work, especially not from an officer that is in a lieutenant capacity. I found his behavior towards me to be very inappropriate, unprofessional, unkind and very disrespectful.

(Exhibit 3.)

D. The Department Investigation and Section 41 Hearing

40. Superintendent Marchilli assigned Lieutenant Douglas Adams to investigate the matter on June 28, 2010. Lt. Adams has been employed by the Department for thirty years, and has been assigned to the Shattuck for twenty years. (Exhibit 3.)

41. Lt. Adams collected incident reports from Lt. Jeghers, the Appellant, Robinson, Sgt. Heeks, Sgt. Dyke and Mitchell. He downloaded the video of the North Unit lobby and the Pedestrian Trap on July 1, 2010. Lt. Adams interviewed Lt. Jeghers on September 23, 2010, interviewed Robinson on January 27, 2011, interviewed Mitchell on February 2, 2011, interviewed Sgt. Heeks on April 21, 2011, interviewed Sgt. Dyke on April 22, 2011 and interviewed Sgt. Simpson on April 22, 2011. (Exhibit 3.)

42. On December 21, 2010, Lt. Adams informed the Appellant that he would be

interviewed on December 23, 2010. On that date, the Appellant called in sick to his regularly scheduled shift that began on December 22, 2010 at 11:00 p.m. and ended on December 23, 2010 at 7:00 a.m. The interview was rescheduled for March 8, 2011, but was cancelled due to the union representative's failure to appear. The Appellant invoked his *Weingarten* rights. On March 8, 2011, the Department rescheduled the interview for March 15, 2011. The letter was delivered to the union. However, no service was made on the Appellant because he was out on sick time. (Exhibit 3.)

43. On March 23, 2011, Lt. Adams hand-delivered a letter to the Appellant, scheduling an interview for March 29, 2011. The interview proceeded as scheduled on March 29, 2011. (Exhibit 3.)

44. Lt. Adams concluded the investigation on August 4, 2011. He made the following findings:

1. The claim by Aime of being disrespected by Jeghers and that Jeghers used profanities toward him while in the Control Room on the morning of 25 June 2010 is **Not Sustained**. No collaborating [*sic*] evidence exists to support Aime's allegation.
2. The allegation by Aime that Jeghers whispered or mouthed profane words to him through the Control Room window is **Not Sustained**. No collaborating [*sic*] evidence exists to support this allegation.
3. **I sustain**, Aime's actions when leaving the control room on the morning 25 June 2010, yelling repeatedly in a loud and disruptive manner which required the assistance of several staff members to have him regain his composure did violate the Rules and Regulations Governing All Employees of the Commonwealth of Massachusetts Department of Correction (Blue Book), specifically, Chapter 6 (a) which reads in part, "Correctional goals and objectives can best be achieved through the united and loyal efforts of all employees. In your working relationships with co-workers you should treat each other with mutual respect, kindness, and civility, as correctional professionals. You should control your temper, exercise the utmost patience and discretion, and avoid all collusions, jealousy, and controversies in your relationships with co-workers.

4. **I sustain** that Aime's act of vocally expressing displeasure due to not being relieved at 6:50 a.m. by 7x3 staff was unwarranted, uncalled for and totally unprofessional. 11-7 staff is on duty until 7:05 a.m. unless properly relieved of duty. Lt. Jeghers had no control over the fact that the 7-3 officer scheduled to relieve Aime, did not report for duty as scheduled.
5. **I sustain** that Aime's interaction with Lt. Jeghers during this incident was insubordinate as he refused to properly respond to Lt. Jeghers' questioning and he failed to answer the phone in the Trap when informed by CO Mitchell that Jeghers was requesting to speak with him. Aime's actions violate the Rules and Regulations Governing All Employees of the Commonwealth of Massachusetts Department of Correction (Blue Book), specifically, Chapter 6 (d) which reads in part, "... You shall readily perform such duties as assigned, and must exhibit at all times, the kind of respect toward your supervisor which is expected and required in correctional service ..."
6. This incident was a result of a misguided belief by Aime that he is in a position to establish the conditions of his employment and responsibilities which are clearly established in the Rules and Regulations Governing All Employees of the Commonwealth of Massachusetts Department of Correction (Blue Book) not by the individual staff.

(Exhibit 3.)

45. On September 19, 2011, Lt. Adams requested a commissioner's hearing. Superintendent Marchilli referred the Appellant to Commissioner Luis S. Spencer for a commissioner's hearing that same day. (Exhibit 3.)

