

**WILLIAM CROWLEY ,
NICHOLAS KENNEY, and
WILLIAM ROACH,**
Appellants

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

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

Case Nos.: D-09-27, D-09-28, D-09-29

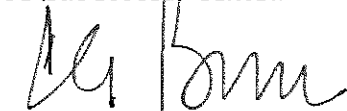
DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on November 12, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated September 4, 2009. The Commission received comments from the Appellant on October 5, 2009. 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, and Stein [Taylor, absent], Commissioners) on November 12, 2009.

A true record. Attest.



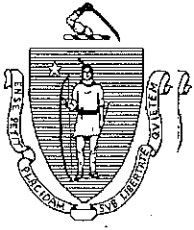
Christopher C. Bowman
Chairman

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)(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 to:

Robert A. Stewart, Esq. (for Appellant)
Andrew S. McAleer, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
98 NORTH WASHINGTON STREET, 4TH FLOOR
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Richard C. Heidlage
Acting Chief Administrative Magistrate

Tel: 617-727-7060
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September 4, 2009

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

Robert Stewart, Esq.
Louison, Costello, Condon & Pfaff, LLP
67 Batterymarch Street
Boston, MA 02110

Andrew S. McAleer, Esq.
Department of Correction
PO Box 946
Norfolk, MA 02056

Re: *William Crowley, Nicholas Kenney and William Roach v. Department of Correction*
Docket Nos. CS-09,141, CS-09-142, CS-09-143

Dear Chairman Bowman, Attorney Stewart and Attorney McAleer:

Enclosed is a copy of the Recommended Decision in the above-titled appeals that is being issued today.

The parties are advised that pursuant to 801 CMR 1.01(11)(c), they have thirty (30) days to file written objections to the decision with the Civil Service Commission, which 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 twenty (20) days of receipt of a copy of the objections.

Very truly yours,

Maria A. Imperato
Administrative Magistrate

Enc.

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Suffolk, ss.

Division of Administrative Law Appeals

**William Crowley,
Nicholas Kenney, and
William Roach,**
Appellants

v.

Docket Nos. D-09-27, CS-09-141
D-09-28, CS-09-142
D-09-29, CS-09-143

Department of Correction,
Appointing Authority

Appearance for Appellants:

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Boston, MA 02110

Appearance for Appointing Authority:

Andrew S. McAleer, Esq.
Department of Correction
PO Box 946
Norfolk, MA 02056

Administrative Magistrate:

Maria A. Imparato, Esq.

CASE SUMMARY

The DOC has proved by a preponderance of substantial evidence that it had just cause to impose a five day suspension and a final warning on each Appellant for filing untruthful reports and for lying during their investigative interviews.

RECOMMENDED DECISION

William Crowley, Nicholas Kenney and William Roach each filed a timely appeal under G. L. c. 31, s. 43 of the decision of the Department of Correction (DOC) to suspend him for five working days and to issue a final warning. CO Crowley and CO Kenney

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were found to have violated Rule 19(c) of the Rules and Regulations of the DOC. Sgt.

Roach was found to have violated Rule 19(d) of the Rules and Regulations of the DOC.

(Exs. 1, 2, 3,)

I held a hearing on the consolidated appeals on June 18, 2009. I declared the hearing private because neither side filed a written request to make it public. I admitted documents into evidence. (Exs. 1 – 10) There are three cassette tapes of the hearing. The record closed on August 10, 2009 with the filing of proposed decisions.

The DOC offered the testimony of DOC Deputy Commissioner James Bender and Jacquelyn Bernard, Licensed Practical Nurse (LPN) at MCI Cedar Junction.

CO Crowley, CO Kenney and Sgt. Roach each testified in his own behalf.

FINDINGS OF FACT

1. Correction Officer I William Crowley has worked at MCI Cedar Junction for four years. On August 23, 2007, Officer Crowley was assigned to the segregation unit known as 10 Block where the most difficult and assaultive inmates are housed. (Testimony, Crowley.)
2. Correction Officer I Nicholas Kenney has worked at MCI Cedar Junction for four years. On August 23, 2007, Officer Kenney was assigned to go to 10 Block and assist in the escort of an inmate to the hospital unit (HSU). (Testimony, Kenney.)
3. Sgt. William Roach has worked for the DOC since February 1998. He has worked at Cedar Junction since February 2007 when he was promoted to a

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CO II, Sergeant. On August 23, 2007, Sgt. Roach was assigned to 10 Block

as a Sergeant on the upper tier. (Testimony, Roach.)

