COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

CRAIG FORD,
Appellant

v.

D1-09-256

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:
Bradford N. Louison, Esq.
Louison, Costello, Condon & Pfaff
67 Batterymarch Street
Boston, MA 02110

Respondent's Attorney:
Andrew McAleer, Esq.
Department of Correction
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P.O. Box 946
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Commissioner:
Christopher C. Bowman

DECISION

The Appellant, Craig Ford (hereinafter "Ford" or "Appellant"), pursuant to G.L. c. 31, § 43, is appealing the decision of the Department of Correction (hereinafter "DOC" or "Appointing Authority") to terminate him from his position as a Correction Officer I for 1) his conviction for a domestic violence misdemeanor in Warren, Rhode Island; and 2) his failure to report promptly to his supervisor that he had received a restraining order ordering him to refrain from contacting or abusing his ex-wife and that he appeared in Taunton District Court on October 2, 2008.

DOC found that the Appellant violated rules and regulations requiring all officers to "render good judgment, owe obedience to all provisions of the law. . . ." and "report promptly in writing to your superintendent, DOC Department Head . . . any involvement with law enforcement officials pertaining to any investigation, arrest or court appearance." Also, DOC found that the Appellant violated the Department's policy for the prohibition of domestic violence which states that the DOC has a zero tolerance policy for domestic violence.

The appeal was filed with the Civil Service Commission (hereinafter "Commission") on May 20, 2009. A pre-hearing conference was held on June 18, 2009 and a status conference was held on October 14, 2009. The full hearing, initially scheduled for March 26, 2010, was continued at the request of DOC and was held on May 10, 2010 at the offices of the Commission. The hearing was digitally recorded and both parties were provided with a CD of the proceeding. Post-hearing briefs were submitted on June 24, 2010 (Appellant) and June 25, 2010 (Appointing Authority).

FINDINGS OF FACT:

Fifteen (15) exhibits were entered into evidence. Based on the documents submitted and the testimony of the following witnesses:

For the Appointing Authority:

- Lieutenant Stephen Gatewood, Department of Correction;
- Sergeant Harold Wilkes, Department of Correction;
- Alexandra McInnis, Director of Personnel, Department of Correction;

For the Appellant:

- Craig Ford, Appellant;

I make the following findings of fact:

1. The Appellant is a forty-three (43) year-old male. He was married to his former wife, Colleen, for eighteen and a half (18 ½) years and has two children, one of whom is a full-time college student. (Testimony of Appellant)
2. The Appellant was a tenured civil service employee in the title of Correction Officer I at the time of his termination on May 6, 2009. He had been employed by DOC for approximately twenty-one (21) years. (Stipulated Facts)

Prior Discipline

3. On April 13, 2004, the Appellant was reprimanded for transporting the wrong inmate to a hospital. (Exhibit 12)
4. On October 11, 2006, the Appellant received a two-day suspension (with 1 day held in abeyance) for using profanity and being less than truthful. (Exhibit 12)
5. On March 9, 2007, the Appellant was reprimanded for failure to provide satisfactory medical evidence. (Exhibit 12)
6. On July 16, 2007, the Appellant was reprimanded for failure to return a set of restraints. (Exhibit 12)
7. On February 25, 2008, the Appellant was reprimanded for leaving work sick after being drafted. (Exhibit 12)

Domestic Violence Conviction

8. On August 2, 2008, the Appellant was arrested for "Simple Assault / Domestic" and "Disorderly Conduct" by the Warren, Rhode Island Police Department. (Exhibit 4)

The charges related to allegations from the Appellant's then-girlfriend, Lynda, that he had assaulted her. (Exhibit 4 and Testimony of Appellant)

9. The police incident report from the responding police officer regarding the August 2, 2008 incident was entered as part of Exhibit 4. The police incident report states:

> "On 08/02/08 at 0259 hours, Ptlm. Perreault and I were dispatched to [address redacted] for a domestic that had just taken place. Upon my arrival, I was met by the complainant / victim Lynda [last name redacted]. Same stated she and her boyfriend came back to her apartment after dinner and had a physical altercation.
>
> Lynda stated she was assaulted by her live in boyfriend Craig Ford of six months. Lynda stated after a verbal argument in the bedroom, Craig physically assaulted her before he left the apartment and fled in his vehicle.
>
> Craig was contacted by phone and advised to report to police headquarters. Upon his arrival, he stated he never hit Lynda at any time during the events that took place. Same stated Lynda grabbed him by the arm and ripped the left side sleeve on his shirt when she pulled him up off the floor.
>
> Photos were taken of Lynda's injuries by Ptlw. Beaulieu. A DVSA Form was filled out and has been filed with this report. Lynda calls her boyfriend Greg, but his name is Craig. Case forwarded to C.I.B. for review regarding possible charges relative to this investigation."
> (Exhibit 4)