46. On December 5, 2011, Commissioner Spencer issued a Notice of Charges and Hearing to the Appellant in accordance with G.L. c. 31, § 41. The Department charged the Appellant with violating the Department General Policy I and the Department Rules 1, 6(a), 6(b), 6(d) and 19(b). The Department informed the Appellant that:

The hearing is being convened as a result of an investigation that revealed just cause to find the following:

1. On or about June 25, 2010, a lieutenant/superior officer ("Lieutenant") questioned you regarding comments he believed you had made, and you refused to answer the Lieutenant's questions.
2. You yelled repeatedly in a loud and disruptive manner at the Lieutenant. Your comments included, but were not limited to, the use of profanity and criticism of the Lieutenant's execution of his duties.

3. The actions referred to in paragraph two took place in view and/or hearing of one or more other officers, and disrupted the orderly running of the institution.
4. Following the incident described in paragraphs one through three above, the Lieutenant attempted to contact you on the phone you refused to take his call [*sic*].

(Exhibit 1.)

47. General Policy I 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 all orders not repugnant to rules, regulations, and policy issued by the Commissioner, the respective Superintendents, or by their authority. All persons employed by the Department of Correction are subject to the provisions of these rules and regulations. Improper conduct affecting or reflecting upon any correctional institution or the Department of Correction in any way will not be exculpated whether or not it is specifically mentioned and described in these rule and regulations. Your acceptance of appointment to the Massachusetts Department of Correction shall be acknowledged as your acceptance to abide by these rules and regulations. ...

(Exhibit 2.)

48. Rule 1 states in pertinent part:

You must remember that you are employed in a disciplined service which requires an oath of office. Each employee contributes to the success of the policies and procedures established for the administration of the Department of Correction and each respective institution. Employees should give dignity to their position and be circumspect in personal relationships regarding the company they keep and places they frequent.

(Exhibit 2.)

49. Rule 6 (a) states in pertinent part:

Correctional goals and objectives can best be achieved through the unified and loyal efforts of all employees. In your working relationships with coworkers you should treat each other with mutual respect, kindness and civility, as become correctional professionals. You should control your temper, exercise the utmost patience and discretion, and avoid all collusions, jealousy and controversies in your relationships with co-workers.

(Exhibit 2.)

50. Rule 6(b) states in pertinent part:

Do not foster discontent or otherwise tend to lower the morale of any employee,

and be particularly discreet in your interest of the personal matters of any co-worker, or when discussing personal matters of yourself or another.

(Exhibit 2.)

51. Rule 6(d) states in pertinent part:

Relations between supervising and subordinate employees should be friendly in aim yet impersonal and impartial to such a degree that no subordinate employee may justly feel themselves favored or discriminated against... You shall readily perform such duty as assigned, and must exhibit at all times, the kind of respect toward your superior which is expected and required in correctional service.

(Exhibit 2.)

52. Rule 19 (b) states:

Efforts will be taken to ensure that orders are reasonable and considerate, however, if you disagree with the intent or wording of an order, time permitting, you may be heard and the order withdrawn, amended, or it may stand. Without such prompt action on your part, no excuse will be tolerated that you did not comply with the order because it was faulty, unworkable, or for any other cause.

(Exhibit 2.)

53. The appointing authority hearing was held on December 22, 2011, with Kieran M. Sullivan presiding as hearing officer. The Appellant did not testify, and the hearing officer drew an adverse inference. (Exhibits 1 and 6.)

54. Mr. Sullivan found that the Appellant's conduct on June 25, 2010 was inappropriate, disruptive, negative and unwarranted, and in violation of Department General Policy I and the Department Rules 1, 6(a), 6(b), 6(d) and 19(b). He sustained the charges in their entirety except for the allegation that the Appellant had used profanity towards Lt. Jeghers.

(Exhibit 6.)

55. Mr. Sullivan found that the suggestion that the Appellant could not answer Lt. Jeghers on June 25, 2010 without union representation was not an adequate reason: the Appellant did not mention union representation in his interview or in the report he submitted that day. Most critically, Mr. Sullivan found that the Appellant's behavior, which took place during a shift change, disrupted the orderly running of the Shattuck. Although others intervened and tried to

get him to be still, he affected the work schedule of the other correction officers, delayed the admission of the medical staff, and continued his disruptive behavior and critique of Lt. Jeghers. Lt. Jeghers telephoned Superintendent Marchilli because the Appellant wanted to cross the street to the Administration building. Sgt. Heeks stayed beyond his shift to escort the Appellant back into the lobby and into the roll call room in order to write his report. The Appellant then refused to take Lt. Jeghers's telephone call because he did not want to speak to him without witnesses. (Exhibits 4 and 6.)

