

# The Commonwealth of Massachusetts

Decision mailed: 4/9/10  
Civil Service Commission 83

**DONOVAN  
BLOOMFIELD,**  
*Appellant*

v.

**DEPARTMENT OF  
CORRECTION,**  
*Respondent*

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

**Case No.: D-09-366**

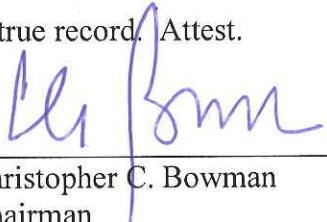
## DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on April 8, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated February 25, 2010. The Commission received the comments of the Appellant on March 5, 2010. The Commission received the comments of the Respondent on March 30, 2010. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on April 8, 2010.

A true record. Attest.

  
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Christopher C. Bowman  
Chairman

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:

Brad Louison, Esq. (for Appellant)  
Amy Hughes, Esq. (for Appointing Authority)  
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
ACTING CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060  
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February 25, 2010

Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

**Re: *Donovan Bloomfield v Department of Correction***  
***DALA Docket No. CS-10-11***

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

*Joan Freiman Fink*

Joan Freiman Fink, Esq.  
Administrative Magistrate

Enclosure

cc: Amy Hughes, Esquire  
Bradford N. Louison, Esquire

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CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

**Division of Administrative Law Appeals**

**Donavan Bloomfield,**  
Appellant

Docket No. D-09-366  
DALA No. CS-10-11

v.

**Department of Correction,**  
Appointing Authority

**Appearance for Appellant:**

Bradford N. Louison, Esq.  
Louison, Costello, Condon & Pfaff, LLP  
67 Battery March Street  
Boston, MA 02110

**Appearance for Appointing Authority:**

Amy Hughes, Esq.  
Department of Correction  
P.O. Box 946  
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Norfolk, MA 02056

**Administrative Magistrate:**

**Joan Freiman Fink, Esq.**

**SUMMARY OF DECISION**

The Appointing Authority has demonstrated just cause to suspend the Appellant for a period of one day from his position as a Correction Officer II/Sergeant with the Department of Correction (DOC). The Appellant filed a false report concerning Sergeant Montenero's conduct on January 6, 2009 and then compounded his misconduct by reiterating his false accusations during a subsequent departmental interview.

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CIVIL SERVICE COMMISSION

**RECOMMENDED DECISION**

Pursuant to G.L. c. 31, § 43, the Appellant, Donovan Bloomfield, is appealing the September 1, 2009 decision of the Appointing Authority, the Department of Correction, imposing upon him a one day suspension from his position as a Correction Officer II with the Department of Correction. (Exhibit 2.) The Appellant filed a timely appeal of this decision with the Civil Service Commission. (Exhibit 3.)

A hearing in this matter was held on January 11, 2010 at the offices of the Division of Administrative Law Appeals, 98 N. Washington Street, Boston, MA. As no written request was received from either party, the hearing was declared to be private. Various documents were entered into evidence at the hearing. (Exhibits 1– 11.) Two cassette tape recordings were made of the hearing. The record in this case was left open until February 11, 2010 for the filing of written closing memoranda.

The following witnesses testified on behalf of the Appointing Authority: David Shaw, a Sergeant with DOC's Department of Internal Affairs, Todd Smith, an Investigator in the Superintendent's Office of the DOC, Jeffrey Cardin, another Investigator in the Superintendent's Office, Emerson Fernandez, a Correction Officer I with the DOC, Gregory Zieroff, a former Correction Officer I, Mark Montenero, a Correction Officer II, and Donald Smith, a mail room officer with the DOC. The Appellant testified in his own behalf.

The Appointing Authority maintains that just cause exists to suspend the Appellant for a period of one day from his employment as a Correction Officer II for

violation of various rules including Rule 6 (a)<sup>1</sup>, Rule 6 (b)<sup>2</sup>, and Rule 19 (c)<sup>3</sup> of the *Rules and Regulations Governing All Employees of the Massachusetts Department of Correction*.

Specifically, the Appointing Authority alleges that the Appellant filed a false report claiming that Sergeant Mark Montenero was swearing at him (Bloomfield) in the front control lobby area of the Souza-Baranowski Correctional Center (SBCC) on January 6, 2009. The Appointing Authority also alleges that on January 21, 2009, during an investigatory interview conducted by Sergeant David Shaw, the Appellant reiterated his false accusation against Sergeant Montenero.

