

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

**CHRISTOPHER
AMENTA,**

Appellant

v.

**DEPARTMENT OF
CORRECTION,**

Respondent

Case No.: D-12-240

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: 1) the Tentative Decision of the Magistrate dated October 9, 2013; 2) the Respondent's Objections to the Recommended Decision; and 3) the Appellant's Response to the Respondent's Objections.

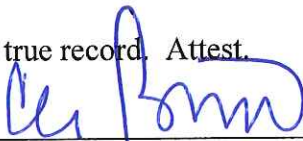
After careful review and consideration, the Commission, deferring to the findings and credibility assessments of the Magistrate, voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

We do so with great reluctance. We reviewed the video in question here. To us, it is more likely than not that the Appellant intentionally dropped an inmate's television down a flight of stairs, which would justify disciplinary action against him.

The decision of the Appointing Authority to suspend the Appellant for twenty (20) days is reversed and the Appellant's appeal is *allowed*. The Appellant shall be returned to his position without any loss of pay or benefits.

By a 3-1 vote of the Civil Service Commission (Bowman, Chairman - Yes; Ittleman, Commissioner - Yes; McDowell, Commissioner - Yes; Stein, Commissioner - No; Marquis, Commissioner - Abstain.) on December 19, 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)(I), 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:

Frank McGee, Esq. (for Appellant)

Amy Hughes, Esq. (for Respondent)

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

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Christopher Amenta,
Petitioner,

Docket No. D-12-240
DALA No. CS-13-2

v.

Department of Correction,
Respondent.

Appearance for Petitioner:

Frank J. McGee, Esq.
1952 Ocean Street
Marshfield, MA 02050

Appearance for Respondent:

Amy Hughes, Administrative Prosecutor
Department of Correction Division of Human Resources
P.O. Box 946, Industries Drive
Norfolk, MA 02056

Administrative Magistrate:

James P. Rooney, Esq.

Summary of Recommended Decision

The Department of Correction has not shown just cause to impose a twenty day suspension on a correction officer for making false statements and intentionally damaging an inmate's property, in violation of Massachusetts Department of Correction General Policy I, Rule 8(a), Rule 12(a), and Rule 19(a). A video showing the corrections officer dropping an inmate's television does not demonstrate purposeful destruction and supports the officer's report that the television was dropped by accident.

RECOMMENDED DECISION

Under the provisions of M.G.L. c. 31, § 43, Appellant Christopher Amenta appeals the decision of the Department of Correction to suspend him without pay for twenty days for violating the Department's rules by purposely breaking an inmate's television and falsely stating that the event was "accidental." After

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CIVIL SERVICE COMMISSION

a hearing, I conclude that the Department has not shown reasonable justification for its conclusion that Officer Amenta deliberately destroyed an inmate's property or lied about it.

I held a hearing at the Civil Service Commission on January 3, 2013. No party filed written notice to make the hearing public, and thus I declared it to be private. I recorded the hearing digitally. I admitted twelve exhibits into evidence. Both parties submitted post-hearing briefs.

The Department offered testimony by Captain Jeffrey Guerin, who conducted an investigation of the incident, and Sergeant Donald Perry, an investigator in the Superintendent's office. Captain Shaun Dewey, who works at the Souza-Baranowski Correctional Center, and Lieutenant David Darling, who works at the same facility, testified for Officer Amenta, as did the officer himself.

FINDINGS OF FACT

Based on the testimony, the exhibits, and the reasonable inferences from them, I make the following findings of fact:

1. Christopher Amenta was hired by the Department of Correction as a Correction Officer I on September 6, 1998. He has served as a Correction Officer at Souza-Baranowski Correctional Center, a maximum security facility, since July 2011. (Amenta Testimony.)
2. Officer Amenta had ten disciplinary infractions between September 6, 1998 and December 8, 2009. Several of these resulted in suspensions. Three of these infractions were characterized as insubordination. Officer Amenta had not been disciplined previously for acting inappropriately toward an inmate. (Exhibit 8.)
3. Since January 2012, Officer Amenta has been assigned to the Special Management Unit at Souza-Baranowski Correctional Center on a full time basis. He has satisfactorily performed his duties and done an "excellent job in all areas assigned." (Exhibit 9.)
4. His supervising officers regard Officer Amenta as smart and detail-orientated. (Dewey and Darling Testimony.)