56. After reviewing Mr. Sullivan's report and supporting documentation, Commissioner Spencer found that there was sufficient evidence to support the charges sustained and adopted the hearing officer's report. On February 2, 2012, the Commissioner found just cause to impose on the Appellant a three-day suspension, without pay, to be served on February 13, 14, and 15, 2012. (Exhibit 5.)

57. The Appellant filed an appeal with the Commission on February 8, 2012. (Exhibits 8 and 9.)

CONCLUSION AND ORDER

A. Applicable Legal Standards

A tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L. c. 31, § 41, may appeal to the Commission under G.L. c. 31, § 43, which provides:

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall

be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

An action is "justified" if it is "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." *Commissioners of Civil Service v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971); *Cambridge v. Civil Service Comm'n*, 43 Mass. App. Ct. 300, 304, *rev. den.*, 426 Mass. 1102, (1997); *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." *School Comm. v. Civil Service Comm'n*, 43 Mass. App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983).

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." *Tucker v. Pearlstein*, 334 Mass. 33, 35-36 (1956).

"The commission's task, however, is not to be accomplished on a wholly blank slate. After making its de novo findings of fact ... the commission does not act without regard to the previous decision of the town, but rather decides whether "there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision." *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983)." *Falmouth v. Civil Service Comm'n*, 447 Mass. 814, 823-24 (2006).

Under G.L. c. 31, § 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." *Falmouth v. Civil Service Comm'n*, 447 Mass. 814, 823

(2006) and cases cited. The role of the Commission is to determine “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” *Cambridge v. Civil Service Comm’n*, 43 Mass. App. Ct. 300, 304, *rev. den.*, 426 Mass. 1102, (1997). *See also Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003); *Police Dep’t of Boston v. Collins*, 48 Mass. App. Ct. 411, *rev. den.* (2000); *McIsaac v. Civil Service Comm’n*, 38 Mass App. Ct. 473, 477 (1995); *Watertown v. Arria*, 16 Mass. App. Ct. 331, *rev. den.*, 390 Mass. 1102 (1983).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 189, 190-91 (2010), *citing Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 824-26 (2006). *See also Methuen v. Solomon*, Docket No. 10-01813-D, at *10 no. 7 (Essex Sup. Ct. July 26, 2012). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether just cause was shown.

Moreover, it is inappropriate for the Civil Service Commission to modify an employee’s discipline where it finds the same core of consequential facts as the appointing authority regarding the misconduct of the employee, but makes different “subsidiary” findings of fact. *Falmouth v. Civil Service Comm’n*, 61 Mass. App. Ct. 796, 797-99 (2004).

B. Analysis

The Department has shown, by a preponderance of the evidence, that Correction Officer I Rigaubert Aime failed to comport himself to the standards to which Department employees are held, and in violation of General Policy I, Rules 1, 6(a), 6(b), 6(d) and 19(b).

It is undisputed that on June 25, 2010, despite his tour of duty not being over, the Appellant made negative comments about a superior officer because less senior staff was relieved before he was. Correction officers were relieved by others specifically assigned to their

posts, and the Appellant's replacement had failed to arrive. Although Lt. Jeghers was the shift command officer, the Appellant asked other correction officers about who would relieve him. By 6:50 a.m., Lt. Jeghers had realized that the correction officer specifically assigned to relieve the Appellant had not yet shown up for work. However, there were already enough on-coming correction officers so that no one from the previous shift would be forced to work overtime. Thus the lieutenant released two correction officers who were junior to the Appellant. Sgt. Dyke was the only superior officer on duty, so when she asked Lt. Jeghers for permission to relieve the Appellant, the lieutenant asked her to wait for a few minutes while he determined where best to place her. Eventually Lt. Jeghers ordered Sgt. Dyke to relieve the trap officer, Correction Officer Mitchell, who in turn relieved the Appellant.

