

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

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

RIGAUBERT AIME,
Appellant

v.

Case No.: D-13-34

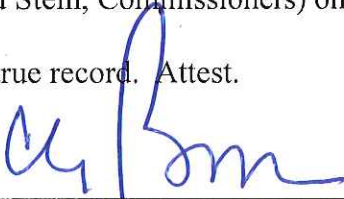
**DEPARTMENT OF
CORRECTION,**
Respondent

DECISION

The Civil Service Commission (Commission) voted at an executive session on August 22, 2013 to acknowledge receipt of: 1) the Recommended Decision of the Administrative Law Magistrate dated July 1, 2013; 2) the Appellant's Objections to the Recommended Decision; and 3) the Respondent's Response to the Appellant's Objections. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on August 22, 2013.

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)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-626-7200
FAX: 617-626-7220
WEBSITE: www.mass.gov/dala

July 1, 2013

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

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Re: Rigault Aime v. Department of Correction
DALA Docket No. CS-13-222
CSC Docket No. D-13-34

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.
Julie E. Daniele, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Rigauert Aime,
Appellant

v.

Docket No. D-13-34
DALA No. CS-13-222

Department of Correction,
Respondent

Appearance for Appellant:

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

Appearance for Respondent:

Julie E. Daniele, Esq.
Department of Correction
One Industries Drive, Box 946
Norfolk, MA 02050

Administrative Magistrate:

Maria A. Imparato, Esq.

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DEPARTMENT OF MASS
CIVIL SERVICE COMMISSION

SUMMARY OF RECOMMENDED DECISION

The action of the Department of Correction in suspending the Appellant for twenty (20) days and issuing a last chance warning should be affirmed where the Appellant yelled at a superior officer, mouthed the words "fuck you" to a Correction Officer, and received a Harassment Prevention Order against the same Correction Officer based on three incidents of alleged harassment that were never reported to the DOC, in violation of General Policy I and Rule 6(a) of the DOC's Rules and Regulations.

RECOMMENDED DECISION

Rigauert Aime filed a timely appeal under M.G.L. c. 31, s. 43 of the February 6, 2013 decision of the Department of Correction (DOC) to suspend him for twenty (20) days from his employment as a Correction Officer I, and to issue a final warning that any future violation may

result in termination. Mr. Aime was disciplined for violation of General Policy I and Rule 6(a) of the *Rules and Regulations Governing All Employees of the Massachusetts Department of Correction* (the Blue Book) on September 4 and September 12, 2012.

I held a hearing on April 12, 2013 at the office of the Division of Administrative Law Appeals, One Congress Street, 11th floor, Boston, Massachusetts.

I admitted documents into evidence. (Exs. 1 – 10.) I heard the testimony of five witnesses for the DOC: Lieutenant Stephen Vassalli; Lieutenant Brian Foley; Correction Officer (CO) Anderson Jemmott; and Superintendent Tanja Gray, all of the DOC Boston Pre-Release Center (BPRC), and Sergeant Crystal Johnson, of the Internal Affairs Division of the DOC. Rigauert Aime testified on his own behalf. The witnesses were sequestered, with the exception of Sgt. Crystal Johnson who conducted the internal investigation for the DOC.

The record closed on May 24, 2013 with the filing of post-hearing briefs by both parties.

FINDINGS OF FACT

1. Rigauert Aime has been employed as a Correction Officer (CO) I by the Department of Correction (DOC) since September 1995. He was assigned to the Southeast Correctional Center until 1997, when he was assigned to the Shattuck Hospital. In July 2011, CO Aime was assigned to the Boston Pre-Release Center (BPRC). (Testimony, Aime.)
2. CO Aime was transferred to the BPRC because he filed a discrimination complaint and a lawsuit against the DOC in July 2011. (Testimony, Aime.)
3. The BPRC is a minimum security facility in Roslindale. Most of the 200 inmates are on pre-release and go out of the facility to work. (Testimony, Gray.)
4. On September 4, 2012, CO Aime was assigned to the 11 to 7 shift at the BPRC as the first floor CO. Lieutenant Stephen Vassalli was the Shift Commander. On duty in the

Control Room were Lieutenant Brian Foley, the Control Room Officer in Charge, and CO Anderson Jemmott on the Control Desk. Also on duty that night was CO Glennis Olgaldez as the second floor CO. (Testimony, Vassalli, Foley, Jemmott, Aime; Ex. 10.)

