

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

PAUL BEAUSOLEIL,
Appellant

v.

D-05-336

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:

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Respondent's Representative:

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Hearing Officer:

John J. Guerin, Jr.¹

**(AMENDED AND RE-SENT ON JULY 15, 2008 TO CORRECT SCRIVENER'S ERROR ON PAGE 11)
DECISION**

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant Paul Beausoleil (hereinafter "Appellant") is appealing the decision of the Respondent, Department of Correction (hereinafter "DOC") as Appointing Authority, to suspend him for twenty (20) working days without pay from his employment as a Correction Officer I. In a letter dated August 16, 2005, the Appellant was suspended for violating the General Policy and Rule 6(d) and Rule 19(b) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction (hereinafter "Blue Book") when he exited Door #19 in the Main Housing Unit at Bay State

¹ John J. Guerin, Jr., a Commissioner at the time of the full hearing, served as the hearing officer. His term on the Commission has since expired. Subsequent to leaving the Commission, however, Mr. Guerin was authorized to draft this decision, including the referenced credibility assessments, which were made by Mr. Guerin.

Correctional Center (hereinafter “BSCC”) on February 17, 2005 - despite having been previously ordered not to do so. The Appellant filed a timely appeal. A hearing was held on March 6, 2008 at the offices of the Civil Service Commission (hereinafter “Commission”). One tape was made of the hearing. Since no notice was received from either party, the hearing was declared private. Both parties filed proposed decisions with the Commission.

FINDINGS OF FACT

Based on the documents entered into evidence, (Joint Exhibits 1 - 6, Appointing Authority Exhibits 1 – 7, the testimony of BSCC Superintendent Michael Corsini (hereinafter “Supt. Corsini”), the testimony of DOC Captain John McGonagle Jr. (hereinafter “Capt. McGonagle”) and the testimony of the Appellant, I make the following findings of fact:

1. On February 17, 2005, the Appellant was a tenured civil service employee in the position of Correction Officer I. The Appellant has been employed by the Respondent since November 3, 1991. (Testimony of Appellant)
2. After a hearing pursuant to G.L. c. 31 §41 on August 16, 2005, the Respondent notified the Appellant that he was suspended for twenty (20) days due to conduct in violation of Rule 6(d) and Rule 19(b). This prohibited conduct was his exiting Door #19 in the Main Housing Unit at BSCC, despite previously being ordered not to do so. (Joint Exhibit 2)
3. The Appellant is employed in a paramilitary organization which has a supervisory rank structure of CO II (Sergeant), CO III (Lieutenant) and Captain. (Testimony of Supt. Corsini)
4. Captains function as Shift Commanders and are in charge of the entire facility on the 11 p.m. to 7 a.m. shift. (Id.)

5. Correction Officers are subject to the rules and regulations contained in the Blue Book. The Appellant received and signed for a copy of the Blue Book on December 2, 1991 (Joint Exhibits 5 and 6)
6. Rule 6(d) states in part, “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 toward your superior which is expected and required in correctional service.” (Joint Exhibit 6)
7. Rule 19(b) states in part, “Efforts will be taken to ensure that orders are reasonable and considerate, however, if you disagree with the intent or wording 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.” (Id.)
8. The Appellant had a lengthy discipline history from August 1993 until the issuance of the instant discipline, including one written warning; four (4) written reprimands; three (3) one-day suspensions; one (1) two-day suspension; one (1) three-day suspension; one (1) five-day suspension; and one (1) ten-day suspension. (Testimony of Supt. Corsini and Appointing Authority Exhibit 4)
9. On May 26, 2004, Sgt. Daniel Sullivan (hereinafter “Sgt. Sullivan”) submitted a report to Supt. Corsini indicating that on that date, he had informed the Appellant that the practice of utilizing Emergency access Door #19 at shift relief had to cease. Sgt. Sullivan also indicated that on May 26, 2004, Capt. McGonagle had also repeatedly told the Appellant not to use that door. (Testimony of Supt. Corsini and Capt. McGonagle and Appointing Authority Exhibit 3)

10. In a letter dated June 17, 2004, the Appellant was suspended for five (5) days without pay.

This letter states in pertinent part:

“Specifically, on May 26, 2004 at approximately 6:32 a.m., you called C.O. Kimberly Duwart at Inner Control to request that she deactivate the alarm for Emergency Door # 19 in Main One. As C.O. Duwart proceeded to clear Emergency Door # 19, Captain McGonagle instructed her to leave the alarm set and called Sgt. Sullivan in the Main Housing Unit to order him to report to Main One to find out what you were doing there since you were assigned to Main 3 and you had not been relieved from your assigned post. Captain McGonagle accompanied by Lt. Botelho left Inner Control and proceeded to Main One. Upon their arrival, Captain McGonagle informed you that you could not use Emergency Door # 19. In response, you stated, ‘I came in that way and I’m going out that way.’ Captain McGonagle then asked you to be quiet and advised that both he and Lt. Botelho had previously advised you that you were not allowed to use Emergency Door # 19 to be relieved. At this time you became loud and argumentative. Captain McGonagle advised you that you were going to comply with his orders and proceeded to leave the area. However, you followed him out into the corridor and as inmates were walking by you continued to argue and make inappropriate statements. Again, Captain McGonagle had to order you to be quiet and left the area.