4. On August 23, 2007, Sgt. Stephen Hocking was the acting Lieutenant because he was the senior Sergeant that night. (Testimony, Roach.)
5. At or about 9 p.m. on August 23, 2007, inmate A, who was housed in 10 Block complained of chest pain. He was evaluated by LPN Jacquelyn Bernard who determined that inmate A needed to be seen in the hospital unit for an EKG. (Testimony, Bernard.)
6. Officers Crowley and Kenney were directed by a Sergeant (either Roach or Hocking), to go up to 10 Block and escort inmate A to the hospital unit. While Officers Crowley and Kenney were getting inmate A into restraints for the escort, Sgt. Hocking was present. Sgt. Roach was present because he was doing a round of the tier. (Testimony, Crowley, Roach.)
7. While inmate A was being placed in restraints, he said he had a piece of mail that needed to be mailed. Sgt. Hocking took the mail off of the bars and said he would take care of it. Inmate A then said he wanted his mail back. Sgt. Hocking said "When you are hooked up, I'll give you your mail back." Inmate A spit in Sgt. Hocking's face. (Testimony, Crowley, Kenney, Roach; Ex. 5, p. 62.)
8. The escort began with Officer Crowley on inmate A's left, Officer Kenney on inmate A's right, and Sgt. Hocking walking right behind inmate A. Sgt. Roach was a few feet behind Sgt. Hocking. (Ex. 10)

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9. LPN Bernard was sitting in a chair at the end of the tier watching the escort approach her. When the escort passed just out of view of the cameras on the tier, she saw Sgt. Hocking hit inmate A on the back of the head with an open hand. Inmate A fell to his knees. Officers Crowley and Kenney lifted inmate A back to his feet and escorted him to the hospital unit. (Testimony, Crowley, Kenney.)
10. When inmate A fell to his knees, he shouted loudly, "Jacquie, you saw that. He just hit me." (Testimony, Bernard.)
11. Just before Sgt. Hocking hit inmate A on the back of his head, Sgt. Hocking placed his hands on the shoulders of CO Crowley and CO Kenney. (Ex. 10)
12. Right after the incident, on the landing of the stairs going down to the hospital unit, Sgt. Hocking said to LPN Bernard, "Are we okay?" Sgt. Hocking said he would write a report of the incident and she could read it if she chose. (Testimony, Bernard.)
13. LPN Bernard reported the incident to Lt. Pavia who told her to speak with the Captain who told her to write a confidential report. The Director of Nurses told LPN Bernard she had to write up a report. LPN Bernard did write a confidential incident report. (Ex. 5, p. 58.)
14. Sgt. Hocking then called LPN Bernard with the number of his report. Lt. Pavia printed that report up for LPN Bernard. That was the last time Sgt. Hocking contacted LPN Bernard. (Testimony, Bernard.)

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15. Sgt. Hocking did not write an incident report; he wrote a disciplinary report accusing inmate A of spitting in his face. Sgt. Hocking's disciplinary report includes the language, "As we got to the end of the tier inmate A dove on the ground yelling, 'Hocking hit me in the back of the head. Did you see that!'" (Ex. 5, p. 59.)
16. CO Crowley wrote an incident report #416204 that includes the language, "As we got to the end of the tier inmate A dove on the ground yelling, 'Hocking hit me in the back of the head. Did you see that!'" (Ex. 5, p. 61)
17. CO Kenney wrote an incident report #416217 that is identical to CO Crowley's report. It includes the language, "When we got to the end of the tier inmate A dove to the ground yelling, 'Hocking hit me in the back of the head. Did you see that!'" (Ex. 5, p. 60.)
18. Sgt. Roach wrote an incident report #416220 stating, "I saw inmate A suddenly drop himself to the floor near the tier gate stating "Did you see that." (Ex. 5, p. 62.)
19. At the end of the shift out in the parking lot, LPN Bernard saw Officer Crowley and said what a terrible position she was in. Officer Kenney came over and said that Sgt. Hocking had stepped on inmate A's leg chains which made him fall. (Testimony, Bernard.)
20. Captain Edward McGonagle of the DOC Office of Investigative Services interviewed Officer Kenney on August 24, 2007. Officer Kenney said that inmate A "dove" to the ground when exiting the tier; he did not see Sergeant

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- Hocking hit inmate A or step on his leg iron chains; Sgt. Hocking did not touch Officer Kenney; no one told him what to write in his incident report; and he had no recollection of speaking with LPN Bernard and CO Crowley in the parking lot the previous night. (Ex. 6.)
21. At a follow-up interview with Captain McGonagle on January 22, 2008, Officer Kenney said that looking at a picture of Sgt. Hocking touching his shoulder did not refresh his recollection of being touched by Sgt. Hocking on August 23, 2007 right before passing out of view of the camera, and that he did not see Sgt. Hocking make physical contact with inmate A. (Ex. 7.)
22. At an interview with Captain McGonagle on August 24, 2007, Officer Crowley said he believed inmate A deliberately fell to his knees during the escort; he had no memory of Sgt. Hocking touching him during the escort; and he did not see Sgt. Hocking hit inmate A. He said no one else was present during his conversation with LPN Bernard in the parking lot that night. (Ex. 6.)
23. At a follow-up interview with Captain McGonagle on January 23, 2008, Officer Crowley said the pictures do not refresh his recollection of being touched by Sgt. Hocking on August 23, 2007 and he did not see Sgt. Hocking make physical contact with inmate A on that night. (Ex. 7.)
24. At his interview with Captain McGonagle in August 2007, Sgt. Roach said that inmate A fell down; he did not see Sgt. Hocking hit inmate A. (Ex. 6.)
25. On October 2, 2008, Sgt. Hocking wrote a confidential incident report of the events of August 23, 2007 at the behest of Deputy Commissioner James

