

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

JAMES ANDRADE,  
Appellant

v.

D-04-28

DEPARTMENT OF CORRECTION,  
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Department of Correction  
Division of Human Resources  
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Commissioner:

John J. Guerin, Jr.

**DECISION**

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, James Andrade (hereinafter "Appellant") appeals the decision of the Respondent, Department of Correction (hereinafter "DOC") as Appointing Authority, to suspend him without pay from the DOC for a period of five (5) days for violating multiple provisions of the Rules and Regulations of the Massachusetts Department of Correction, including Rule 6 –

interpersonal relationships among employees; Rule 7 - General conduct - employees; Rule 16 – private possessions; and Rule 19(c) - internal investigations administrative procedures. The appeal was timely filed. A full hearing was held at the offices of the Civil Service Commission on August 10, 2005. One tape was made of the hearing. Both parties submitted post-hearing briefs. As no notice was received from either party, the hearing was declared private. Sixteen (16) joint exhibits were stipulated to by the parties and entered into the record.

### **FINDINGS OF FACT:**

Based upon the documents entered into evidence (Exhibits 1-16), and the testimony of the Appellant; Philip Poirier, DOC Captain; and Bernard Brady, DOC Deputy Superintendent, I make the following findings of fact:

1. The DOC is the employer and appointing authority. (Testimony)
2. At all relevant times, the Appellant was a permanent, tenured employee (Correction Officer) of the DOC, employed at the Old Colony Correctional Center (hereinafter “OCCC”). (Testimony)
3. The Rules and Procedures of the Department of Correction set forth rules of conduct for employees of the DOC including, but not limited to, Rules 19(b) and (c), which state in pertinent part:

### **19. ADMINISTRATIVE PROCEDURES**

(b) Efforts will be taken to ensure that orders are reasonable and considerate, however, if you disagree with the intent or workings

of an order, time permitting, you may be heard and the order withdrawn, amended or it may stand.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.

(c) Since the sphere of activity within an institution of 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. Pending investigation into the circumstances and your possible involvement therein, you may be detached from active duty forthwith, however, without prejudice and without loss of pay. (Exhibit 14)

4. Rules 6(a), (b) and (d) of the Rules and Procedures of the Department of Correction provide, in pertinent part:

#### 6. INTERPERSONAL RELATIONSHIPS AMONG EMPLOYEES

(a) 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 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. Unverified information (rumors) should not be conveyed to any person other than your direct supervisor. You must not solicit membership to any organization during the course of your duties. Nor shall you solicit for any other cause while on Department of Correction or institution property.

(b) 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. You must not inspect personnel or casework folders or other official documents or papers other than that which is necessary in the official performance of your duties.

(c) 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. Supervising employees may

express appreciation for good job performance as well as criticism for faulty execution of orders. You shall readily perform such duty as assigned, and must exhibit at all times, the kind of respect towards your superior which is expected and required in correctional service. You shall not receive or follow orders of any kind emanating from any person who is not officially connected with the institution or the Department of Correction. Report all infractions of law, rules and orders to a higher authority.  
(Id.)

5. Rule 7(d) of the Rules and Procedures of the Department of Correction provides, in pertinent part:

7. GENERAL CONDUCT - EMPLOYEES

(d) Employees should not read, write or engage in any distracting amusement or occupation during their required work hours, except to consult rules or other materials necessary for the proper performance of their duties.  
(Id.)

6. Rule 16 of the Rules and Procedures of the Department of Correction provides:

16. PRIVATE POSSESSIONS

Employees must not bring personal property other than personal effects and car, on or within the precincts and dependencies of the institution without the prior approval of the superintendent or his/her immediate subordinate. You must permit your car and effects to be searched or inspected, which should be done in your presence, except, where the safety and good order of the institution is considered sufficiently important to warrant otherwise. The posting of political or other handbills is forbidden on the property of the institution. Pictures or photographs of institution property or inmates may only be taken with the knowledge and approval of the Superintendent.  
(Id.)