10. Lynda was interviewed by the Warren Police Department and was asked to state in her own words what happened at their residence. She stated:

> "My boyfriend Greg Ford came home and walked [through] the front door. He then walked into the bedroom and laid down on the floor. I then asked him to stand up and he said no. He appeared to be highly intoxicated. When I took his keys and put them in my pocket book, he became very upset. He then got in my face and stated "give me those fucking keys." When I told him no, he grabbed my pocket book from me and punched me five times in the chest and legs with his fist. He then pushed me onto the bed. He then left the apartment when he saw me picking up the phone to call the police."
> (Exhibit 4)

11. The Appellant was also interviewed by the Warren Police Department and was asked to explain in his own words what occurred at the residence. He stated:

> "We went out to eat and returned to the apartment. Once there I went into the bathroom. Lynda then opened the door and stated 'If you don't want to be with me then just leave.' I then went into the bedroom and laid on the floor. Lynda then grabbed my shirt to get me up and ripped it. After she ripped my shirt I said 'What the fuck, I'm out of here' and I left." (Exhibit 4)

12. On November 7, 2008, the Appellant was found guilty of Simple Assault / Domestic. He was placed on probation for one (1) year; ordered to have no contact with the victim; attend a batterers' intervention program and substance abuse counseling and pay court costs. There was an original conviction in the district court and then an appeal de novo to the superior court where the conviction was the same. The disorderly conduct charge was dismissed. (Exhibit 4 & Stipulated Facts)

13. General Policy I of the DOC Rules and Regulation states in part:

> ". . .Nothing in any part of these rules and regulations shall be construed to relieve an employee of his/her primary charge concerning the safe-keeping and custodial care of inmates or, from his/her constant obligation to render good judgment full and prompt obedience to all provisions of law. . . 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)

14. The Department's Policy for the Prohibition of Domestic Violence, 103 DOC 238, states in pertinent part:

> "The Commonwealth has a zero-tolerance policy for domestic violence occurring within or outside the workplace . . . ." 238.01
>
> "DOC employees shall:
>
> a. Ensure that they do not participate in any form of domestic violence, either within or outside the workplace." 238.04
>
> (Exhibit 6)

15. The above-referenced rules also state that: "Acts of domestic violence, regardless of where they occur, shall not be tolerated and may result in discipline, including, but not limited to: a) an oral warning; b) a written warning or reprimand to be placed in a personnel file; c) required completion of a certified batterer intervention program; d) suspension, demotion or termination; or e) any combination of the above. (Exhibit 6)

16. The Federal Lautenberg Amendment (18 U.S.C. § 922(g)(9)) precludes individuals who have been convicted of a domestic violence misdemeanor from ever obtaining a firearm license. The Amendment states in pertinent part: It shall be unlawful for any person . . . who has been ***convicted in any court of a misdemeanor crime of domestic violence***, to ship or transport in interstate or foreign commerce, or ***possess*** in or affecting commerce, ***any firearm or ammunition***; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. (18 U.S.C. § 922(g)(9). (***Emphasis added.***) (Exhibit J-10)x

17. The March 20, 2010 Massachusetts Human Resources Division Open Competitive Examination Announcement Correction Officer I Department of Correction mandates in relevant part under: ENTRANCE REQUIREMENTS, Section 3: ". . .Certification as a Correction Officer requires that the applicant be able to satisfy and maintain the eligibility requirements for obtaining a license to carry a firearm. . . ." (Exhibit 7A)

18. Section IV. Examples of Duties Common to All [Correction Officer Levels] in Series of the foregoing Specifications states in pertinent part: "Performs related duties such as screening visitors; operating two-way radios; ***carrying and operating firearms***. . ." subsection 6. (***Emphasis added***) (Exhibit 9)

