

Decision mailed: 8/29/08  
Civil Service Commission  
CB

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

WILLIAM DESROCHES,  
Appellant

Docket No.: D-07-247

v.

DEPARTMENT OF CORRECTION,  
Respondent

Attorney for the Appellant:

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

Representative of Respondent:

Kerry A. Rice  
Department of Correction  
Division of Human Resources  
P.O. Box 946 Industries Drive  
Norfolk, MA 02056

Hearing Officer:

Angela C. McConney, Esq.

**DECISION**

The Appellant, William DesRoches (hereinafter "Appellant"), pursuant to G.L. c.31 § 43, filed an appeal with the Civil Service Commission, (hereinafter "Commission") on July 11, 2007, claiming the Department of Correction (hereinafter "DOC" or "Appointing Authority") did not have just cause to suspend him without pay for sixteen (16) days because he allegedly made inappropriate comments to an inmate (hereinafter "Inmate X")<sup>1</sup>. A hearing was held on May 28, 2008 at the Commission. Since neither party requested a public hearing, the hearing was declared

---

<sup>1</sup> The inmate involved in this incident is a figure of some notoriety. In order to protect his privacy, he shall be referred to as Inmate X throughout this decision.

private. Upon motion by the parties, the Hearing Officer sequestered the witnesses. Two (2) tapes were made of the hearing and are retained by the Commission.

## **FINDINGS OF FACT**

Seventeen (17) joint exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of:

### *For the Appointing Authority:*

- Jamie Nee, Correction Officer, Office of Investigative Services, MCI- Cedar Junction,
- Scott Black, Superintendent's Special Investigator, MCI- Cedar Junction,
- Ronald Bergeron, Correction Officer, MCI – Cedar Junction, and
- Chad Fiola, Sergeant/Investigator, MCI – Cedar Junction

### *For the Appellant:*

- Appellant, William DesRoches, Sergeant, MCI – Cedar Junction

I make the following findings of fact:

1. The Appellant William DesRoches, a tenured civil service employee, has been employed by the DOC since March 29, 1998. (Testimony of Appellant)
2. He received a copy of the *Rules and Regulations Governing All Employees of the Massachusetts Department of Correction* (hereinafter "Blue Book") on March 30, 1998. (Exhibit 11)
3. Before the July 12, 2006 incident, the DOC had suspended the Appellant on three (3) separate occasions. He had also been issued a written warning. (Exhibits 13, 14, 15 and 16)

4. In November 2005, the Appellant transferred to MCI-Cedar Junction, one of the DOC's two maximum security prisons. (Testimony of Appellant)
5. After working in the general population for a couple of months, the Appellant bid to work in Ten Block, a segregation unit within Cedar Junction where inmates are locked in their cells for twenty-three (23) hours each day. (Testimony of Appellant)
6. DesRoches was appointed to Ten Block where he worked from 1:00 p.m. to 11:00 p.m. He served as the officer-in-charge after the senior supervisory staff (lieutenant and senior sergeants) left around 5:00 p.m. until the end of his shift. (Testimony of Appellant)
7. 'Inmate X,' is a high-profile prisoner who resides on Ten Block. (Testimony of Appellant, Testimony of CO Black, CO Bergeron, Investigator Nee)
8. Inmate X's cell has two sets of doors that are ten (10) to twelve (12) feet apart, one solid and one with spaced bars. The solid door must be opened in order to gain access to the door with spaced bars. Inmate X's cell is at the end of the tier on the second floor of Ten Block.  
(Testimony of Appellant)
9. Inmate X is known for causing conflict and is regularly called a "rat" or a "snitch" by other inmates. Other inmates are resentful of the fact that Inmate X isn't disciplined for conduct for which they are punished. (Testimony of Appellant, Exhibit 17)
10. Inmate X has alleged that staff members intentionally leave his solid door open, giving other inmates access to assault him. In a June 9, 2006 report, Investigator Nee found that there was documentation that Inmate X's solid door had been left open, resulting in an assault by other inmates. A memorandum was posted in Ten Block directing staff to ensure that the solid door is secured during inmate movement to prevent a further assault on Inmate X and to prevent him from assaulting others. (Exhibit 10, page 44)