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Bender. In his report, Sgt. Hocking wrote, "I extended my arm and brisled the top of inmates A's head as we were exiting the tier." (Ex. 9.)

26. As of August 2007, neither CO Crowley nor CO Kenney had any previous discipline. (Ex. 5, pp. 146, 147.)
27. As of August 2007, Sgt. Roach had been disciplined on seven occasions. In November 1998 he was terminated for an arrest on a domestic violence charge but was reinstated on January 10, 1999. He received a three day suspension in May 1999 for changing procedures without authorization, but no action was taken. He received a reprimand in June 2002 for leaving a broken key in an inmate's door and failing to secure an inmate's property after the inmate was removed from the population. He received a reprimand in January 2003 for having a non-work conversation with an inmate which resulted in a miscount. He received another reprimand in January 2003 for being too familiar with inmates and creating a ruckus. He received a one day suspension in March 2003 for attempting to bring a contraband book and newspaper into the institution on two occasions. He received a two day suspension in April 2003 for failing to control access to the segregation building and allowed an unassigned staff person into the building and issued restricted keys. (Ex. 5, p. 148.)

CONCLUSION AND RECOMMENDATION

The Department of Correction has proven by a preponderance of substantial evidence that it had just cause to suspend for five days and issue a final warning to CO Crowley and CO Kenney for violation of Rule 19(c) of the DOC Rules and

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Regulations, and to suspend for five days and issue a final warning to Sgt. Roach for violation of Rule 19(d) of the DOC Rules and Regulations. I recommend that the Civil Service Commission affirm the action of the Appointing Authority.

Rule 19(c)

Rule 19(c) states in pertinent part:

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 to any questions or interrogatories relative to the conduct of ... another employee or yourself.

In view of the fact that LPN Bernard witnessed Sgt. Hocking hit inmate A with an open hand on August 23, 2007, and in view of Sgt. Hocking's admission in his incident report of October 2, 2008 that he "brisked" the top of inmate A's head as they were exiting the tier, I have no doubt that both CO Crowley and CO Kenney saw or heard the slap to inmate A's head. In addition, the pictures show that Sgt. Hocking touched the shoulders of both CO Crowley and CO Kenney in a motion designed to get them out of the way so he could reach inmate A's head.

Both CO Crowley and CO Kenney lied during Captain McGonagle's investigation about these matters, and both lied about speaking with LPN Bernard in the parking lot later that night. Furthermore, CO Kenney lied about his report, since he obviously copied CO Crowley's report verbatim. Both reports were untruthful.

This dissembling was a clear violation of Rule 19(c).

LPN Bernard was a credible witness not only because she had a clear view of the escort coming towards her, but because she was such a reluctant witness. Inmate A knew she saw the slap and if she covered up for Sgt. Hocking, she would be on

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the wrong side of assaultive inmates. Telling the truth would no doubt put her on the wrong side of the Correction Officers. She was in an unenviable position, but she chose to tell the truth.

I believe LPN Bernard also testified truthfully when she said that she spoke with both CO Crowley and CO Kenney in the parking lot the night of the incident. I believe CO Crowley lied when he said that CO Kenney was not present, and I believe that CO Kenney lied when he denied that he said during the parking lot conversation that Sgt. Hocking stepped on inmate A's leg chains which caused him to fall.

This dissembling merits a five day suspension for violation of Rule 19(c).

Rule 19(d)

Rule 19(d) states in pertinent part:

It is the duty and responsibility of all institution and Department of Correction employees to obey these rules and official orders and to ensure they are obeyed by others. This duty and responsibility is augmented for supervising employees, and increasingly so, according to rank.

Sgt. Roach was in a position to see Sgt. Hocking hit the back of inmate A's head. I believe that he testified untruthfully when he told Captain McGonagle that he did not see Sgt. Hocking hit inmate A, and I believe that his incident report was untruthful when he said that he saw inmate A "drop himself" to the floor.

This dissembling merits a five day suspension under Rule 19(d) in view of Sgt. Roach's rank.

I recommend that the Civil Service Commission affirm the action of the DOC in suspending each Appellant for five days and issuing a final warning to each Appellant

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for filing a false incident report and for dissembling during his investigative

interview.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imperato

Maria A. Imperato

Administrative Magistrate

DATED: 9/4/09