19. The foregoing Specifications were in effect when Appellant was appointed as a Correction Officer by the Department. (Exhibits 7 A & 8; Testimony of McInnis)
20. The June 10, 1989 Commonwealth of Massachusetts Department of Personnel Administration Promotion to Correction Officer I State Department Of Correction examination application states in pertinent part under Note 1: "***Certification as a Correction Officer requires that the applicant be able to obtain a permit to carry a firearm."*** (Exhibit 7B) (***Emphasis added***)
21. The Appellant took the above examination in order to be appointed a Correction Officer I. (Exhibit 8)
22. The Union was notified that anyone convicted of a domestic violence offense after October 23, 1997, shall be terminated from the Department and that the ability to possess a firearm is an essential job function. "Any Correction Officer . . . 'convicted' of a domestic violence offense, shall, after proper notice and hearing, be terminated for failure to discharge one of the essential functions of a Correction Officer." (Exhibit 11)
23. Although correction officers are not required to carry a firearm for normal patrol duties throughout the institution, they may be required to carry a firearm when they are assigned to tower duties or to transport inmates outside the institution when the transportation unit is busy. (Testimony of Wilkes)
24. The Appellant testified that he did not use a firearm while employed as a correction officer because he did not "qualify". He did not qualify with the use of a firearm because he did not score high enough in the target shooting contest. (Testimony of Appellant)

Failure to Promptly Report Restraining Order and Court Appearance in Taunton District Court to Supervisor

25. On September 18, 2008, in a separate matter from the above, the Appellant's ex-wife obtained a temporary restraining order against him in Taunton District Court. The Appellant was not present in court when the order entered and a hearing was scheduled for October 2, 2008, when the temporary restraining order was scheduled to expire. (Exhibit 4, p. 80)
26. On October 2, 2008, the Appellant attended a hearing at the Taunton District Court. The restraining order was extended to January 5, 2009 and the order was modified to vacate those orders related to the custody and contact of the Appellant's children. (Exhibit 4, Page 81)
27. On October 8, 2008, a member of DOC's Domestic Violence Unit contacted the facility requesting to know if the Appellant had informed the institution that a restraining order had been issued against him. (Testimony of Gatewood and Exhibit 4, p.59)
28. Lieutenant Stephen Gatewood was assigned to investigate this matter. (Testimony of Gatewood and Exhibit 4, p.58)
29. On October 9, 2008, Gatewood received via fax the above-referenced restraining order from thee Rehobeth Police Department. (Testimony of Gatewood and Exhibit 4, p.58)
30. On October 12, 2008, the Appellant completed an incident report stating: "On 9/29/08 at approximately 8:00 P.M., I, Officer Ford, was contacted by the Rehoboth Police by Telephone, informing me of another restraining order in place by my ex-wife. The restraining order was filed on 9/18/08. I was unaware of said order." The

incident report does not reference the Appellant's appearance in Taunton District court on October 2, 2008. (Exhibit 4, p.73)

31. On October 29, 2008, Gatewood met with the Appellant and his union representative and asked the Appellant why he failed to submit an incident report regarding his 9/29/08 phone call with Rehobeth police until October 12th. (Testimony of Gatewood and Exhibit 4, p.58) The Appellant told Gatewood that he had been under medical care from September 12, 2008 until sometime in October and provided medical documentation. Gatewood testified that, even after reviewing the medical documentation, he concluded that the Appellant could have notified DOC since he had been physically able to have a phone conversation with the Rehobeth Police. Thus, according to Gatewood, the Appellant was capable of contacting DOC. (Testimony of Gatewood)
32. The medical documentation submitted by the Appellant was a form signed by a medical provider on October 2, 2008 stating that the Appellant "could not perform his duties" on 9/21/08 and "may return to work with no restrictions on 10/12/08." (Exhibit 4, p.97)
33. The Appellant testified that when he received the restraining order, he contacted his union representative who contacted his supervisor, Deputy Superintendent Leveque. The Appellant testified that Deputy Leveque called him back that afternoon, listened to the explanation and told him that as soon as he gets back to work he is to write a report on the incident and the restraining order. The Appellant testified that on the day he returned to work from his medical leave on October 12, 2008, he wrote the incident report which was introduced into evidence. (Testimony of Appellant)

34. Rule 2(b) of the DOC Rules and Regulations states that DOC employees must:

> "Report promptly in writing to your Superintendent, DOC Department Head, or their designee, any change of events regarding your residential address, home telephone number, marital status, and any involvement with law-enforcement officials pertaining to any investigation, arrest or court appearance." (Exhibit 3)

Appellant's Argument of Disparate Treatment

35. The Appellant testified that a DOC Captain, who served as a shift commander, was convicted of a domestic violence-related offense several years ago and was not terminated. (Testimony of Appellant)

36. The Appellant submitted a criminal docket sheet from the Wareham District Court regarding the above-referenced Captain and an incident report from the Lakeville Police Department. (Exhibit 15)