5. On May 7, 2012, Officer Amenta received a Certificate of Recognition for excellence in job performance. Such certificates are given to officers "[w]hose service best exemplifies the core values of the Department of Correction through the betterment of our institution and community." (Exhibit 11.)
6. On October 11, 2011, during the 7 a.m. to 3 p.m. shift, Officer Amenta was assigned to the P-2 Housing Unit with Officer Kevin Fontaine. (Amenta Testimony.)
7. The housing unit has an open floor plan. On the second floor there are inmate cells lining the perimeter in a rectangular shape, and narrow walkways leading to two sets of stairs. The center of the second floor is open, so that someone on the second floor walkway can be seen from either floor. (Exhibit 7.)
8. Video cameras at either end of the housing unit record everything that happens outside the cells. Officer Amenta knew that this area was under video surveillance. (Amenta Testimony.)
9. At approximately 10:45 a.m., Officer Fontaine entered the cell of inmate A, on the second floor of the unit, intending to search it. Officer Amenta was stationed at the podium on the ground floor at the opposite end of the housing unit. Officer Amenta witnessed inmate A swing at Officer Fontaine and ran to assist. Upon nearing inmate A's cell, Officer Amenta saw that Officer Fontaine was not visibly injured. Nonetheless, Officer Fontaine went to the hospital because inmate A had struck him with a cloth that may have had something on it. (Amenta Testimony.)
10. Officer Amenta reported the incident to Sergeant Donald Perry, who wrote up an incident report. When asked how he felt after witnessing inmate A take a swing at Officer Fontaine, Officer Amenta told Sgt. Perry, "I knew coming up here people get assaulted. It's part of working here.... It doesn't bother me in the least." (Exhibit 6; Amenta Testimony.)

11. After the inmate was removed, Officer Amenta was ordered to continue searching the cell.
Officer Amenta also began to pack inmate A's belongings. (Amenta Testimony.)
12. It was standard procedure, after an inmate was removed from his cell, to pack his belongings and take them to storage. (Amenta Testimony.) This task was typically performed by the property department, not by correction officers assigned to a cell block. (Guerin testimony.)
13. Officer Amenta left inmate A's cell carrying a bag of trash in his left hand. Inmate A's television set was balanced in the center of his right hand and held against his shoulder. Upon leaving the cell, Officer Amenta turned left, proceeded along a short walkway, turned right, continued down another long walkway, and turned right once more to walk down the stairs. A video taken at the time shows that while he was walking a long cord and speaker was dangling from the television near Officer Amenta's right leg. While Officer Amenta was negotiating the right hand turn to go down the stairs, the television rolls forward and away from his body. As the television rolled off Officer Amenta's hand and away from his body, his right hand followed as if to grab it. The television dropped two steps in front of him and rolled down the stairs. Officer Amenta did not react visibly to the television falling, but he followed it as it fell. His facial expression did not change throughout the video, and neither did his pace. (Exhibit 7.)
14. Inmates' televisions cost approximately \$180 at the inmate canteen and this sum takes many months to earn. For this reason, they are considered valuable property. (Guerin Testimony.)
15. After the incident, there was a "climate issue" at the facility. "Climate issue" refers to a heightened tension among the inmates. This tense climate intensifies the danger for facility employees and often results in assaultive behavior. (Guerin Testimony.)
16. Following the incident, Captain Guerin spoke with Officer Amenta about it and ordered him to fill out an incident report. Captain Guerin also filed an incident report and reviewed the video surveillance. (Guerin Testimony.)

17. Officer Amenta's incident report states, in relevant part:

Inmate [A]'s cell 49 television was accidentally dropped when I was bringing the inmate's property down the stairs from his cell. I did not realize a speaker/speaker wire was hanging from the television almost causing me to trip down the staircase which in turn caused me to drop the television.

(Exhibit 5.)

18. Three investigations following the incident resulted in disparate findings. First, Sgt. Donald Perry concluded that the incident was an accident based on the video and his interviews with eight different people. Captain Guerin and Acting Deputy Commissioner Paul DiPaolo then reviewed Sgt. Perry's report, as well as the surveillance video, and concluded that Officer Amenta purposely dropped the television. (Exhibit 2.)

19. In a letter dated May 23, 2012, the Department charged Officer Amenta with violating Department of Correction General Policy I, Rules 8(a), 12(a), and 19(a). (Exhibit 1).

20. On June 7, 2012, Susan E. Herz conducted a hearing to determine whether Officer Amenta violated department rules, regulations, or policies. She concluded in her July 18, 2012 report that "more likely than not" Officer Amenta purposely dropped the inmate's television and falsely stated in an incident report that he "accidentally" dropped the television. (Exhibit 2.)

21. The Department issued Officer Amenta a 20 day suspension on August 10, 2012. (Exhibit 3.)

DISCUSSION

The Department of Correction's decision to suspend Officer Amenta for twenty days for intentionally breaking an inmate's television and filing a false report about the incident should be reversed. The evidence does not show purposeful destruction by Officer Amenta, and supports instead, the officer's report that the television was dropped accidentally.

The role of the Civil Service Commission is to determine whether the appointing authority has proven by a preponderance of the evidence that there was a "reasonable justification" for the action it took.

