

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

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

DANIEL DUMONT,
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

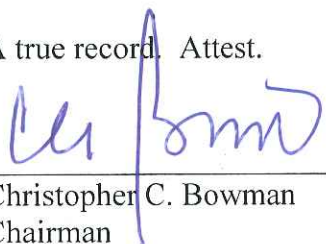
Case No.: D-11-235

DECISION

The Civil Service Commission voted at an executive session on June 14, 2012 to acknowledge receipt of the report of the Administrative Law Magistrate dated April 27, 2012, written objections of the Appellant dated May 9, 2012 and the Respondent's response to those objections dated May 24, 2012. After careful review and consideration, 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; Ittleman, McDowell and Stein, Commissioners [Marquis – Absent]) on June 14, 2012.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:
Bradford Louison, Esq. (for Appellant)
Amy Hughes, Esq. (for Respondent)
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
FAX: 617-727-7248

April 27, 2012

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

**Re: Daniel Dumont v. Department of Correction
D-11-235; DALA Docket No. CS-12-74**

RECEIVED
2012 APR 30 A 10: 10
COMMISSIONER OF MASS
CIVIL SERVICE COMMISSION

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,

Richard C. Heidlage, Esq.
Chief Administrative Magistrate

Enclosure

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

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Daniel Dumont,
Appellant

v.

Docket No. D-11-325

DALA No. CS-12-74

April 27, 2012

Department of Correction,
Appointing Authority

Appearance for Appellant:

Bradford N. Louison, Esquire
Louison, Costello, Condon & Pfaff, LLP
101 Summer Street, 4th Floor
Boston, MA 02110

Appearance for Appointing Authority:

Amy Hughes, Esquire
Administrative Prosecutor
Department of Correction
One Industries Drive
P.O. Box 946
Norfolk, MA 02056

Administrative Magistrate:

Judithann Burke

RECEIVED
2012 APR 30 A 10:10
OFFICE OF THE CLERK OF THE
COMMONWEALTH OF MASSACHUSETTS
MAIL SERVICE COMMISSION

CASE SUMMARY

The Appointing Authority, Department of Correction (DOC), proved by a preponderance of the evidence that there was just cause to discipline the Appellant, a Correction Officer I (CO I) in the DOC. In violation of DOC Rules and Regulations, the Appellant parked his personal vehicle, which contained a controlled substance, on state property. The Appellant knew that the marijuana was there.

RECOMMENDED DECISION

Pursuant to G.L. c. 31 § 43, the Appellant, Daniel Dumont, is appealing the November 1, 2011 decision of the Appointing Authority, Department of Correction (DOC), to suspending him

for twenty (20) working days from his employment with the DOC. (Exhibit 2). The appeal was timely filed. A Section 43 hearing was held on February 24, 2012 at the Division of Administrative Law Appeals (DALA), 98 North Washington Street, Boston, MA.

At the hearing, five (5) exhibits were admitted into evidence. The DOC's Pre-Hearing Memorandum was marked as "Attachment A." The Appellants Pre-Hearing Memorandum was marked as "Attachment B." Both parties stated their arguments for the record. One (1) audiocassette was made of the proceedings.

FINDINGS OF FACT

Based upon the documentary evidence submitted at the hearing in the above captioned matter, I hereby render the following findings of fact:

1. The Appellant, Officer Daniel Dumont, is a fourteen (14) year employee with the DOC, who holds the title Correction Officer I (CO I). He has most recently been assigned to MCI Concord. (Exhibit 2).
2. The Appellant's disciplinary history between 2001 and 2007 includes five suspensions, ranging in length from one day (the earliest suspension) to ten days (the most recent suspension). His prior infractions include instances of disrespectful conduct toward his superiors. His first suspension, on December 11, 2001, was the result of his refusal to obey a direct order. (Exhibit 5).
3. On December 31, 2010, the DOC's Acting Commissioner, Ronald Duval, issued a memorandum to all employees, including Appellant, regarding the Department's Drug Free Workplace Policy. The memorandum stated that "it is prohibited for any employee of the Department to unlawfully manufacture, distribute, dispense, possess, or use controlled substances at the workplace." The memorandum further stated that "Department policy calls for

disciplinary action, up to and including termination, in instances where employees are found to have engaged in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace.” (Exhibit 4).