37. The above-referenced criminal docket regarding said Captain states:

1. ASSAULT W/DANGEROUS WEAPON c.265 § 15B
   10/12/99: Sufficient facts found but continued without guilty finding until 10/10/2000

2. KIDNAPPING c265 §26
   5/25/00: Dismissed upon … request of Comm.

3. A&B c265 § 13A
   10/12/99: Sufficient facts found but continued without guilty finding until 10/10/200

4. WITNESS, INTIMIDATE x268A § 13B
   10/12/99: Sufficient facts found but continued without guilty finding until 10/10/200
   (Exhibit 15)

38. The Lakeville Police Department incident report is a 5 ½ page report from a police officer that clearly establishes that the incidents stemmed from domestic violence

allegations of the Captain's wife, who was initially spotted by police walking on the side of a highway crying and bleeding. (Exhibit 15)

39. I kept the record open for DOC to provide any records regarding the disciplinary history of the above-referenced Captain. On May 25, 2010, DOC forwarded correspondence to the Commission which stated in part: " … the Department has no disciplinary history in connection with [the criminal docket of the Captain]. The Department did, however, detach [the Captain] pending the outcome of the criminal charges against him. The criminal charges were dismissed on or about October 12, 1999. As a result of this dismissal, the Department believed at the time, **more than ten years ago**, that there was not just cause to discipline [the Captain]. [This] matter is clearly distinguishable to the case at bar as Mr. Ford was convicted." (**emphasis in original**) In their post-hearing brief, DOC stated that the incident involving the Captain " … is distinguishable from the present matter as it does not concern a court conviction for the misdemeanor crime of domestic violence. Hence, Lautenberg does not apply … Additionally, [the Captain] was not charged with the crime of domestic violence and there was no conviction … ".

40. Appellant Exhibit 13 is a spreadsheet of all disciplinary charges against DOC employees related to domestic violence over what appears to be two decades[1]. Many entries lack relevant information, including the disposition of the domestic violence-related charges. For example, the third entry on page 1 of the spreadsheet states that the employee was "arrested and charged w/ domestic assault and battery and intimidation of a witness" and was suspended for one day on October 23, 2009.

[1] The spreadsheet is sorted in alphabetical order by employee's last name as opposed to chronological order.

There is no information regarding the disposition of the charges. The third entry from the bottom on page 1 of the same spreadsheet states that another employee was "arrested and charged w/intimidation / assault and battery" and was terminated on April 7, 2010. A cursory review of all entries where a conviction of a domestic-related charge is noted does appear to have resulted in the employee's termination. For example, the eighth entry on page 2 states that an employee was "arrested / admitted to sufficient facts on a domestic assault & battery charge, the court later entered a guilty finding / sentenced to house of correction for 3 months." This employee was terminated by DOC on August 18, 2006. (Exhibit 13)

CONCLUSION

G.L. c. 31, § 43, provides:

> "If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority."

An action is "justified" if 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." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102, (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). 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." School Comm. v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 488, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983)

The Appointing Authority's burden of proof by a preponderance of the evidence 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).

"The commission's task…is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether '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'", which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006). See Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev.den., 390 Mass. 1102 (1983) and cases cited.

Under Section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. 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." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102, (1997). See also

Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den. (2000); McIsaac v. Civil Service Comm'n, 38 Mass App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, 390 Mass. 1102 (1983).

By a preponderance of the evidence, DOC has shown that the Appellant violated DOC's zero-tolerance policy regarding domestic violence when he was convicted of a domestic violence misdemeanor in Warren, Rhode Island. Further, DOC has shown that the Appellant violated DOC rules when he failed to report promptly to his supervisor that he appeared in Taunton District Court on October 2, 2008 for a hearing related to the extension of a restraining order against him.

It is undisputed that on November 7, 2008, the Appellant was found guilty of Simple Assault / Domestic in Warren, Rhode Island. He was placed on probation for one (1) year; ordered to have no contact with the victim (his ex-girlfriend); ordered to attend a batterers' intervention program and substance abuse counseling and pay court costs. There was an original conviction in the district court and then an appeal de novo to the superior court where the conviction was the same.

It is also undisputed that DOC has a zero-tolerance policy related to domestic violence prohibiting its employees from participating in any form of domestic violence, either within or outside the workplace. DOC rules state that acts of domestic violence, regardless of where they occur, shall not be tolerated and may result in discipline, including, but not limited to: a) an oral warning; b) a written warning or reprimand to be placed in a personnel file; c) required completion of a certified batterer intervention program; d) suspension, demotion or termination; or e) any combination of the above.