5. A few minutes after 11 p.m., CO Jemmott called for "searches" on the public address system. "Searches" refers to the fact that inmates who return to the BPRC after a work assignment must be searched by the first floor CO when they re-enter the institution. (Testimony, Vassalli.)
6. CO Aime replied to the call for "searches" by saying "I'm doing a round." CO Jemmott did not understand what CO Aime said, and therefore responded "10-9," which means "say that again." CO Aime said, "I'm doing a round." (Testimony, Vassalli, Foley, Jemmott, Aime.)
7. Lt. Foley left the Control Room to search the inmate. (Testimony, Foley.)
8. A short time later, CO Aime entered the Control Room and said to Lt. Foley, "Why is he playing games with me?" Lt. Foley said there were no games. CO Aime yelled that CO Jemmott was harassing him. Lt. Foley asked CO Aime to leave the Control Room. CO Jemmott asked CO Aime to leave the Control Room so he could lock the door.¹ CO Aime did not leave. He insisted that Lt. Foley write-up CO Jemmott for harassing him. Lt. Foley said that CO Jemmott was not harassing CO Aime. As CO Olgaldez was walking past the Control Room, CO Aime asked her to come in. (Testimony, Foley, Jemmott, Aime.)
9. Lt. Vassalli heard yelling coming from Control Room. Lt. Vassalli entered the Control Room and saw Lt. Foley sitting in a chair with CO Aime bending over him and yelling

¹ The security procedures for the BPRC, 103 BOS 501, requires that one of the two doors in the Control Room (the main entrance door and the security equipment room door) "must be secured (locked) when the other is open." (Ex. 8.)

- “he’s harassing me.” Lt. Vassalli heard Lt. Foley tell CO Aime to leave the Control Room, but CO Aime did not respond. Lt. Vassalli asked CO Aime and CO Olgaldez to come with him to the Shift Commander’s Office. (Testimony, Vassalli, Jemmott Ex. 10.)
10. As Lt. Vassalli, CO Aime and CO Olgaldz were leaving the Control Room, Lt. Vassalli and CO Jemmott saw CO Aime turn around and mouth “fuck you” to CO Jemmott. (Testimony, Vassalli, Jemmott.)
11. In the Shift Commander’s officer, CO Aime said he wanted to go home, and then he said he would stay and finish his shift. Lt. Vassalli told CO Aime and CO Ogaldez to go back to work. (Testimony, Vassalli.)
12. CO Aime left Lt. Vassalli’s office and went back to the Control Room and told Lt. Foley that he wanted to leave at 5 a.m. Lt. Foley said that he could. CO Aime then said that he wanted to go home immediately. Lt. Foley asked whether CO Aime could wait until CO Pike arrived at about 11:45 p.m. CO Aime said that it was his right to leave immediately. Lt. Vassalli said to “let him go.” CO Aime left at about 11:20 p.m.² (Testimony, Vassalli, Foley.)
13. CO Aime has not returned to work since he left on September 4, 2012. (Testimony, Aime)
14. Lt. Vassalli, Lt. Foley and CO Jemmott submitted confidential reports regarding the events of September 4, 2012. An investigation began on September 5, 2012 at the request of the Acting Chief of Internal Affairs. (Ex. 3, pp. 10, 82, 84, 85.)
15. On September 7, 2012, CO Aime filed a request for worker’s compensation benefits, citing anxiety and emotional distress that he experienced on May 17, 2012 when CO

² Minimum staffing is four (4). CO Aime was allowed to leave because 4 staff were present after his departure: Vassalli, Foley, Jemmott and Ogaldez.

- Jemmott stared at him and was physically and verbally abusive to him. (Ex. 3, pp. 94-96.)
16. On September 10, 2012, CO Aime sought and received a Harassment Prevention Order under M.G.L. c. 258E against CO Jemmott in the Dorchester Division of the Boston Municipal Court. CO Jemmott was ordered not to abuse or contact CO Aime, to remain away from CO Aime's residence and to remain away from CO Aime's workplace at the BPRC. (Ex. 3, p. 108.)
 17. CO Aime supported his request for the Harassment Prevention Order with an affidavit, citing events on May 17, 2012, August 16, 2012 and September 4, 2012. (Ex. 3, pp. 111-112.)
 18. CO Aime claimed in his affidavit that on May 17, 2012, CO Jemmott stared at CO Aime while conducting the major count. Sgt. Kennedy reported that he spoke with both COs and "both officers declined to file a report and the incident appeared to have been resolved." (Ex. 3, pp. 11, 112.)
 19. CO Aime claimed in his affidavit that on August 16, 2012, while he was speaking with Lt. Foley, CO Jemmott injected himself into the conversation. CO Aime asked CO Jemmott to stay out of the conversation. Sgt. Foley told CO Jemmott to cease his behavior. CO Aime claimed that he felt "bullied" by CO Jemmott's behavior. (Ex. 3, p. 112.)
 20. CO Aime claimed in his affidavit that on September 4, 2012, CO Jemmott told him in a disrespectful way to leave the Control Room. CO Aime felt that CO Jemmott's behavior was "hostile." (Ex. 3, p. 111.)

