

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

CHRISTOPHER AMENTA

Appellant

v.

CASE NO: D-15-193 & D-15-210¹

DEPARTMENT OF CORRECTION

Respondent

Appearance for Appellant:

Christopher Amenta, *Pro se*

Appearance for Respondent:

Heidi D. Handler, Esq.
Department of Correction
P.O. Box 946, One Industries Drive
Norfolk, MA 02056

Commissioner:

Paul M. Stein²

DECISION

The Appellant, Christopher Amenta (Officer Amenta), acting pursuant to G.L. c. 31 §43, duly appealed the decision of the Massachusetts Department of Correction (DOC), Appointing Authority, to suspend him for three days, with one day to serve and two days held in abeyance for one year, as a result of his involvement in an altercation with another correction officer and his failure to properly report said altercation under DOC rules and regulations. A pre-trial hearing for D-15-193 was held by the Civil Service Commission (Commission) on October 27, 2015 and a full hearing was held on December 2, 2015.³ The hearing was declared private as no party requested a public hearing. All witnesses were sequestered except for Officer Amenta and

¹ D-15-210 was an appeal filed by the appellant in relation to a procedural matter arising from the same incident as D-15-193. The procedural issue was addressed at the pre-hearing conference for Case No.D-15-193 which was held on October 27, 2015. The appeals were combined into the matter addressed in Case No. D-15-193.

² The Commission acknowledges the assistance of Law Clerk Brendan Rimetz in the drafting of this decision.

³ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

DOC Officer Katie Appel (Officer Appel). Eleven (11) exhibits were received in evidence. The hearing was digitally recorded.⁴ Both parties submitted proposed decisions.

FINDINGS OF FACT

Based on the exhibits, the testimony of Officer Appel, Officer Amenta, and DOC Sgt. Vincent Ruziak (Sgt. Ruziak), and inferences reasonably drawn from the evidence as I find credible, I make the findings of fact set forth below.

Background of the Witnesses

1. The Appellant, Officer Amenta, is currently a full-time tenured Correction Officer I and has worked for the DOC since Sept. 6, 1998. At the time of the incident in question, Officer Amenta was working at Souza Baranowski Correctional Center (SBCC). (*Exhibit 1, Exhibit 3*)

2. Officer Appel has worked as a Corrections Officer for the DOC since 2011. She is assigned to the Internal Affairs Unit (IAU) and has worked for the unit for just over two years. (*Testimony of Officer Appel*)

3. Sgt. Ruziak has worked for the DOC for 21 years and has been working at SBCC for almost 3 years. (*Testimony of Sgt. Ruziak*)

Appellant's Disciplinary History

4. On May 3, 2000, Officer Amenta received a Letter of Reprimand for neglecting duties and failing to conduct pat searches. (*Exhibit 1*)

5. On January 15, 2001, Officer Amenta received a one-day suspension for being disrespectful to a supervisor. (*Exhibit 1*)

⁴ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

6. On January 4, 2002, Officer Amenta was given a five-day suspension for insubordination and being disrespectful to his supervisor. (*Exhibit 1*)
7. On February 8, 2002, Officer Amenta received a Letter of Reprimand for removing state property without permission. (*Exhibit 1*)
8. On March 13, 2003, Officer Amenta was suspended for ten days for sleeping and being negligent in the performance of his duties. (*Exhibit 1*)
9. On August 21, 2003, Officer Amenta received a two-day suspension for being belligerent with a police officer. This punishment was combined with other disciplines and was served as part of a fifteen-day suspension handed down on July 5, 2007. (*Exhibit 1*)
10. On March 29, 2004, Officer Amenta was suspended for fifteen days after being disrespectful and insubordinate to a superior officer and for refusal to follow a direct order. This punishment was combined with other disciplines and served as part of a fifteen-day suspension handed down on July 5, 2007. (*Exhibit 1*)
11. On February 2, 2004, Officer Amenta received a five-day suspension for refusing a direct order to blouse his pants. The suspension was combined with other disciplines and was served as part of a fifteen-day suspension received on July 5, 2007. (*Exhibit 1*)
12. On October 4, 2005, Officer Amenta was suspended for three days for parking his truck in a fire lane after being told not to do so. The suspension was combined with other disciplines and served as part of a fifteen day suspension received on July 5, 2007. (*Exhibit 1*)
13. On June 15, 2010, Officer Amenta was terminated for bringing a personal laptop into a prison facility, using said laptop to look at pornography, and failing to perform his duties by operating doors within the interlock system. He was reinstated with time served on May 13, 2011. (*Exhibit 1*)