4. On April 8, 2011, while parked on state property at MCI-Concord, Appellant’s car was found to contain marijuana and a marijuana pipe. (Exhibit 2).

5. The Appellant was aware that this controlled substance (i.e., marijuana) was in his vehicle. (*Id.*)

6. On September 21, 2011, the Appellant was notified that a disciplinary hearing had been scheduled for October 6, 2011 to investigate the April 8, 2011 events. The Appellant was charged with violating the following **Rules and Regulations Governing All Employees of the**

Massachusetts Department of Correction:

General Policy I:...“Nothing in any part of these rules and regulations shall be construed to relieve an employee...from his/her constant obligation to render good judgment [and] full and prompt obedience to all provisions of law, and to all orders not repugnant to rules, regulations, and policy issued by the Commissioner, the respective Superintendents, or by their authority...Improper conduct affecting or reflecting upon any correctional institution or the Department of Correction in any way will not be exculpated whether or not it is specifically mentioned and described in these rules and regulations...”

(Exhibit 1.)

7. The Appellant was also advised that his conduct violated the Department’s Drug Free Workplace Policy as set forth in Finding of Fact 2 above. (*Id.*)

8. On November 1, 2011, DOC Commissioner Luis S. Spencer notified the Appellant that he was suspended from his employment for twenty (20) working days due to his violation of General Policy 1, *supra*, and, because he showed disregard for the memorandum issued to all DOC employees in December 2010, the Drug Free Workplace Policy, *supra*. (Exhibits 2 and 4.)

9. The Appellant filed a timely appeal.

CONCLUSION AND RECOMMENDED DECISION

After a careful review all of the documents in this case, I have concluded that the Appointing Authority had just cause to suspend the Appellant for twenty days. The Appointing Authority has proven by a preponderance of the evidence that the Appellant violated DOC rules and policies, including: General Policy I and the Department's Policy for a Drug Free Workplace.

The Appointing Authority proved that Appellant violated General Policy I when his automobile, which was parked on state property at MCI-Concord, was found to contain marijuana and a marijuana pipe. The evidence also showed that Appellant was aware of the Department's Drug Free Workplace Policy as the policy was contained in a memorandum sent to all employees of the Department of Correction four months prior to his offense. As such, Appellant brought marijuana onto workplace grounds, and, knowingly violated the Department's Policy for a Drug Free Workplace. The DOC's Policy for a Drug Free Workplace expressly prohibits the possession of a controlled substance, in this instance, marijuana. The memorandum also put Appellant on notice that the possible punishment resulting from a violation of the Department's policy could include termination of his employment with the DOC.

The Appellant contends that the twenty day suspension was excessive, without just cause, and is tantamount to disparate treatment. I find this argument unpersuasive. While a twenty day suspension for an offense such as the one committed by Appellant may seem harsh, the DOC properly considered the Appellant's lengthy discipline history, and its action here is consistent with the idea of progressive discipline. Progressive discipline allows the imposition of a more severe penalty with the presentation of an extensive disciplinary history. In other words, it is

reasonable for the Appellant's punishments to escalate in severity for each subsequent offense he commits. Here, the Appellant's lengthy disciplinary history was of his own making. His previous infractions include several instances where he was disrespectful to his superiors as well and one instance of a refusal to obey a direct order. This most recent infraction also involves his failure to obey a directive of his superiors.

In view of the fact that the Appellant's disciplinary record includes five prior suspensions, the most recent ten days, I find the Appellant's twenty day suspension to be an appropriate progression in discipline. See *Paul Beausoleil v. Department of Correction*, 21 MCSR 317 (2008) (noting that a twenty day suspension was appropriate under the principle of progressive discipline after considering the Appellant's lengthy disciplinary record); see also *Luster v. Department of Correction*, 12 MCSR 228 (1999) (Appellant's records of previous suspensions warranted imposition of a substantial penalty).

In conclusion, the Appointing Authority has proven that the Appellant knowingly violated General Policy I and the Department's Drug Free Workplace Policy when he brought marijuana and a marijuana pipe onto state property at his workplace. I recommend that the Civil Service Commission affirm the decision of the Appointing Authority suspending the Appellant for twenty days.

Division of Administrative Law Appeals,

BY:



Judithann Burke
Administrative Magistrate

DATED: April 27, 2012