The Appellant was relieved at approximately 6:55 a.m., ten minutes before the punch-out time of 7:05 a.m. This was still not to his liking. He yelled and made comments about Lt. Jeghers and criticized his work performance. When Lt. Jeghers asked to speak to the Appellant after he heard him making negative comments, the Appellant delayed before going into the Control Room to speak with him. After speaking to Lt. Jeghers, the Appellant exited the Control Room, yelling repeatedly, "He disrespected me, he disrespected me." The Appellant then entered the Pedestrian Trap of the 8 North Unit, a public area, yelled at Lt. Jeghers, waved his arms, and disrupted the orderly running of the Shattuck facility, impeding the entry of medical staff and commanding the attention of staff who had duties to attend to. When Lt. Jeghers telephoned the Pedestrian Trap and asked to speak to the Appellant, the Appellant refused to take the call from Lt. Jeghers, a superior officer and the shift command officer for the June 25, 2010 11:00 p.m. to 7:00 a.m. shift.

I do not find the Appellant's version of events credible. The Appellant testified that Lt. Jeghers had deliberated held him back while releasing others. The Appellant testified that when they met in the Control Room after the Appellant had been relieved, Lt. Jeghers yelled at him, "What time is your shift over, you fuck!" He testified that while he was in the 8 North Unit lobby, Lt. Jeghers taunted him through the Control Room window, mouthing the words, "Fuck you." Robinson was in the Control Room at the time. When the Appellant approached the window and asked Robinson to turn around so that she could see what the lieutenant was doing, she said that the lieutenant had been on the telephone.

Pursuant to General Policy I, upon his acceptance to his appointment as a Correction Officer I, Rigauert Aime accepted the Rules and Regulations of the Department of Correction. The Appellant took an oath of office, and his primary charge became and remained the safe-keeping and custodial care of inmates. The Appellant assumed a constant obligation to render good judgment and full and prompt obedience to the orders not repugnant to the Rules and Regulations of the Department. The Appellant failed to live up to this charge when he misbehaved on the morning of June 25, 2010. His yelling at Lt. Jeghers and his later refusal to take the lieutenant's telephone call constituted improper conduct that will not be excused. The bottom line is that from 6:50 a.m. until 6:55 a.m., the attention of the staff at 8 North Unit was focused on the Appellant, not on the efficient running of the facility.

Pursuant to Rule 1, the Appellant's behavior failed to give dignity to his position. He was observed by Department employees, non-Department employees who worked at the Shattuck, and by at least one inmate. His behavior did not contribute to the success of the policies and procedures established for the administration of the Department and the Shattuck facility.

Pursuant to Rule 6(a), the Appellant failed to treat Lt. Jeghers with mutual respect, kindness, and civility as became correctional professionals. The Appellant failed to control his temper, exercise the utmost patience and discretion, and failed to avoid collusions and controversies in his relationships with coworkers. The Appellant not only yelled at Lt. Jeghers in a public fashion, he later accused him of using profanity towards him in the presence of Robinson. In her interview with Lt. Adams, Robinson said that she did not hear Lt. Jeghers swear at the Appellant. The Appellant also colluded with Sgt. Dyke, who despite her superior officer status, advised the Appellant to go across the street to the superintendent's office. As a superior officer, she should have worked with Lt. Jeghers to calm the situation – rather than giving a conflicting order that further inflamed it. On the video, the Appellant is observed going into the roll call room with Sgt. Dyke and closing the door after speaking to Lt. Jeghers. In her interview with Lt. Adams, Robinson said that she thought that Sgt. Dyke was disrespectful to Lt. Jeghers.

Pursuant to Rule 6(b), the Appellant's behavior fostered discontent and lowered the morale of his fellow correction officers. Instead of paying attention to their duties or going off shift, correction officers were asking each other who would relieve the Appellant. The relief of the Appellant was Lt. Jeghers's responsibility, not theirs. As Lt. Jegher checked the roster to make sure there were no errors, he was interrupted by Sgt. Dyke, Robinson and Mitchell. Mitchell was supposed to be in the Pedestrian Trap.

Pursuant to Rule 6(d), the Appellant failed to remain at his post in the Outside Corridor until relieved. He wandered from the Control Room to the Pedestrian Trap to a bench in the North Lobby. He failed to exhibit at all times the kind of respect toward Lt. Jeghers which is expected and required in correctional service. The Department is a paramilitary organization,

where order and respect for authority is prized. Public displays of insubordination that disrupt the efficiency of the Department should not be tolerated. Correction Officers Mitchell and Robinson both stated in their interviews with Lt. Adams that the Appellant was disrespectful to Lt. Jeghers. The evidence documents that Lt. Jeghers was calm and respectful at all times to the Appellant, while the Appellant is portrayed as hot-headed, upset, angry and confrontational. The Appellant testified that he was not yelling, that he only spoke loud enough for the other correction officers to hear him. The evidence does not support that version of events.

