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COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT
CIVIL ACTION NO. 2009-3638

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CIVIL SERVICE COMMISSION

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CARL GONSALVES,
Plaintiff

v.

MASSACHUSETTS CIVIL SERVICE COMMISSION
and DEPARTMENT OF CORRECTION,
Defendants

DECISION ON PLAINTIFF'S MOTION FOR JUDGMENT
ON THE PLEADINGS AND DEFENDANT, DEPARTMENT OF
CORRECTION'S CROSS MOTION FOR JUDGMENT ON THE PLEADINGS

For the following reasons the Plaintiff's Motion for Judgment on the Pleadings is DENIED and the Defendant's Cross Motion for Judgment on the Pleadings is ALLOWED.

On June 21, 2007, Department of Correction Officer Carl Gonsalves ("Gonsalves") was terminated for violation of the Department of Correction ("DOC") rules and regulations governing employees of the Department.

Gonsalves appealed his termination.

On June 5, 2009 after hearing, the administrative magistrate recommended a decision on findings of fact to the Civil Service Commission. The recommendation stated that:

"The Department of Correction had just cause to discharge the Appellant [Gonsalves] as a Correction Officer for violation of institution regulations and policies, and for his involvement in a scheme to deliver contraband jewelry to inmates at MCI Cedar Junction."

On July 23, 2009, the Civil Service Commission ("Commission") adopted the findings and recommendations of the magistrate and denied Gonsalves' appeal of his termination.

The decision of the Commission adopted the findings and recommendations of the magistrate that provided substantial evidence to show that Gonsalves worked as a DOC officer on Block VI Housing Unit at Cedar Junction. During his employment, the record reflects that:

(1) It is undisputed that Inmate M asked Gonsalves to bring him items into the institution. Gonsalves did not report the inmate request in violation of Department rules and regulations.

(2) It is undisputed that Gonsalves had a personal relationship with Inmate M and Inmate M's family. Specifically, Gonsalves knew Inmate M's uncle and Inmate M knew Gonsalves' family. This was not reported by Gonsalves in violation of Department rules and regulations.

(3) It is undisputed that Gonsalves brought a screwdriver, Dayquil tablets and an assortment of pills and a cell phone into the institution without authority and in violation of Department rules and regulations.

It is disputed that Gonsalves participated in bringing contraband jewelry to the inmates. However, there is substantial

evidence to establish Gonsalves participated in a scheme to deliver contraband jewelry to inmates through the following evidence:

(1) Inmate M asked Gonsalves to deliver items to him within the institution. Gonsalves never reported the inmate's request as required by the rules and regulations.

(2) Gonsalves initially denied that Inmate M made the request for the delivery of contraband and later acknowledged that those requests had been made.

(3) Gonsalves was observed passing an item to Inmate M in violation of the Department rules and regulations. Immediately thereafter, Inmate M was in possession of a contraband gold chain and medallion.

(4) Both Inmate M and Gonsalves were in possession of printouts for the same Seiko watch with the exception of the face color.

(5) Inmate M's recorded conversation with his uncle (whom Gonsalves knew) referred to the exchange of money for the uncle sending items to "the hill". These conversations referred to "C" whom the magistrate reasonably inferred was a reference to Carl Gonsalves. The hill is an expression for Cedar Junction.

(6) Inmate M possessed a letter from Inmate R asking him to get his uncle to bring "shine" to the hill. Shine is

known as jewelry. Inmate R complained that "C" had been gone. Attendance records reflect Gonsalves' absence during the referenced time period.

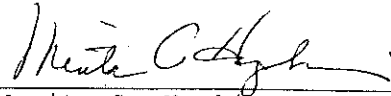
(7) Gonsalves was in possession of Inmate M's canteen slip that had a written description of a request for a Fossil Chronograph wristwatch with a green dial, No. CH2390. A Fossil Chronograph wristwatch with a green dial, No. CH2390 was confiscated from Inmate R on Block VI.

The decision of the Commission that adopted the findings and recommendations of the magistrate was supported by substantial evidence and is not arbitrary, capricious or an abuse of power.

Conclusion

For the reasons stated, the decision of the Civil Service Commission is AFFIRMED.

By the Court,



Merita A. Hopkins
Justice of the Superior Court

Dated: March 17, 2011

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