## **FINDINGS OF FACT**

Based on the documents entered into evidence (Exhibits 1 – 11) and the testimony of David Shaw, Todd Smith, Jeffrey Cardin, Donald Smith, Emerson Fernandez, Gregory Zieroff, Mark Montenero, and Donovan Bloomfield, I hereby make the following findings of fact:

1. The Appellant, Donovan Bloomfield, has been employed by the DOC for the past twenty-six years. He has served as Correction Officer II/Sergeant for the past twenty-one years. (Testimony of the Appellant.)

2. Approximately two and one-half years ago, he was re-assigned to the Souza-Baranowski Correctional Center. (SBCC.) (Testimony of the Appellant.)

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<sup>1</sup> Rule 6 (a) provides in part that: "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 becomes correctional professionals."

<sup>2</sup> Rule 6 (b) provides in part that: "Do not foster discontent or otherwise tend to lower the morale of any employee ...."

<sup>3</sup> Rule 19 (c) provides in part that: "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."

3. The Appellant's prior disciplinary record consists of the following: a one day suspension issued in 2002 for verbally threatening a union steward and stress counselor; a five day suspension issued in 2007 that was later reduced to a two day suspension with three days held in abeyance for bringing a personal cell phone and beeper to a post within the institution and being less than truthful when questioned, and a letter of reprimand issued in January of 2009 for refusing to acknowledge a supervisor and being less than truthful. (Exhibit 11.)

4. In or about November of 2008, Sergeant David Shaw was assigned to conduct an investigation concerning an allegation that Sergeant Mark Montenero had made racial slurs while in his (Bloomfield's) presence. (Testimony of Sergeant Shaw.)

5. After conducting an investigation, Sergeant Shaw determined that there was not enough evidence to support the Appellant's allegation and the matter was dismissed. (Testimony of Sergeant Shaw.)

6. Subsequently, the Appellant filed an incident report to the effect that on January 6, 2009, while he (Bloomfield) was at the end of his shift and was turning in his weapon for the evening, Sergeant Montenero yelled profanities towards him. (Testimony of Sergeant Shaw; Exhibit 5, p. 48.)

7. Specifically, the Appellant claimed that Sergeant Montenero purposely bumped into him and called him (Bloomfield) a "piece of shit." (Testimony of the Appellant; Exhibit 5, p. 48.)

8. Sergeant Shaw was assigned to conduct an investigation of the January 6, 2009 incident. (Testimony of Sergeant Shaw; Exhibit 5.)

9. Upon receiving this assignment, Sergeant Shaw contacted SBCC and requested that he be permitted to review the videotape of the control room for January 6, 2009. (Testimony of Sergeant Shaw.)

10. Sergeant Shaw did secure the videotape for the control room at the end of the shift at the time that the Appellant described that the incident had occurred. Sergeant Shaw observed nothing on the videotape indicating that Sergeant Montenero was in the presence of the Appellant during the time in question. (Testimony of Sergeant Shaw.)

11. This videotape that has no audio component was entered into evidence as Exhibit 8 and played at the hearing. The videotape did not show any interaction between Sergeant Montenero and the Appellant. (Exhibit 8.)

12. Sergeant Shaw then interviewed Officers Zieroff, Smith, and Fernandez as the Appellant had indicated in his incident report that the three officers had witnessed the confrontation between himself and Sergeant Montenero. (Testimony of Sergeant Shaw; Exhibit 5.)

13. When questioned by Sergeant Shaw, the three officers acknowledged that they were in the control room around the time of the end of the Appellant's shift but all denied that they had observed or heard any altercation, yelling, or abnormal interaction between Sergeant Montenero and the Appellant. All three officers were called as witnesses in the current hearing and again denied observing any unusual or offensive conduct by Sergeant Montenero. (Testimony of Sergeant Shaw; testimony of Officers, Smith, Zieroff, and Fernandez.)

14. Sergeant Shaw also interviewed Superintendent Investigators Todd Smith and Jeff Cardin, as he observed those two supervisors in the videotape. Both



Investigators Smith and Cardin remembered being in the control room on the day in question when the Appellant was ending his shift and neither recalled witnessing an incident or hearing any yelling that day. (Testimony of Sergeant Shaw; Exhibit 5.)

15. Investigators Smith and Cardin were called as witnesses at the current hearing and both of them stressed that had they observed or heard any abnormal interaction between the two Sergeants, they would have reported it. (Testimony of Investigators Smith and Cardin.)