The Events of June 24, 2015 Before Amenta Entered the SMU Control Room

14. Officer Amenta was assigned to work within the South Special Management Unit (SMU) on June 24, 2015. He had been assigned to the unit in the past, but was not assigned there on a regular basis. (*IAU Interview of Officer Amenta; Exhibit 6*)

15. Officer C was assigned to operate the Graphic Unit Interface (GUI) within the SMU on the morning of June 24, 2015. The GUI is the system used to control the opening and closing of doors on the tier. (*Incident Report Submitted by SBCC Superintendent Osvaldo Vidal; Exhibit 5*)

16. On June 24, 2015, SBCC was locked down due to electrical work being done on the facility. There were no prisoner movements or activities scheduled for that day. (*IAU Interview of Officer Amenta; Exhibit 6*)

17. After the prisoners were fed on the morning of June 24, 2015, Officer Amenta wanted to stay busy so he decided to start cleaning. He first cleaned the SMU control room and the bathroom within the control room. (*IAU Interview of Officer Amenta; Exhibit 6*)

18. Officer Amenta then went to clean the J-3 tier, which is located within the SMU, and went over to the door leading to the tier. (*IAU Interview of Officer Amenta; Exhibit 6*)

19. Once he reached the door, he radioed for Officer C to open the door as his duties included opening the J-3 door through the use of the GUI. Officer C did not respond to Officer Amenta's first request to open the door. (*IAU Interview of Officer Amenta; Exhibit 6*)

20. Officer Amenta attempted to radio Officer C multiple times to open the door but Officer C did not respond to those requests. (*IAU Interview of Officer Amenta; Exhibit 6*)

21. Officer Amenta made multiple requests via his radio to have the door opened and when the door did not open, he decided to enter the SMU control room to see if his request had been

received. Amenta said that sometimes there are microphone problems with the radios and that such issues can prevent messages from being heard. (*IAU Interview of Officer Amenta; Exhibit 6*)

22. There were four other corrections officers in the control room at the time that Officer Amenta entered. (*Testimony of Officer Appel*)

23. Upon entering the doorway to the control room, Officer Amenta asked Officer C if he had received his radioed requests and Officer C stated he had but that he was not going to open the door for him. (*IAU Interview of Officer Amenta; Exhibit 6*)

24. Officer C replied by saying something to the extent of “we are locked down today and we’re not doing shit.” (*IAU Interview of Officer Amenta; Exhibit 6*)

25. Officer Amenta replied that he didn’t care if others in the control room “don’t have to do shit,” but that he wanted to stay busy and that he was going to do so by cleaning the [J-3] tier. He then again requested that Officer C open the door to the J-3 tier. (*IAU Interview of Officer Amenta; Exhibit 6*)

26. Both Officer Amenta and Officer C continued to argue with one another briefly until Officer Amenta turned to walk away.⁵ (*IAU Interview of Officer Amenta; Exhibit 6*)

27. Officer Amenta then turned to walk away at which point he heard the chair the Officer C was sitting in “pop-up” and turned to find Officer C coming at him. (*Testimony of Officer Amenta*)

28. Officer Amenta then grabbed Officer C by the shoulders. He did so because he wanted to prevent Officer C from taking a swing at him. (*Testimony of Officer Amenta*)

⁵ It is not clear what exactly was said to one another as both Officer Amenta and Officer C provided differing versions of what was said and other witnesses in the control room could not recall what exactly was said.

