

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

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

Paul Brouillette,
Appellant

v.

D-05-162

Department of Correction,
Respondent

Appellant's Attorney:

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67 Batterymarch Street
Boston, MA 02110

Respondent's Attorney:

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Commissioner:

John E. Taylor

DECISION

Pursuant to the provisions of G.L c. 31, s. 43, the Appellant, Paul Brouillette (hereinafter "Appellant"), is appealing the decision of the Respondent, the Massachusetts Department of Correction as Appointing Authority (hereinafter "DOC"), suspending him for thirty (30) days without pay from his employment as a Correction Officer for (1) violating the General Policy and Rule 1 of the Rules and Regulations Governing All Employees of the Massachusetts

Department of Correction (hereinafter "Rules and Regulations") on August 23, 2004; and for (2) violating 103 DOC 238: Policy for the Prohibition of Domestic Violence (hereinafter "DOC Domestic Violence policy") when he failed to comply with a 209A restraining order issued from the Barnstable District Court Department. The Appellant filed a timely appeal. A hearing was held by the Civil Service Commission (hereinafter "Commission") on February 13, 2008. One tape was made of the hearing. As no notice was received from either party, the hearing was declared private. Following the hearing, both parties submitted proposed decisions.

FINDING OF FACT:

Based on the documents entered into evidence, (Joint Exhibits 1-5), the testimony of Sergeant Christopher McDermott, Heather Hall-Martin and Correction Officer Paul Brouillette, I make the following findings of fact:

1. On August 23, 2004, Appellant was a tenured civil service employee in the position of Correction Officer I. The Appellant has been employed by the Respondent since September 6, 1998 (Testimony of Appellant).
2. The Appellant has no prior discipline. (Testimony of Appellant & Respondent)
3. On August 1, 1997, then-Governor Cellucci issued Executive Order 398, directing all Executive Branch agencies to implement a policy of zero-tolerance for domestic violence. (Exhibit 9 and Testimony of Ms. Hall-Martin).
4. In a Memorandum to All Employees dated October 23, 1997, Commissioner Michael Maloney announced that the DOC had established a zero-tolerance policy for domestic violence (Exhibit 10 and Testimony of Ms. Hall-Martin).
5. The zero-tolerance policy extends to domestic violence within or outside the workplace (Exhibit 6).

“DOC employees shall:
Ensure that they do not participate in any form of domestic violence,
either within or outside the workplace.” (Exhibit 6, 238.04 Roles and
Responsibilities ¶3.a.)

6. Although Chapter 209A restraining orders are civil actions, violations of certain provisions constitute criminal offenses for which arrest is mandatory (Exhibit 6, 238.03 Definition of Domestic Violence ¶3).

7. Rule 1 of the Rules and Regulations reads as follows:

“1, STANDARDS OF CORRECTIONAL SERVICE

You must remember that you are employed in a disciplined service which requires an oath of office. Each employee contributes to the success of the policies and procedures established for the administration of the Department of Correction and each respective institution. Employees should give dignity to their position and be circumspect in personal relationships regarding the company they keep and places they frequent.”

(Exhibit 7)

8. The Appellant received 2.5 hours of training on the Rules and Regulations on September 11, 1998 (Exhibit #11).
9. The Appellant received training on the Department’s Domestic Violence Policy as follows:

2.5 hours – October 21, 1998 (Exhibit #11)

0.5 hours – November 1998 (Exhibit #12)

10. The DOC Domestic Violence policy advises employees that:

“Acts of domestic violence, regardless of where they occur, will not be tolerated and may result in discipline, including, but not limited to:

- a. An oral warning or reprimand;
- b. A written warning or reprimand to be placed in a personnel file;
- c. Required completion of a certified batterer intervention program;
- d. Loss of accrued vacation time ...
- e. Suspension, demotion, or termination; or
- f. Any combination of the above.”

(Exhibit 6, 238.06 Procedures for Investigating and Disciplining Abusers ¶4)

11. The transcript of the video on Domestic Violence seen by the Appellant on

October 28, 1999 shows that Commissioner Maloney states the following to all employees:

“Any violation of a restraining order is a criminal offense. Furthermore, Federal Law now dictates that anyone, including law enforcement personnel, who are convicted of a domestic violence misdemeanor or felony offense are prohibited from carrying transporting, shipping or possessing firearms and/or ammunition. As a Department employee you will face discipline up to and including termination.” (Exhibit #14 and Testimony of Ms. Hall-Martin)

12. The Appellant was issued a restraining order against him by the Barnstable

District Court on July 14, 2004, which was later extended to July 25, 2005 (Exhibit 15).