21. When asked during the investigation at his interview with Sgt. Johnson on September 19, 2012, whether he had documented any of the three incidents outlined in his affidavit with the DOC, CO Aime said he did not because he was under duress. When asked why he did not provide the administration the opportunity to rectify his issue with CO Jemmott before seeking a Harassment Prevention Order, CO Aime said "he was not in his right mind being under duress and that's why he went out on stress Industrial Accident."
(Ex. 3, pp. 38, 39.)
22. On September 11, 2012, CO Aime was detached with pay, pending an investigation of the events of September 4, 2012. (Ex. 3, pp. 99, 101; Testimony, Gray.)
23. The Harassment Prevention Order was vacated on September 12, 2012 after the court heard the testimony of Sgt. Kennedy and Lt. Vassalli. Also present in court on behalf of CO Jemmott were Lt. Foley, CO Russell, CO Byrd and Superintendent Tanja Gray.
(Ex. 3, pp. 101, 110.)
24. By letter of December 7, 2012, CO Aime was given a Notice of Charges and Hearing under M.G.L. c. 31, s. 41. A hearing was held on December 18, 2012, to determine whether he had violated General Policy I and Rule 6(a) of the Blue Book on September 4, 2012 and September 10, 2012. (Ex. 1.)
25. By letter of February 6, 2013, CO Aime was notified that he was suspended for twenty working days without pay, and was issued a final warning that future violations could result in termination, as a result of his violation of General Policy I and Rule 6(a) on September 4 and September 10, 2012. (Exs. 4, 6.)
26. CO Aime's prior discipline consists of a five (5) day suspension for sleeping while on duty and away from his post in March 2004; a letter of reprimand for physical contact

with a fellow officer in December 2009; a letter of reprimand for failure to document an incident with possible inmate suicide in December 2010; and a one day suspension for failing to report in a timely manner occurrences that may affect the safety of the facility in September 2011. Currently on appeal is a three day suspension for being disruptive toward a Lieutenant and refusing to take a call in February 2012. (Ex. 9.)

CONCLUSION AND RECOMMENDATION

The role of the Civil Service 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.” *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997). An action is “justified” when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rule of law. *Id.*, quoting *Selectmen of Wakefield v. Judge of First District Ct. of E. Middlesex*, 262 Mass. 477, 482 (1928); *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 211, 214 (1971). 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.” *Murray v. Second District of Ct. of E. Middlesex*, 389 Mass. 508, 514 (1983).

The Appointing authority’s burden of proof is one of a preponderance of the evidence, which is established “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). If the Commission finds by a preponderance of the evidence that there was just cause

for an action against the Appellant, the Commission shall affirm the action of the Appointing Authority. *Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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).

I conclude that the DOC has demonstrated by a preponderance of the evidence that it had reasonable justification for suspending the Appellant for twenty days and issuing a last chance warning for his misconduct on September 4 and September 12, 2012, in violation of General Policy I and Rule 6(a) of the Blue Book.

General Policy I provides in pertinent part: “Nothing in any part of these rules and regulations shall be construed to relieve an employee of his ... constant obligation to render good judgment [.]”

Rule 6(a) provides in pertinent part: “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[.]”

The Appellant failed to exercise good judgment and failed to control his temper and exercise the utmost patience when he yelled at Lt. Foley, demanding that he write up CO Jemmott for harassment, and when he mouthed “fuck you” to CO Jemmott on his way out of the Control Room with Lt. Vassalli on September 4, 2012.

The Appellant failed to exercise good judgment when he sought and received a Harassment Prevention Order against CO Jemmott based on three incidents that he deemed to be harassment that were never reported to the DOC. The result of the Harassment Prevention Order was that CO Jemmott was unable to report to work while the Order was in effect. The DOC had to appear in court two days later to have the Order lifted.

The Appellant's failure to report the three incidents to the DOC before going to court again demonstrates poor judgment. The alleged incident on May 17, 2012 came to the attention of Sgt. Kennedy who spoke with both the Appellant and CO Jemmott, and both officers declined to file a report. Sgt. Kennedy deemed the matter resolved. Four months later, the Appellant resurrected the incident, and used it to support his application for worker's compensation benefits, and to support his application for a Harassment Prevention Order. The DOC was not given an opportunity to rectify the dysfunctional relationship between the Appellant and CO Jemmott before the Appellant took these actions.

Although a twenty (20) day suspension and a last chance warning may seem excessive in light of the Appellant's previous discipline, I conclude that the Appellant's actions were egregious enough to warrant the discipline imposed.

I recommend that the Civil Service Commission affirm the action of the DOC.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imperato

Maria A. Imperato
Administrative Magistrate

Dated: **JUL - 1 2013**