29. Officer Amenta then pushed Officer C back against the desk on which the GUI was located and told him to stop. (*Testimony of Officer Amenta*)

30. Within seconds of the officers coming into contact with one another, Sgt. Ruziak and other officers in the area stepped in between the two officers and the situation ended. It lasted not more than a couple of seconds. (*Testimony of Officer Amenta*)

31. Officer Amenta left the control room to continue cleaning. He again requested to be let out onto the tier and his request was granted and he was granted access to the tier. (*Testimony of Officer Amenta*)

32. Following the incident in question, there were no further incidents between Officers C and Amenta for the rest of the shift. (*Exhibit 5*)

33. In his testimony, Officer Amenta claimed that Officer C later apologized to him towards the end of the shift and the two are seen on video talking in the recreation area outside. (*Exhibit 5; Testimony of Officer Amenta; Exhibit 7*)

34. Prior to the end of the shift, Officer C addressed the staff in the control room and said that there was no reason to report the incident between Officer C and Officer Amenta and that it should not leave the SMU control room. The incident was not reported by any witnesses. (*Exhibit 5*)

35. The incident was reported by Officer C after he returned home following his shift on June 24, 2015. (*Exhibit 5*)

36. On June 26, 2015, SBCC Superintendent Osvaldo Vidal (Superintendent Vidal) filed an incident report following a phone call he had with Officer C about the incident with Officer Amenta. (*Testimony of Officer Appel*)

37. In his report, Superintendent Vidal wrote that during his phone conversation with Officer C, the officer alleged that Officer Amenta called him “lazy” and “a typical nigger” in the control room because he did not open the door. (*Testimony of Officer Appel*)

38. Superintendent Vidal’s report then states that Officer C claimed he stood to up ask Officer Amenta what he meant by that comment. Officer C alleged that Officer Amenta then turned around, lunged at him and grabbed his uniform shirt. (*Testimony of Officer Appel*)

39. In his report, Superintendent Vidal wrote that Officer C then claimed that other staff immediately intervened, but not before Officer Amenta pulled Officer C in and head-butted him in the chin causing a cut on the inside of his lip. (*Testimony of Officer Appel*)

40. Officer C also alleged that immediately after leaving the control room, Officer Amenta said over the radio, “open the door asshole.” (*Executive Review and Comments; Exhibit 5*)

41. Officer Appel was assigned to investigate these incidents. After conducting interviews of the percipient witnesses, Officer Appel concluded that there was no basis for Officer C’s allegations that Officer Amenta made racist comments toward him. During his interview, Officer C gave the impression that he was upset by racist comments that he alleged Officer Amenta made. Furthermore, witnesses to the incident denied that Officer Amenta made any racial comments towards Officer C or any other officer. Officer Appel sustained a workplace violence finding against Officer C as she found that the physical part of the confrontation between Officer C and Officer Amenta was mutual. I credit the testimony and report of Officer Appel and do not credit the unsupported allegations of racist alleged in Officer C’s conversation with Superintendent Vidal as well as Officer C’s own incident report. (*Testimony of Officer Appel; Executive Review and Comments; Exhibit 5*)

42. Officer Appel did not sustain the claim that Officer Amenta used his radio to state, “hey asshole” to Officer C as there was insufficient evidence to prove or disprove that he did so.

(Executive Review and Comments; Exhibit 5)

43. Officer Appel also concluded that Officer Amenta violated Chapter 6, Interpersonal Relationships Among Employees, of the DOC Rules and Regulations Governing all Employees, when he engaged in a verbal altercation with Officer C and called him “lazy” and “useless.”

(Executive Review and Comments; Exhibit 5)

44. Officer C’s claim that Officer Amenta head-butted him was not sustained by Officer Appel as there was insufficient evidence to prove or disprove that Officer Amenta did so.

(Executive Review and Comments; Exhibit 5)

45. Officer Appel also found Officer Amenta to have violated 103 DOC 237 The Prevention and Elimination of Workplace Violence Policy when he admitted to grabbing Officer C’s uniform and pushing him. *(Executive Review and Comments; Exhibit 5)*

46. Officer Appel also found that Officer Amenta violated the Department of Correction SBCC Post Order #076 South SMU C.O. when he engaged in a verbal and physical altercation with Officer C. *(Executive Review and Comments; Exhibit 5)*

47. Officer Appel also found that Officer Amenta’s actions of failing to report his involvement in a verbal and physical altercation with Officer C while on duty violated 103 DOC 237 The Prevention and Elimination of Workplace Violence Policy. *(Executive Review and Comments; Exhibit 5)*