City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 304, 682 N.E.2d 923, 925 (1997).

Reasonable justification means that the appointing authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law. *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 211, 214, 268 N.E.2d 346, 348 (1971). The Commission determines whether discipline was justified 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 Dist. Ct. of E. Middlesex*, 389 Mass. 508, 514, 451 N.E.2d 408, 412 (1983). The Department must prove that discipline is justified by a preponderance of the evidence. *School Committee of Brockton v. Civil Service Commission*, 43 Mass. App. Ct. 486, 488, 684 N.E.2d 620, 622 (1997).

The Department asserts that a twenty day suspension of Officer Amenta was warranted because he purposely damaged the television set and then falsely stated that it was an accident in violation of the Massachusetts Department of Correction General Policy I, Rules 8(a), 12(a), and 19(a).¹

It is undisputed that Officer Amenta removed inmate A's television set from the cell and then dropped it. The only question is whether he did so intentionally as the Department claims, or accidentally, as Officer Amenta claims.

¹ General Policy I states in relevant part:

Nothing in any part of these rules and regulations shall be construed to relieve an employee of his/her...constant obligation to render good judgment [and] full and prompt obedience to...all orders not repugnant to rules, regulations or policy issued by the Commissioner...or by [his] authority.

Rule 8(a) states in relevant part:

Relations with inmates may be twofold, that of counselor and disciplinarian simultaneously, which will require your utmost tact and diplomacy. For those employees having job responsibilities which require inmate contact, your attitude toward inmates should be friendly not familiar, firm not harsh, vigilant not unduly suspicious, strict not unjust. Your leadership ability may be enhanced by the professional image you project.

Rule 12(a) states in relevant part:

Employees shall exercise constant vigilance and caution in the performance of their duties.

Rule 19(a) states in relevant part:

Since the sphere of activity within an institution or the Department of Correction may on occasion encompass incidents that require thorough investigation and inquiry, you must respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee, or yourself.

The surveillance video of Officer Amenta dropping the television set does not show intentional dropping conclusively. The video shows Officer Amenta leaving the cell with the television balanced in the palm of his right hand and a trash bag in his left hand. He proceeds down two narrow walkways before reaching the stairs. As he is negotiating the right hand turn to go down the stairs, the television rolls forward and away from his body. Officer Amenta does not change his pace as the television rolls forward. As the television rolls off Officer Amenta's right hand and away from his body, his hand follows after it. The television drops two steps in front of him and proceeds to roll down the stairs. Officer Amenta does not react visibly to the television falling, beyond his hand following it as it falls. Indeed, his facial expression does not change throughout the video.

The video does not show that Officer Amenta threw the television or purposely let it fall. In fact, the manner in which Officer Amenta's hand follows the television as it falls suggests a brief, vain attempt to grab onto it and prevent it from falling, which would be inconsistent with the Department's theory that he intentionally dropped the television.

The question of intent turns on an evaluation of Officer Amenta's state of mind when he dropped the television. The Department posits that Officer Amenta sought revenge on inmate A for assaulting Officer Fountaine, decided to break inmate A's television, and knowing that he would be videotaped, dropped it in a manner that feigned an accident. The video does not corroborate the Department's suspicions that this act was intentional. Nor is there any evidence to support the Defendant's theory about Officer Amenta's motives. He had no known problems with inmate A, no history of discipline regarding his interactions with inmates, and at the time he was moving inmate A's belongings he knew Officer Fountaine had gone to the hospital merely as a precaution. If anything, the video is evidence that Officer Amenta made what proved to be a poor choice in trying to move the inmate's property himself, when that was the job of the property department, and then carrying the television as he did as this led to him being unable to stop the television from rolling off his hand when he came to the stairs and had to negotiate a tight turn.

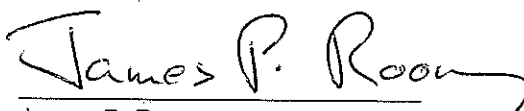
The dangling speaker cord and wire near Officer Amenta's right leg, visible in the video, offer some support for Officer Amenta's description of how the television fell. Officer Amenta's poor judgment in carrying the television as he did is not, however, the equivalent of purposefully destroying property.

It was not Officer Amenta's burden to prove that he did not drop the television intentionally; it was the Department's burden to prove that he did, with credible evidence amounting to more than suspicion or speculation. The video surveillance relied on by the Department is at best equivocal; it does not corroborate its allegations. The Department has not sustained its burden of proving by a preponderance of the evidence that Officer Amenta intentionally damaged the television, or that he made false representations as to the incident.

I therefore recommend that the Civil Service Commission reverse the Department of Correction's decision to suspend Officer Amenta.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS


James P. Rooney
First Administrative Magistrate

Dated:

OCT - 9 2013