11. The Appellant attempted to build a rapport with Inmate X when he first arrived at MCI-Concord. However, the relationship deteriorated after the Appellant issued him disciplinary tickets for yelling racial slurs at other inmates, throwing trash out on to the tier, and intentionally flooding his cell by clogging his toilet. (Testimony of Appellant, Exhibit 17)
12. After that, Inmate X would constantly file grievances against the Appellant. (Testimony of the Appellant, Exhibit 10)
13. On March 24, 2006, Investigator Jamie Nee (hereinafter "Investigator Nee") of the Office of Investigative Services (OIS) began an investigation of allegations that Inmate X had made against the Appellant. Inmate X claimed that the Appellant was intentionally leaving the solid door of his cell open - so that other inmates could harass him and spit on him through the inner door with spaced bars. Investigator Nee's Investigative Report, submitted to the Superintendent on June 9, 2006, did not sustain any of Inmate X's allegations. (Exhibit 10, pp. 37-44; Testimony of Investigator Nee, Testimony of Appellant)
14. Inmate X has also filed grievances against other correction officers. (Testimony of the Appellant)
15. On July 12, 2006, Correction Officer Scott Black (hereinafter "CO Black"), a member of Cedar Junction's Inner Perimeter Security team (hereinafter "IPS") and the Superintendent's Special Investigator, interviewed Inmate X regarding misplaced or missing mail. Inmate X claimed that he had received other inmates' mail, and that his own mail was missing. (Testimony of CO Black)
16. After sending Inmate X to his cell on that same day, CO Black called Correction Officer Ronald Bergeron (hereinafter "CO Bergeron") at about 3:45 p.m. and asked him to pick up the misdirected mail from Inmate X. (Exhibit 10 at 33, Testimony of CO Black) CO Black

was reluctant to enter Inmate X's cell due to his status as an IPS officer - who routinely dealt with inmate informers. In the culture at MCI-Concord, when inmates see others speaking with CO Black, it is assumed that they are providing information. CO Black was concerned that Inmate X's safety may be jeopardized if they were seen together. (Testimony of CO Black, Exhibit 10)

17. At about 4:20 p.m., CO Bergeron approached Inmate X's cell in order to collect the misdirected mail. As Inmate X was about to hand the mail to CO Bergeron, the Appellant walked past and said "Stop snitching, you rat." No other staff members were present. (Testimony of CO Bergeron, Exhibit 10)
18. This comment was within earshot of neighboring inmates. Inmate X became infuriated, and refused to hand over the mail to CO Bergeron. (Testimony of CO Bergeron, Exhibit 10)
19. As they walked down the stairs, CO Bergeron asked the Appellant why he had said this. The Appellant replied that Inmate X had told on him in the past and he had gotten suspended as a result. (Exhibit 10, pp. 6 and 9)
20. CO Bergeron informed CO Black about the interrupted pick-up. He did not inform him of the Appellant's comments. CO Black instructed him to try again when his shift ended at 5:00 p.m. (Testimony of Correction Officer Black, Testimony of CO Bergeron, Exhibit 10)
21. After waiting approximately fifteen (15) minutes, CO Bergeron returned to the second floor tier to try again. (Testimony of CO Bergeron, Exhibit 10)
22. CO Bergeron had walk by the Appellant in order to get to get to Inmate X's cell. When CO Bergeron passed the Appellant at approximately 4:45 p.m., the Appellant said to him, "Coming down to talk to the rat?" Other inmates started to snicker. Inmate X also heard this

comment, refused to hand over the mail, and asked to speak to CO Black. No other staff members were present. (Exhibit 10, Testimony of CO Bergeron)

23. CO Bergeron let CO Black know that he was unable to get the mail on the second attempt. Again, he did not inform him of the Appellant's remarks. (Testimony of Correction Officer Bergeron, Testimony of CO Black, Exhibit 10)
24. CO Bergeron was ordered to write a confidential report of the incidents. In his July 14, 2006 report, he claimed that the Appellant made comments about Inmate X on two occasions. (Testimony of CO Bergeron, Exhibit 10 at 35)
25. On July 19, 2006, Sergeant Chad Fiola (hereinafter "Sergeant Fiola"), an Investigator with the OIS, was assigned to investigate the July 12, 2006 allegations contained in Bergeron's July 14, 2006 confidential report. During his investigation, Sergeant Fiola interviewed CO Bergeron, CO Black, and Inmate X on August 17, 2006. During his interview, Inmate X alleged that the staff was allowing inmates to spit and throw feces at him as they were escorted by his cell. Sergeant Fiola conducted an interview with the Appellant on October 12, 2006. (Exhibit 3, Exhibit 10, pp. 1, 5, 12-14; Testimony of Sergeant Fiola)
26. The Appellant denied that he had called Inmate X "a rat" or any words to that effect on July 12, 2006. He said that he did not remember going to the upper tier a second time although it's possible he may have. He said that Inmate X's agenda is to get him suspended or terminated because he thinks it's funny. (Exhibit 10)
27. Sergeant Fiola's Investigative Report, DOC-CJ-06-200, dated December 19, 2006, found that the Appellant had lied during the investigation and that he had called Inmate X a 'rat,' or words to that effect, on two separate occasions on July 12, 2006. In so doing, he violated Rule 8(a), Rule 10(a) and Rule 19(c and d) of the Blue Book. (Exhibit 10)