48. On August 31, 2015, Officer Amenta was notified of the charges against him and was informed that a hearing would take place on September 16, 2015. *(Exhibit 4)*

49. The hearing was held before Richard Bodurtha (Bodurtha) on September 16, 2015. As a result of the hearing, it was determined that Officer Amenta violated 103 DOC 237, The Prevention and Elimination of Workplace Violence, but with an allowance for mitigating circumstances in the actual altercation. Further results from the hearing found that Officer Amenta violated Rule 6(a) and Rule 6(b) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction. (*Report form DOC Division of Human Resources; Exhibit 3*)

50. The relevant parts of Rule 6(a):

“Correctional goals and objectives can best be achieved through the united 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*)

51. The relevant parts of Rule 6(b):

“Do not foster discontent or otherwise tend to lower the morale of any employee, and be particularly discreet in your interest to the personal matters of any co-worker, or when discussing personal matters of yourself or another...” (*Exhibit 2*)

52. 103 DOC 237, The Prevention and Elimination of Workplace Violence, states:

“Policy—It is the Department’s policy to have zero tolerance for workplace violence in any form. Any use of work or workplace facilities to commit or threaten to commit actions of workplace violence is cause for discipline, up to and including termination. All allegations and incidents or violence or threatened workplace violence shall be reported, reviewed and treated in a serious manner...” 103 DOC 237.01;

“Workplace violence—Includes, but is not limited to, the following...Any behavior that causes disruption of workplace productivity, as determined by the Commissioner, the applicable Superintendent, Division Head or their designees.” 103 DOC 237.02; and

“...all allegations, reports, incidents, or threats of workplace violence must be immediately reported to the Superintendent, Division Head, or designees verbally and followed up with a confidential incident report before the end of the shift...If any employee, except for a victim of a threat or incident of workplace violence, has

knowledge of such a threat or incident and fails to report it, he/she may be subject to disciplinary action, up to and including termination.” 103 DOC 237.04. (*Exhibit 2*)

53. SBCC Post Order #076, South SMU CO states in relevant part:

“It is essential that all officers assume a professional attitude and responsibility for the completion of all duties for this facility to function efficiently and effectively. It is the responsibility of all officers to constantly remain alert...” (*Exhibit 2*)

54. Bodurtha’s report noted that Officer C showed a “consciousness of guilt” after the incident by lobbying the other officers in the control room at the time of the incident to not report it. The report also noted that the officers interviewed as part of the IAU investigation noted the difficulty working with Officer C. (*Report form DOC Division of Human Resources; Exhibit 3*)

55. Based on the findings in Bodurtha’s report, the DOC decided to suspend Officer Amenta for three days without pay, with two of the days held in abeyance for one year. (*Exhibit 2*)

ANALYSIS

Applicable Legal Standard

A person aggrieved by disciplinary action 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, in part:

“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.”

Under Section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” Town of 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." City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997). See also City of 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., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm'n, 38 Mass.App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, rev.den., 390 Mass. 1102 (1983).

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., 359 Mass. 211, 214 (1971); City of 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, 160 N.E. 427 (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 Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.' " Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of "merit principles" which govern civil service law that discipline must be

remedial, not punitive, designed to “correct inadequate performance” and “separating employees whose inadequate performance cannot be corrected.” G.L. c.31,§1.

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). See also Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001). The Commission is guided by, but is not obliged to follow strictly, the rules of evidence applied in a judicial proceeding, and may credit, in its sound discretion, reliable hearsay evidence that would be inadmissible in a court of law. See, e.g., Doe v. Sex Offender Registry Board, 459 Mass. 603 (2011); Costa v. Fall River Housing Auth., 453 Mass. 614, 627 (2009).

It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [Commission] upon which a court conducting judicial review treads with great reluctance.” Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003) (where live witnesses gave conflicting testimony at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing).

G.L. c.31, section 43 also vests the Commission with authority to affirm, vacate or modify the penalty imposed by an appointing authority. The Commission has been delegated with “considerable discretion,” albeit “not without bounds,” to modify a penalty imposed by the appointing authority, so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. See Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594,600 (1996) and cases cited. See Faria v. Third Bristol Div., 14 Mass.App.Ct. 985,987 (1982) (no findings to support modification).

