

COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT

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SUFFOLK, ss.

DOCKET NO. 13-CV-4337-B
CIVIL SERVICE COMMISSIONRIGAUBERT AIME,
Plaintiff

v.

DEPARTMENT OF CORRECTION AND CIVIL SERVICE
COMMISSION,
DefendantsMEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS

Mr. Rigaubert Aime seeks judicial review under G. L. c. 30A of the Massachusetts Civil Service Commission's decision upholding the Department of Correction's finding that its Officer Aime failed to exercise good judgment in violation of Department policy. Corrections Officer Aime now moves for judgment on the pleadings.

For the following reasons, Officer Aime's motion is DENIED.

BACKGROUND

On September 4, 2012, Officer Aime was working as a corrections officer at the Boston Pre-Release Center. On that day Officer Aime felt a fellow officer was harassing him. He sought out his supervisor and began yelling at him, demanding that his supervisor punish the alleged harasser, mouthed an obscenity at a fellow officer, and then demanded to be allowed to leave work immediately. He was given permission only after he again became angry and acted disrespectfully. He then left work only a short time into his eight-hour shift. Several days later, Officer Aime obtained a Harassment Prevention Order after he alleged that he had been forced to endure several incidents of harassment. He failed to report the existence of the Order to his superiors. After a hearing, a different court vacated the Order.

The Department held a hearing based on the incident, after which it found that Officer Aime failed to exercise good judgment as required by General Policy I, and violated Department Rule 6(a), which states that employees should treat co-workers with respect and civility and control his/her temper and exercise patience and discretion. This was Officer Aime's sixth disciplinary hearing, and the Department suspended him for twenty workdays and issued a final warning. The Commission upheld the Department's decision.

DISCUSSION

The Commission found that Officer Aime violated Department policy by yelling at and acting disrespectfully toward his superior, mouthing an obscenity at a co-worker, failing to control his temper, and failing to notify his superior of several alleged harassment incidents before demanding that his superior punish a co-worker. This was sufficient evidence for the Commission, based on its experience, technical competence, specialized knowledge, and statutorily-conferred discretion, to find that Officer Aime exercised poor judgment and that it violated Rule 6(a), warranting discipline. *See Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 241-242 (2006). Even though his supervisor's report did not specifically state that Officer Aime yelled, the Department and Commission were entitled to find otherwise based on the evidence, and the court "is not empowered to make a *de novo* determination of the facts, to make different credibility choices, or to draw different inferences from the facts found by the [agency]." *Medi-Cab of Mass. Bay, Inc. v. Rate Setting Comm'n*, 401 Mass. 357, 369 (1987). (Emphasis supplied.)

Regrettably, a final point needs to be addressed. Both the Department and the Commission found that Officer Aime exercised poor judgment because he had sought a Harassment Prevention Order. They were palpably wrong in so finding, and acted improperly in penalizing Officer Aime for the free exercise of his legal right. Nevertheless, overall, their decision is still supported by substantial evidence.

Notwithstanding their errant decision to penalize Officer Aime for exercising a legal right, the Commission properly upheld Officer Aime's punishment.

ORDER

For these reasons, the plaintiff's motion for judgment on the pleadings is **DENIED**.

Judgment shall enter forthwith for the defendant, Department of Correction and Civil Service Commission.

BY THE COURT

DENNIS J. CURRAN
Associate Justice

February 13, 2015