Based upon the information stated above, I find that you left your assigned post without being properly relieved and I find your conduct in this matter to be insubordinate. Therefore, I find you in violation of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, including . . . ”

(Appointing Authority 4)

11. On February 18, 2005, Capt. McGonagle submitted a report about the Appellant to Supt.

Corsini. In the report, Capt. McGonagle wrote the following:

“On Thursday morning February 17, 2005 at approximately 6:40 a.m. I was in the inner control room. Just prior to that I had stood by while an officer from the state transportation unit had strip searched and placed an inmate in restraints. This officer then escorted the inmate out front. I was in the control room awaiting a call from staff out front to place that inmate off the institution count and then I could sign off on all the paperwork. The telephone rang and Officer McNally answered it. I could here Officer Turner who was assigned to Main 1 state ‘Could you clear door 19 for Mr. Beausoleil’. I told CO McNally not to disarm door 19. Moments later Sgt. Spicuzza called from the front control room

stating that the alarm on Main 1 had been activated. Once the count had been changed and the paperwork completed I proceeded out front. Arriving there Officer Beausoleil was already heading out the door into the parking lot. Officer Beausoleil had been assigned to the Modular 1 Housing Unit during the 11x7 shift.

On Thursday night February 17, 2005, I arrived for duty at approximately 10:10 p.m. Officer Beausoleil arrived at approximately 10:25 p.m. I went out into the lobby and stated to him 'What did I tell you about using door 19'. He just looked at me. Moments later he approached me and stated 'Why am I the only one being singled out when many others do it'. By his reaction it was obvious that he did not realize that I was in the control room when he had requested Officer Turner to call the control room to have the door disarmed.

Sir we were quite busy that morning and the last thing that we needed was a door alarm activated just for the convenience of Officer Beausoleil to cut through Main 1 to reduce his walking distance and hasten his departure from the facility. Furthermore this Officer has been told by myself and Lt. Botelho not to utilize that door. He chose to ignore those orders and you had to discipline him. Now by his latest action he has demonstrated that he will ignore your orders as well."

(Appointing Authority Exhibit 2)

Appellant's Argument

Although the credible memos described above can leave no doubt that he was aware that the use of Door #19 was prohibited, the Appellant's refrain at the Commission March 6, 2008 hearing was, "But everybody does it." The Appellant asserted that there was no formal memo or written order so he felt singled out by his supervisors for his actions. He claimed that his lengthy discipline history began to increase with the arrival at BSCC of Supt. Corsini and Capt. McGonagle but failed to support that claim with any evidence. His argument that he was a victim of disparate treatment was weak and unpersuasive. Later in his testimony, the Appellant finally admitted that he received a directive not to use the door. (Testimony of Appellant)

Appointing Authority's Argument

I found the testimony of Supt. Corsini at hearing to be credible. He demonstrated a professional demeanor and an excellent knowledge the operation of BSCC. His answers were consistent with the documentary evidence presented in this matter. Supt. Corsini was confident and clear in his statement that, regardless of any memorialization of same, if a Captain gives a directive, it is to be followed. He was also convincing when he pointed out that the Appellant already knew from the Door #19 incident in May 2004 that he was prohibited from using that door. (Testimony and Demeanor of Supt. Corsini)

Supt. Corsini testified that after receiving the February 18, 2005 report from Capt. McGonagle, he found that the described actions of the Appellant were “par for the course” and that the Appellant was “recalcitrant from my point of view.” (Id.)

Capt. McGonagle presented a demeanor that was professional and knowledgeable. He explained why Door #19 was supposed to be out of use on the 11 p.m. to 7 a.m. shift for shift relief or equipment change. He explained that the noise that would result from the door alarm was an unwelcome nuisance during the overnight shift at a correctional institute: his summation was “a sleeping inmate is a good inmate.” Capt. McGonagle demonstrated that he was not singling out the Appellant for behavior correction because of any kind of animus. He testified that he had worked in a very disciplined atmosphere at the maximum security facility at Cedar Junction for 27 years and he expected officers to do as they are told. He testified that in the failure to follow orders at any correctional institution, “you could get killed.” (Testimony and Demeanor of Capt. McGonagle)

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). See 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." Id. 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 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 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). 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). In reviewing an appeal under G.L. c. 31, § 43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an 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). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The Appellant's lengthy discipline history was of his own making and his testimony. His argument that he was singled out for disparate treatment was unpersuasive. The Appellant had been previously directed not to use Door #19. Despite this direction, he knowingly chose to do so anyway. His actions lent credence to Supt. Corsini's description of him as "recalcitrant." A twenty (20) day suspension in this instance may seem harsh, but the DOC properly considered the Appellant's lengthy discipline history and its action here is consistent with the principles of progressive discipline. Capt. McGonagle's chilling closing testimony that if an officer does not follow directives, he or she "could get killed" put an exclamation point on the danger of insubordination inside prison walls.

I find that neither Supt. Corsini nor Capt. McGonagle had any reason to unduly discipline the Appellant. In fact, I find that both men would have preferred that the Appellant simply performed his job so that discipline or any corrective measures would have been unnecessary.

By a preponderance of the credible evidence presented at hearing, I find that the DOC sustained its burden of proving just cause for suspending the Appellant for twenty (20) days without pay. For all the reasons stated herein, therefore, the appeal on Docket No. D-05-336 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Hearing Officer

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman –Yes; Marquis, Commissioner – Yes; Stein, Commissioner – Yes; Henderson, Commissioner – No; **Taylor**, Commissioner - No) on July 10, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 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:
Bradford N. Louison, Esq. (for Appellant)
Jeffrey S. Bolger (for Appointing Authority)