28. The investigative report found that Inmate X's allegations reported to Sergeant Fiola on August 17, 2006, in regard to inmates spitting and throwing feces on him, were unfounded and unsubstantiated. (Exhibit 10)
29. At the Appellant's request, a hearing was held on March 30, 2007 to determine whether he had indeed violated DOC rules, regulations and policies. Joseph Santoro, Labor Relations Advisor, presided as hearing officer. (Exhibits 6, 7 and 8)
30. In a letter dated June 26, 2007 the Appellant was suspended for sixteen (16) days for violating Rule 8(a), Rule 10(a) and Rule 19(c and d) of the Blue Book for his actions on July 12, 2006. The letter also contained a final warning that any further rule violations could result in his termination from the DOC. (Exhibits 2, 3 and 4)
31. The Blue Book rules which the Appellant violated were:

Rule 8(a) Relations with inmates may be twofold, that of counselor and disciplinarian simultaneously, which will require your utmost tact and diplomacy. For those employees having job responsibilities which require inmate contact, your attitude toward inmates should be friendly not familiar, firm not harsh, vigilant not unduly suspicious, strict not unjust. Your leadership ability may be enhanced by the professional image you project.

Rule 10(a) Employees shall not use profane or abusive language toward any inmate, nor reply in such language to what is perceived to be impudent or insulting words or actions by an inmate, Make no disparaging references to inmates regarding their color, creed, race or crimes they have committed. Department of Correction regulations shall only permit an employee to use force against an inmate which is reasonable. Under no circumstances shall an employee use or permit to use excessive force, or use of force as punishment (103 CMR 505 Use of Force)

Rule 19(c) 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. 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.

Rule 19(d) 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. Not only are you charged with certain responsibilities while on duty, but you should also keep in mind that any irregularities coming to your attention

while off duty, which affects the welfare of an institution, the Department of Correction or its inmates, should be reported to the institution Superintendent or Commissioner of Correction.  
(Exhibits 3 and 12)

32. The Appellant filed a timely appeal with this Commission. A full hearing was held on May 28, 2008.

## 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." Cambridge v. Civ. Serv. Comm'n, 43 Mass. App. Ct. 300, 304 (1997). See Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civ. Serv. Comm'n, 38 Mass. App. Ct. 473, 477 (1995); Police Dep't of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); 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); Commissioner of Civ. Serv. v. Mun. 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 Comm. of Brockton v. Civ. Serv. Comm'n, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority's burden of proof is one of a preponderance of the evidence which is satisfied "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. Falmouth v. Civ. Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (2004).

The issue before 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 Commissioner of Civ. Serv. at 86 and Leominster v. Stratton at 727-728.

The Appointing Authority was reasonably justified in disciplining the Appellant. The Appointing Authority's decision to discipline the Appellant was supported by adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law. See Leominster v. Stratton at 728.

Other than Inmate X, CO Bergeron was the main witness regarding the allegations against the Appellant. There is no evidence that CO Bergeron possessed any animus toward the Appellant. He presented credible testimony before the Commission and shed some light on the previous history between the Appellant and Inmate X. CO Bergeron testified that the Appellant was new to MCI-Concord and had written up Inmate X in the past. He further testified that Inmate X was often troublesome, but that on the date of the incident, he was "over the top." He also testified that he had not initially written a report of the incident because he didn't want to get the Appellant in trouble. He was out sick on the day after the incident and returned to work on

July 14, 2006. He was ordered to write a report of the incident because a senior officer had learned of the incident while making his rounds. (Exhibit 10, pp. 20-22, 35; Testimony of CO Bergeron)