In deciding to exercise discretion to modify a penalty, the commission’s task “is not to be accomplished on a wholly blank slate.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006), quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

“After making its de novo findings of fact, the commission must pass judgment on the penalty imposed, a role to which the statute speaks directly. G.L. c.31,§43. . . . Here, the commission does not act without regard to the previous decision of the [appointing authority], 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.’ ”

Id. See also Town of Falmouth v. Civil Service Comm’n, 61 Mass.App.Ct. 796, 800 (2004) quoting Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 600 (1996) (“The power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded to the appointing authority.”). Thus, when it comes to the review of the penalty, unless the Commission’s findings of fact differ materially and significantly from those of the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to “substitute its judgment” for that of the appointing authority, and “cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. Cf. School Committee v. Civil Service Comm’n, 43 Mass.App.Ct.

486, rev.den., 426 Mass. 1104 (1997) (modification of discharge to one-year suspension upheld); Dedham v. Civil Service Comm'n, 21 Mass.App.Ct. 904 (1985) (modification of discharge to 18-months suspension upheld); Trustees of the State Library v. Civil Service Comm'n, 3 Mass.App.Ct. 724 (1975) (modification of discharge to 4-month suspension upheld).

Applying these principles to this appeal the Commission finds that DOC met its burden in finding a violation of 103 DOC 237, The Prevention and Elimination of Workplace Violence and in finding a violation of Rule 6(a) and Rule 6(b) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction. The Commission affirms the decision of the DOC to suspend Officer Amenta. While the evidence establishes that Officer Amenta did not initiate contact with Officer C, the comments Officer Amenta made in the moments leading up to the physical confrontation shows that both officers played a role in escalating the situation. Thus, the Commission finds that a one-day suspension, with two days held in abeyance for a year, was justified.

The IAU report was thorough and credible and took into account all sides of the story and included interviews with all parties present both in and around the South SMU control room. Officer Appel's testimony at the Commission was convincing and supported the findings in the report. The report acknowledges that there were two versions of the events that transpired; one by Officer C and the other by Officer Amenta. The interviews conducted as part of the IAU investigation clearly support the version of events presented by Officer Amenta and many times refute the version given by Officer C. The Commission thus finds Officer Amenta's version of events to be most indicative of what occurred. Based on that narrative, it is clear the Officer Amenta was not the aggressor but neither was he a wholly innocent victim since he played a role in creating tensions with Officer C.

In his testimony before the Commission, Officer Amenta stated that staff members at SBCC consider Officer C to be a liability and have mentioned this to supervisors. Officer Amenta therefore knew about Officer C's hot temper and how easily he could become upset and should have known better than to provoke Officer C. Beyond that, the comments of Officer Amenta clearly undermine Rule 6(a), which states that coworkers in DOC facilities "should treat each other with mutual respect, kindness, and civility, as become correctional professionals." Officer Amenta violated this rule when he called Officer C "lazy" and "useless," which are terms that do not convey a sense of respect or civility. Despite the frustrating situation, Officer C still should have been treated with respect and dignity by Officer Amenta. It does not appear that Officer Amenta made the comments with the intention of inviting a physical confrontation with Officer C. However, the comments do appear to have been made with little regard to whether they may provoke Officer C. Officer Amenta's comment conflict with the parameters and intentions of Rule 6(a) and the DOC was justified in finding that the appellant violated this rule.

Rule 6(b) requires employees to treat each other with respect and to not harbor animosity towards one another at work. Officer Amenta's comments offended Officer C, which is exactly what the rule seeks to prevent. Calling Officer C "lazy" and "useless" created an atmosphere that fostered "discontent or otherwise tend to lower the morale of any employee." Officer Amenta was not the only guilty party since Officer C's comments toward Officer Amenta were the origin of the toxic environment that eventually led to the physical confrontation between them. Officer Amenta had every right to work as he pleased and to stay busy at work. Officer C was in no position of authority to prevent Officer Amenta from being productive and cleaning the tier. However, what is at issue here is Officer Amenta's comments and it is clear that he intended to ridicule Officer C for not granting Officer Amenta's request to go out on the tier. Since Officer

Amenta's comments fostered discontent in his incident with Officer C, the DOC was correct in finding that he violated Rule 6(b). In the tense environment of a correctional facility, such conduct can undermine the safety and security of the facility.