13. In the February 13, 2008 hearing before the Commission, Sandwich Police

Sergeant Christopher McDermott testified that he conducted an investigation of the domestic violence in this matter.

14. In the Sergeant's presence, the alleged victim received a call from the Appellant.

The Appellant asked her why she was doing this. The sergeant was able to observe the Appellant's name and telephone number on the victim's phone (Testimony of Sgt. McDermott and Exhibit 4).

15. The sergeant called the Appellant back on his cell phone. The Appellant

acknowledged that there was a restraining order against him in effect and that he had called the victim numerous times (Testimony of Sgt. McDermott and Exhibit 4).

16. Sgt. McDermott also testified that he advised the Appellant that he was subject to arrest and should turn himself in (Testimony of Sgt. McDermott and Exhibit 4).
17. Sgt. McDermott was a credible witness with a calm, professional demeanor.
18. The Appellant indicated that he would not turn himself in and hung up on Sergeant McDermott (Exhibit 4).
19. The Appellant stated that just prior to this incident which is the subject matter of the thirty (30) day suspension, his father had passed away and he was emotionally distraught. (Testimony of Appellant)
20. The Appellant acknowledged that the Restraining Order against him was in effect but the conversations between him and the alleged victim were mutual.
(Testimony of Appellant)
21. On September 13, 2004, the Appellant was before the Barnstable District Court in the matter of Restraining Order Docket Number 0425 RO 0185. The matter was continued without a finding for six (6) months.
22. On April 25, 2005, after a hearing pursuant to M.G.L. c. 31 §41, the Respondent notified the Appellant that he was suspended for thirty (30) days for conduct in violation of Rule 1 of the Rules and Regulations, as well as a violation of the DOC Domestic Violence policy.

CONCLUSION:

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 Commission, 43 Mass. App. Ct. 300,304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v.

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 “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. 12Pearlstein, 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 at 334. See Commissioners of Civil Serv. v. Municipal Ct. of Boston at 86 and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The Respondent has shown by a preponderance of the evidence that it had just cause to suspend the Appellant from employment for a period of thirty (30) work days, without pay.

All employees were put on notice that “All employee acts of domestic violence, regardless of whether they occur at home or in the workplace, will not be tolerated and may result in discipline *up to and including* termination.” (Exhibit #10 and Testimony of Ms. Hall-Martin (*emphasis added*)). Not only did the Appellant have notice of this policy, he attended the DOC training as well.

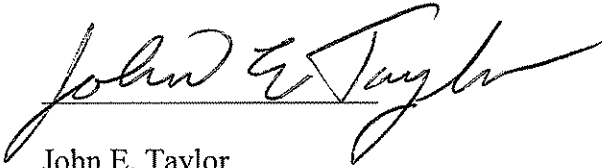
The Appellant was subject to a 209A Abuse Prevention Order in July 2004 which ordered him not to abuse the alleged victim, to have no contact with her, and to stay away from her residence and her workplace (Exhibit 15). The Appellant violated that order on August 23, 2004 when he contacted the alleged victim, the nature of that contact being wholly immaterial. At least one violation took place in the presence of a police officer (Testimony of Sgt. McDermott). The Appellant later admitted to sufficient facts in Barnstable District Court on September 13, 2004, and the matter was continued without a finding for six months (Exhibit 5).

Based on the facts presented, there was just cause to discipline the Appellant. The thirty (30) day suspension was justified based on the zero tolerance policy on Domestic Violence which states that any employees who violate this DOC policy would be disciplined up to termination. Due to the Appellant’s actions, he was also brought before the court on criminal charges. In addition to the length of the Appellant’s criminal proceedings, he was also subject to court supervision for a period of six months at the conclusion of said proceedings.

For all of the above stated reasons, 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.

WHEREFOR, the appeal on Docket No. D-05-162 is hereby *dismissed*.

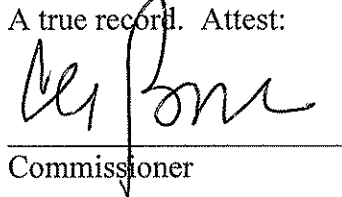
Civil Service Commission



John E. Taylor
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Stein, Marquis and Taylor, Henderson, [absent] Commissioners) on August 14 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)(I), 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 sent to:
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