7. Captain Poirier supervises the running of the OCCC, a level 5 correctional facility. As part of his duties, Captain Poirier is required to make rounds of every unit as shift commander. (Testimony of Captain Poirier)
8. On July 29, 2003, Captain Poirier entered the segregation unit of the OCCC, and observed the Appellant at a table in the break room with a magazine in his hand. (Id.)
9. Upon observing Captain Poirier, the Appellant placed the magazine in his lunch cooler. (Testimony, Exhibits 3 and 4)
10. Captain Poirier directed the Appellant to dispose of the magazine, as Rule 16 of the Rules and Procedures of the Department of Correction expressly forbids bringing personal property (including reading materials) into the facility. (Testimony of Captain Poirier and Exhibit 14)
11. The Appellant replied “Yeah, whatever” and refused to dispose of the magazine. (Testimony of Captain Poirier)
12. Captain Poirier again instructed the Appellant to remove and dispose of the magazine, and again the Appellant failed to comply. (Testimony of Captain Poirier and Exhibits 3 and 4)
13. Thereafter, Captain Poirier directed the Appellant to give him the magazine. (Id.)
14. The Appellant surrendered the magazine to Captain Poirier, who requested that the Appellant dispose of the magazine. (Id.)
15. The Appellant, for the third time, refused to dispose of the magazine. (Id.)

16. Captain Poirier thereafter directed the Appellant to submit a written report of the incident. (Id.)
17. In violation of Rule 19(b), the Appellant refused to submit a written report (thereby disobeying a direct order of a superior). (Id.)
18. Instead, the Appellant had heated words with Captain Poirier as he followed him from the break room to the office of Bernard Brady, the Deputy Superintendent of Operations of OCCI. At one point, the Appellant yelled “This is like fucking high school!” (Id.)
19. Deputy Superintendent Brady was advised of the incident and met with the Appellant and his Union Representative, Tracy Cabral. At the conclusion of the meeting, Deputy Superintendent Brady directed the Appellant to write a report. (Testimony of Deputy Superintendent Brady and Exhibits 3, 4 & 8)
20. The Appellant wrote a report that stated, in its entirety:
- “I, C.O. Andrade, was ordered to write this incident report per Deputy Brady. E.O.R.”
- (Exhibit 7a)
21. Deputy Superintendent Brady determined that the incident report submitted by the Appellant was insolent, and showed the report to then-Acting Superintendent Lisa Mitchell. (Testimony of Deputy Superintendent Brady and Exhibit 8).
22. Thereafter, Superintendent Mitchell and Deputy Superintendent Brady met with the Appellant and Union Representative Cabral in Superintendent Mitchell’s office and directed the Appellant to write a second, detailed incident report. (Testimony, Exhibits 8 and 9).

23. The Appellant complied and wrote a second report. (Testimony, Exhibit 7b)
24. Based on the second incident report, an investigatory interview with the Appellant was scheduled for August 5, 2003. (Testimony, Exhibit 4)
25. In the course of the August 5, 2003 interview, the Appellant stated that he “did not know where the magazine came from” and had “never seen it before”. The Appellant also stated that he never put the magazine in his lunch cooler, and denied that he handed it to Captain Poirier or otherwise touched the magazine. (Exhibit 5)
26. After the investigatory interview, the Appellant was found to have violated Rules 6, 7, 16 and 19 of the Rules and Procedures of the Department of Correction and was suspended for five (5) days. (Testimony, Exhibit 4)
27. The Appellant appealed the suspension to the Commissioner of the Department of Correction, and on September 19, 2003, a disciplinary hearing in the matter was held, after proper notice was given, concerning the Appellant’s appeal of the five (5) day suspension. (Exhibit 2)
28. In the course of the September 19, 2003 disciplinary hearing, the Appellant again falsely stated that he did not know where the magazine came from and had never seen it before. (Testimony, Exhibit 3)
29. Thereafter, by letter of Commissioner Michael T. Maloney dated September 29, 2003, the Appellant’s appeal was denied and the five (5) day suspension was upheld. This appeal ensued. (Exhibit 2)
30. At hearing, the Appellant credibly testified when he admitted that, at all times prior to testifying before the Commission, he had been untruthful when

questioned about his ownership of the magazine. The Appellant was credible when he admitted to lying to both Captain Poirier and Superintendent Brady on the date of the incident, as well as in the course of both the August 5, 2003 investigatory hearing and the September 19, 2003 disciplinary hearing. (Testimony)

31. Captain Poirier and Deputy Superintendent Brady credibly testified as to the July 29, 2003 incident and the Appellant's behavior. (Testimony)

32. In violation of Rule 19(c), the Appellant admitted to repeatedly providing false information when questioned about the incident. (Testimony)

33. The documentary and testimonial evidence conclusively establishes that in violation of Rules 7 and 16, the Appellant, without first obtaining prior approval, brought unauthorized personal property (read: reading material) into the facility, and further, attempted to hide same from Captain Taylor.