The video clearly shows that Appellant was upset, irate and unable to control his manner. Not only his hand and body gestures indicate this, but it took a few officers to calm him down. Although the video system does not have recorded sound, several officers testified that Appellant was very upset and loud in the trap. In the Commission hearing, for the first time the Appellant raised the issue that the video had been altered. I do not find this allegation to be credible, and it is just one more example of the Appellant's unreasonableness.

Pursuant to Rule 19(b), the Department makes all efforts to ensure that orders given are reasonable and considerate. It was the Appellant's duty to carry out the instructions of superior officers even if he did not agree with them, and file a grievance after the fact: in popular parlance – obey now, grieve later. According to Department Rules and Regulations, an employee may be heard on the intent or working of an order, and if time permits, the order withdrawn, amended or remain in effect. However, no excuse will be tolerated that the Department employee did not comply with the order because it was faulty, unworkable, or for any other cause. The Appellant not only disagreed with Lt. Jeghers's order, he made certain that everyone in the vicinity knew it. He discussed the lieutenant's decision with other correction officers and two sergeants. He wanted to "go across the street" and speak to the superintendent in the Administration building.

He goaded Sgt. Dyke, who was already not fond of the lieutenant, to approach Lt. Jeghers on his behalf.

I do not believe that Lt. Jeghers provoked the Appellant or was confrontational. The video evidence and testimony of other officers demonstrate that Lt. Jeghers was calm during the incident while Appellant was clearly upset, confrontational, and insubordinate. The Appellant testified that Lt. Jeghers had no right to ask him to come into the Control Room because he had already punched out for the day and thus was no longer on duty. Lt. Jeghers had both the authority and the obligation to speak with Appellant even if he had punched out. The video evidence shows that Appellant *did not enter* the roll call room before going into the Control Room to speak with Lt. Jeghers. The video shows that the Appellant was upset after leaving the Control Room. He then went into the roll call room with Sgt. Dyke and closed the door. At the time, Sgt. Dyke was on duty on the 7:00 a.m. to 3:00 p.m. shift.

On June 25, 2010, the Appellant's discontent with the manner in which he was relieved caused him to disrupt the orderly running of the Shattuck. His behavior in the North Unit lobby and Pedestrian Trap commanded the attention of everyone present, and was viewed by at least one inmate. There was a lot of yelling and shouting which led to confusion. The Appellant's behavior impacted other officers who should have been going off shift, impeded the entry of medical staff, and disrupted Lt. Jeghers's schedule. A superior officer commiserated with him instead of doing her work. The Appellant testified that he was normally relieved before 6:55 a.m. However, on June 25, 2010, he was relieved between 6:52 a.m. and 6:55 a.m. as usual, and before his official shift ending time of 7:05 a.m. The irony is that the Appellant was eager to leave by 6:50 a.m., but remained at the facility more than two and a half hours later.

This was not the first time that the Appellant had exercised poor judgment when he believed that a junior correction officer had received preference over him or that he was disrespected by others. The Appellant had already been disciplined on December 4, 2009 because he had a scuffle with a junior correction officer, who punched out before him due to his rightful place in a queue.

Based on testimony given and evidence presented, the Appellant failed to conduct himself in a manner befitting a correction officer. The Department had just cause to discipline the Appellant and has stated sound and sufficient grounds for doing so. The Appellant has already been subject to discipline: he had received two letters of reprimand (one for the scuffle with the junior correction officer), a three-day suspension and a five-day suspension. This three-day suspension is in keeping with the principle of progressive discipline and does not warrant modification by the Commission.

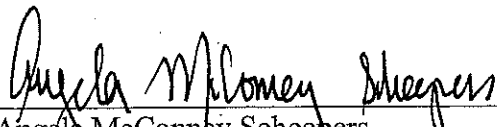
There is no evidence that the appointing authority's decision was based on political considerations, favoritism or bias. Thus the Department's decision to discipline the Appellant is "not subject to correction by the Commission." *Cambridge*, 43 Mass. App. Ct. at 305.

Based on the preponderance of credible evidence presented at the hearing, I conclude that the Department of Correction had just cause to discipline the Appellant Rigault.

Accordingly, I recommend that the appeal be dismissed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Angela McConney Scheepers
Administrative Magistrate

DATED: **NOV 14 2013**