The Appellant was suspended for violating rules 8(a), 10(a), 19(c), and 19(d) of the Blue Book. Rule 8(a) of the Blue Book provides, "Relations with inmates may be twofold, that of counselor and disciplinarian simultaneously, which will require your utmost tact and diplomacy. For those employees having job responsibilities which require inmate contact, your attitude toward inmates should be friendly not familiar, firm not harsh, vigilant not unduly suspicious, strict not unjust. Your leadership ability may be enhanced by the professional image you project." (Exhibit 12) Blue Book Rule 10(a) further requires that "Employees shall not use profane or abusive language toward any inmate, nor reply in such language to what is perceived to be impudent or insulting words or actions by an inmate. Make no disparaging references to inmates regarding their color, creed, race or crimes they have committed." (Exhibit 12)

In regard to Rule 19(c), the Appellant attempted to hinder Sergeant Fiola's investigation by being less than truthful during the investigative interview on October 12, 2006. (Exhibit 3) The Appellant's contention that he did not call Inmate X a "rat" on the first occasion is not true. CO Bergeron and Inmate X were interviewed separately by Investigator Fiola and their accounts of the incident were consistent with one another: they both heard the Appellant's remarks. The Appellant's position is further undermined by the second comment he made just fifteen (15) minutes later. Both CO Bergeron and Inmate X had another opportunity to hear and identify the Appellant. Neither person believed the comment came from any other source other than the Appellant. The Appellant did not identify another source for the comments.

In regard to Rule 10(a), calling Inmate X a “rat” within ear-shot of other inmates constitutes “profane or abusive language.” In prison culture, an inmate labeled a “rat” is exposed to additional threats and assault by fellow inmates. For a corrections officer to make such a comment while working on the tier, lends credence to other inmates’ suspicions and exposes Inmate X and others similarly situated to harm, taunts, or ridicule. The context and use of the word ‘rat’ in this case therefore constitutes “profane and abusive language” in violation of Rule 10(a).

The Appellant’s conduct also violated Rules 8(a) and 19(d). Name-calling or labeling an inmate a “rat” is contradictory to a corrections officer’s duty to conduct themselves with the “utmost tact and diplomacy.” Correction officers are held to a professional standard and not permitted to degrade their conduct or reciprocate inmates’ inappropriate behavior. While performing their duties, corrections officers must “be friendly not familiar, firm not harsh, vigilant not unduly suspicious, strict not unjust.” (Rule 8(a)) The Appellant’s conduct interfered with CO Black’s order for the collection of misdirected legal correspondence and its return to the appropriate addressees. The Appellant’s comments impaired the efficiency of the DOC: his unprofessional conduct frustrated the investigative operations at MCI-Cedar Junction and risked exposing Inmate X to unnecessary harm.

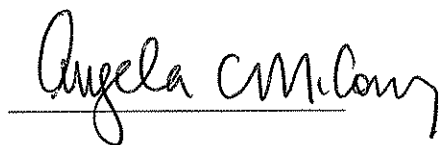
The Appellant testified before the Commission that the inmates disrespected his authority. His comments to Inmate X certainly could not raise his esteem among the inmates. In the March 1, 2006 disciplinary report that he filed against Inmate X, the Appellant wrote, “There is an ongoing issue between inmate ... [X] ... and most of the other inmates on the tier *and this is steadily becoming a climate issue.* (Exhibit 17 (*emphasis added*)) He also testified before the

Commission that Inmate X was regarded as an informant among the Ten Block population. Given this background, the Appellant's remarks are even more irresponsible. They display a blatant disregard for the Blue Book rules, the culture of the institution, decrease the inmates' regard for the corrections officers and their ability to lead in the facility, and risk the safety and morale of the inmates. The Appellant's comments violate the core mission of the DOC - the safe keeping and custodial care of the inmate population. There is simply no excuse for the Appellant's behavior.

For all the above reasons, the Appointing Authority has demonstrated by a preponderance of the evidence that there was reasonable justification for the Appellant's suspension. There was no evidence of inappropriate motivations or objectives that would warrant the Commission reducing or overturning the Appellant's suspension.

The Appellant's appeal filed under Docket No. D-07-247 is hereby *dismissed*.

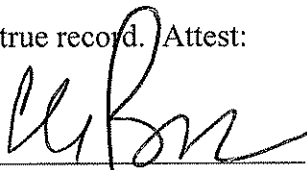
Civil Service Commission

A handwritten signature in cursive script that reads "Angela C. McConney". The signature is written in black ink and is positioned above a horizontal line.

Angela C. McConney  
Hearing Officer

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman - Yes; Henderson, Commissioner – No; Marquis, Commissioner – Yes; Stein, Commissioner – Yes; and Taylor, Commissioner – No) on August 28, 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 sent to:

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

Kerry A. Rice  
P.O. Box 946  
Industries Drive  
Norfolk, MA 02056