The DOC's Prevention and Elimination of Workplace Violence policy states that workplace violence includes "any behavior that causes disruption of workplace productivity." While Officer C's actions were the original cause of the disruption, Officer Amenta's confrontational conduct toward Officer C did nothing to calm the situation and instead provoked a man who was known to be difficult to work with. The physical confrontation that followed Officer Amenta's comments caused other co-workers to stop what they were doing, go over to where the confrontation was occurring, and attempt to restore calm to the control room. This is a clear disruption of workplace productivity. Since Officer Amenta's comments did nothing to calm the situation and instead inflamed it to the point of a physical confrontation, causing other co-workers to take their attention away from relevant work-related tasks, the DOC was right to find that he violated 103 DOC 237, The Prevention and Elimination of Workplace Violence policy.

Even though he felt he was the victim in the confrontation with Officer C, Officer Amenta had a duty to report the incident under 103 DOC 237.04, which requires that incidents of workplace violence must be reported to the Superintendent, Division Head, or their designees. However, although Officer Amenta should not bear all the blame for failing to report the incident because all of the officers who saw or heard what was going on had a duty to report the incident, the failure of others to report does not fully justify exonerating him. The decision by those involved and those who witnessed the incident to keep the incident within the confines of the control room put everyone who was there in violation of the reporting rule. As one of the people directly involved in the incident as well as one of the people in the control room who agreed to

not report the decision, the DOC had just cause in finding that Officer Amenta violated the reporting requirement of 103 DOC 237.

Finally, SBCC Post Order #076, South SMU CO states, in part, that “it is essential that all officers assume a professional attitude and responsibility for the completion of all duties for this facility to function efficiently and effectively.” Officer Amenta’s comments to Officer C, calling him “lazy” and “useless,” were not professional. He could have inquired why Officer C would not open the door for him in a different manner that would not provoke Officer C. Furthermore, the unprofessional attitude and comments of Officer Amenta did not allow the facility to function efficiently and effectively because they caused other officers to stop what they were doing to prevent a physical confrontation from escalating. Therefore, I find that Officer Amenta violated SBCC Post Order #076.

While Officer C and Officer Amenta’s narrative of events contradict each other, the interviews of other officers present bolsters Officer Amenta’s credibility. Specifically, the other interviews indicate that Officer C did not want to do work, purposely ignored Officer Amenta’s request to get out of the tier, and was the aggressor. However, I agree with the finding of the DOC hearing officer that Officer Amenta was not exclusively a victim. Officer Amenta was well aware of the behavioral and emotional history of Officer C; knowledge he could have used to handle the situation in a different manner. Instead, Officer Amenta chose to confront Officer C, knowing that it could lead to problematic consequences. Due to his part in escalating the situation to the point where it became a physical confrontation, Officer Amenta is responsible for the escalation in part. Furthermore, Officer Amenta knowingly chose not to report the incident despite knowing that the rules require it.

In sum, after carefully considering all the circumstances, I conclude that the one-day suspension with two days held in abeyance was a reasonable and fair punishment. Although Officer Amenta had only one other recent discipline, the fact remains that this incident was not his first discipline. Thus, the minimal level of remedial discipline imposed here, including the two days in abeyance, is an appropriate penalty under the circumstances and the Commission is not warranted to exercise its discretion to modify that penalty. I conclude that the one day suspension with two days held in abeyance was a reasonable and fair level of progressive discipline. The Commission does not feel the need to modify that punishment.

CONCLUSION

For the reasons stated above, the appeal of the Appellant, Christopher Amenta, is hereby *dismissed*.

Civil Service Commission

/s/ Paul M. Stein
Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Stein, and Tivnan, Commissioners) on March 17, 2016.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:
Christopher Amenta (Appellant)
Heidi D. Handler, Esq. (for Appointing Authority)
John Marra, Esq. (for Human Resource Division)