34. The credible documentary and testimonial evidence establishes that, in violation of Rule 6, the Appellant lost his temper and failed to treat Captain Taylor with respect, kindness and civility, as becomes correctional professionals.

## **CONCLUSION:**

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). Town of Watertown v. Arria, 16 Mass.



App. Ct. 331 (1983). McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000). City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). 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 rules of law.” City of Cambridge at 304, quoting Selectmen of Wakefield v. Judge of First Dist. 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 proper inquiry for determining if an action was justified is, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983). School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). This burden must be met by a preponderance of the evidence. M.G.L. c. 31, §43.

It is the conclusion of this Commission that the Respondent has satisfied its burden of proving reasonable justification for suspending the Appellant for five (5) days without benefits. Specifically, the evidence proffered by the Respondent is sufficiently reliable to warrant a reasonable mind to find that the Appellant committed the acts for which he was penalized.

It is the function of the agency hearing the matter to determine what degree of credibility should be attached to a witness’ testimony. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978). Doherty v. Retirement Board

of Medicine, 425 Mass. 130, 141 (1997). The hearing officer must provide an analysis as to how credibility is proportioned amongst witnesses. Herridge v. Board of Registration in Medicine, 420 Mass. 154, 165 (1995).

Here, while the Commission assigns credibility to the testimony of the Appellant, ironically such a finding does not support a determination in favor of the Appellant. Specifically, the Appellant testified credibly when he admitted that at all times prior to testifying before the Commission, he had been untruthful when questioned about ownership of the magazine. Here, the Appellant admitted to lying to both Captain Poirier and Superintendent Brady on the date of the incident; as well as in the course of both the August 5, 2003 investigatory hearing and the September 19, 2003 disciplinary hearing.

While the Appellant is to be credited for (finally) speaking the truth, such late contrition does not excuse his previous false testimony. The purpose of Rule 19(c) is to foster honesty and full disclosure among its employees, in order to ensure that internal investigations uncover the truth underlying incidents which occur within the various arms of the Department of Corrections. Here, in violation of Rule 19(c), Appellant admitted to repeatedly providing false information when questioned about the incident.

Similarly, the documentary and testimonial evidence conclusively establishes that in violation of Rules 7 and 16, the Appellant, without first obtaining prior approval, brought unauthorized personal property (read: reading material) into the facility, and further, attempted to hide same from Captain Taylor and repeatedly refused to relinquish the

material to his superior. The credible documentary and testimonial evidence also establishes that in violation of Rule 6, Appellant lost his temper and failed to treat Captain Taylor with respect, kindness and civility, as becomes correctional professionals.

The Appellant violated well-established rules for the effective functioning of the corrections institution in which he works. Such rules are crucial to the para-military environment in which the Appellant works and to safeguard the efficient operation of the institution.

For all of the above stated reasons, it is found that the Department of Correction has established by a preponderance of the reliable and credible evidence in the record that it had just cause to discipline the Appellant for his misconduct. Therefore the appeal on Docket No. D-04-28 is hereby *dismissed*.

Civil Service Commission

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John J. Guerin, Jr.  
Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairman; Taylor, Guerin and Marquis, Commissioners) [Bowman, Commissioner absent] on February 1, 2007.

A True Record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with MGL ch. 30A sec. 14(1) for the purpose of tolling the time of appeal.

Pursuant to MGL ch. 31 sec. 44, any party aggrieved by a final decision or order of the Commonwealth may initiate proceedings for judicial review under MGL ch. 30A sec. 14 in the Superior Court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice To:

Marcino La Bella, Esq.

Bradford N. Louison, Esq.