The parties differ on whether the Appellant, as a result of his conviction, is prohibited from carrying a firearm and, if so, whether this disqualifies him from serving as a police officer.

DOC argues that the Appellant is prohibited from carrying a firearm, citing the Federal Lautenberg Amendment (18 U.S.C. § 922(g)(9)), which states in pertinent part: "It shall be unlawful for any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

The Appellant argues that DOC did not show that this federal law supersedes state law and has not introduced evidence to show that a person convicted of a domestic violence offense is ineligible to obtain a firearm permit in Massachusetts.

Whether the Lautenberg Amendment passes constitutional muster will not be decided by a quasi-judicial agency in Massachusetts. Challenges to this federal law continue to work their way through the federal courts. For the purposes of this appeal, however, I conclude that DOC was reasonably justified in relying on Lautenberg to conclude that the Appellant is not eligible to carry a firearm. However, even if the Appellant is eligible to carry a firearm, DOC was still justified in disciplining him for violating its zero-tolerance policy regarding domestic violence.

Even if the Appellant is prohibited from carrying a firearm, the parties differ on whether this disqualifies him from serving as a Correction Officer. Here, the preponderance of the evidence supports DOC's argument that the ability to carry a

firearm is a minimum entrance requirement to serve as a correction officer. This is explicitly stated on the civil service examination notices, including the notice regarding the examination taken by the Appellant, and is explicitly stated in the job specifications as an example of duties required of a Correction Officer I. While correction officers that perform patrol duties do not regularly carry a firearm, there are critical functions that require possession of a firearm, including "tower duty" and the transporting of inmates out of the facility.

The Appellant also failed to comply with DOC rules which require employees to promptly report in writing any involvement with law enforcement officials pertaining to any investigation, arrest or court appearance. While I credit the Appellant's testimony that he spoke with a DOC Deputy Superintendent via telephone after he was served a temporary restraining order, the Appellant failed to notify DOC that he subsequently appeared in court on October 2, 2008 at which time the restraining order was extended. Rather, on October 12, 2008, the Appellant wrote an incident report which stated "On 9/29/08 at approximately 8:00 P.M., I, Officer Ford, was contacted by the Rehoboth Police by Telephone, informing me of another restraining order in place by my ex-wife. The restraining order was failed on 9/18/08. I was unaware of said order." The incident report does not reference the Appellant's appearance in Taunton District court on October 2, 2008.

Having determined that it was appropriate to discipline the Appellant, the Commission must determine if DOC was justified in the level of discipline imposed, which, in this case, was termination.

The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.' " Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune employees' suspensions to ensure perfect uniformity. *See* Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

"The 'power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.'" Falmouth v. Civ. Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (2004) quoting Police Comm'r v. Civ. Serv. Comm'n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission's findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to "substitute its judgment" for that of the appointing authority, and "cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation" E.g., Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006).

I have, based on the testimony of credible witnesses and the documentary evidence submitted, reached essentially the same findings as DOC. Specifically, I have found that the Appellant, who was convicted of Simple Assault / Domestic, violated DOC's zero-tolerance policy regarding domestic violence. Further, I have found that the Appellant violated DOC rules by failing to notify them that he appeared in Taunton District Court

on October 2, 2008, at which time the court extended the restraining order entered against him in regard to his ex-wife.

The Appellant argues that other similarly situated individuals have not been terminated for their offenses. The Appellant has not shown that other individuals, convicted of a domestic violence-related misdemeanor, have not been terminated. A review of all entries where a conviction of a domestic-related charge is noted does appear to have resulted in the employee's termination on a spreadsheet submitted by the Appellant.

Although the incident occurred a decade ago and did not result in a conviction, I was deeply troubled regarding DOC's lack of disciplinary action against a captain who admitted to sufficient facts to assault with a deadly weapon, assault and battery and witness intimidation. The incident report regarding this matter alludes to a nightmarish series of events inflicted upon the captain's wife at the time. Notwithstanding the distinction (no conviction of a domestic violence-related offense), it is regrettable, even over a decade ago, that DOC would turn a blind eye to such behavior by one of its superior officers. This inaction, however, does not warrant the Commission's intervention in the instant matter regarding the Appellant, who was convicted of a domestic violence-related offense.

For all of the above reasons, the Appellant's appeal under Docket No. D1-09-256 is hereby ***dismissed***.

Civil Service Commission

_____

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and McDowell, Commissioners) on July 29, 2010.
A true record. Attest:

_____
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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:
Brad Louison, Esq. (for Appellant)
Andrew McAleer, Esq. (for Appointing Authority)