16. As part of his official investigation, Sergeant Shaw conducted an interview of the Appellant held on January 29, 2009. During that interview, the Appellant told Sergeant Shaw that on January 6, 2009, while in the front control lobby, Sergeant Montenero called him (Bloomfield) a “fucking rat” and a “piece of shit.” The Appellant also indicated that Sergeant Montenero’s litany of profanity towards him lasted in excess of four minutes as in his opinion, Sergeant Montenero was “putting on a show” in front of other staff members. (Testimony of Sergeant Shaw.)

17. Sergeant Shaw also interviewed Sergeant Montenero who denied yelling and swearing at the Appellant. (Testimony of Sergeant Shaw; testimony of Sergeant Montenero.)

18. After concluding his investigation, Sergeant Shaw made a determination that the Appellant’s incident report was untruthful and that the Appellant continued to relate deceptive and false information during an official interview with him conducted as a part of the investigatory process. Sergeant Shaw then relayed this information to the Superintendent who in turn contacted the Commissioner of the DOC. (Testimony of Sergeant Shaw.)



19. By letter dated September 1, 2009, the Appointing Authority informed the Appellant that, after holding a hearing, it had decided to suspend him for a period of one day from his position as a Correction Officer II with the DOC. (Exhibit 2.)

20. The Appellant filed a timely appeal of this decision with the Civil Service Commission. (Exhibit 3.)

### **CONCLUSION AND RECOMMENDATION**

After reviewing all the testimony and evidence in this case, I conclude that the Appointing Authority has demonstrated by a preponderance of the evidence that just cause exists to suspend the Appellant for a period of one day from his position as a Correction Officer II with the Department of Correction. The Appointing Authority established that the Appellant, by filing a false report relating to Sergeant Montenero's use of profanity towards him on January 6, 2009 and by giving false statements during an official department interview held on January 21, 2009, violated Rule 6(a), Rule 6(b), and Rule 19(e) of the Rules and Regulations of the DOC.

The Civil Service 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). In reviewing an appeal brought pursuant to G.L. c. 31, § 43, if the Civil Service 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 basis of my conclusion rests with my finding that the testimony of all the Appointing Authority witnesses to be extremely credible. The Appellant himself had informed the DOC that Officers Smith, Fernandez, and Zieroff had witnessed the incident between himself and Sergeant Montenero. However, all three witnesses convincingly testified that they were in the front control lobby area at the time and day in question and that they did not observe any abnormal interaction between the Appellant and Sergeant Montenero.

Moreover, their testimony was fully corroborated by the videotape of the front control lobby taken on January 6, 2009. That videotape which admittedly did not have an audio did not reveal any interaction between the two Sergeants. Upon viewing the videotape, Sergeant Shaw discovered that two Superintendent's Investigators, Todd Smith and Jeff Cardin, were in the area at the time that the Appellant claims that Sergeant Montenero was yelling and swearing obscenities at him. Both Superintendent's Investigators Smith and Cardin gave compelling testimony to the effect that they did not observe or hear any unusual interaction between the two Sergeants in the front control lobby on January 6, 2009. In addition, the two Superintendent's Investigators stressed that if they had made such an observation, they would definitely have reported it as in their capacity as senior investigators, they are required to report any unusual or offensive conduct by a member of the staff.

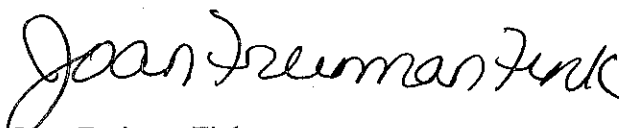
Sergeant Montenero testified that he did not recall interacting with the Appellant in the front control lobby on the day in question. Moreover, Sergeant Montenero persuasively testified that he has never yelled at the Appellant and that he bears no animosity towards him (Bloomfield).

I did not find the Appellant's testimony to be credible, especially in light of the fact that the videotape of the front control lobby for the day and time in question shows absolutely no interaction between the two Sergeants. Moreover, the Appellant failed to offer any convincing or persuasive explanation for Sergeant Montenero's unprovoked alleged verbal assault on January 6, 2009.

In determining the appropriateness of the discipline to be imposed, I carefully reviewed the entire record in this case. The record reflects that the Appellant was disciplined on two prior occasions for being less than truthful. As such, the Appellant was well aware of the fact that in his position as a Correction Officer II, he is required to be truthful at all times especially concerning conduct of staff members including himself.

Accordingly, I recommend that the Civil Service Commission affirm the action of the Appointing Authority suspending the Appellant for a period of one day from his position as a Correction Officer II with the DOC.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Joan Freiman Fink  
Administrative Magistrate

Dated:

2/25/10