COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

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

MONIQUE HEUER,
Appellant

v.

D-02-790

MASSACHUSETTS
DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, Monique Heuer (hereafter "Appellant" or "Heur"), is appealing the decision of the Appointing Authority, the Massachusetts Department of Correction (hereafter "DOC"), terminating her from her

position as Correction Officer I on September 19, 2002 for violating General Policy and Rules 1, 18 and 19 of the Rules and Regulations Governing Employees of the Massachusetts Department of Correction. Specifically, DOC learned that the Appellant, after reporting to be sick on August 7, 2002, had accepted a position and commenced her employment as a Correctional Officer with the Federal Bureau of Prisons (hereafter "BOP"), assigned to the Federal Medical Center (hereafter "FMC Devens") in Devens, Massachusetts. Additionally, DOC learned that the Appellant made false statements to two human resources personnel claiming to have been laid off by DOC, in an attempt to curry sympathy and expedite her hire by BOP. During the course of an internal investigation by BOP, the Appellant resigned her position with BOP. Following notice and a hearing conducted on September 13, 2002 by DOC in accordance with G.L. c. 31, s.41, DOC concluded that the Appellant misused sick leave; and lied to BOP (which reflected negatively on DOC). Due to the seriousness of these charges, as well as the Appellant's short tenure with DOC, the Appellant's employment was terminated by letter dated September 19, 2002. The Appellant's appeal was timely filed with the Commission. A hearing was held on August 21, 2006 and September 19, 2006 at the offices of the Civil Service Commission. As no written notice was received from either party, the hearing was declared private. Five (5) tapes were made of the hearing. All witnesses, with the exception of the Appellant, were sequestered.

FINDINGS OF FACT:

Forty-two (42) exhibits were entered into evidence at the hearing. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- Sergeant Mark McCaw – DOC, Internal Affairs;
- Lynn Bissonnette – Superintendent, MCI-Framingham (was Superintendent at NCCI Gardner at time of incident);
- Jeffery Bolger – DOC, Director of Employee Relations;
- Millie Sheridan – Federal Bureau of Prisons;

For the Appellant:

- Monique Heuer, The Appellant;
- Richard Allain – MCOFU Grievance Coordinator

I make the following findings of fact:

1. The Appellant, Monique Heuer, was appointed to the position of Correction Officer I on October 15, 2000, and upon her graduation from DOC training academy in December 2000, was assigned to the 3:00 p.m. to 11p.m. shift at North Central Correctional Institution (hereinafter "NCCI"), a level-4, medium security prison located in Gardner, Massachusetts. While employed as a Correction Officer I, the Appellant was a member of the Massachusetts Correctional Officers Federated Union (hereinafter "MCOFU"). At all relevant times, Superintendent Lynn Bissonnette was the Chief Administrative Officer at NCCI. (Appellant Testimony; Bissonnette Testimony; Ex. 1).
2. The Rules and Regulations of the Department of Correction set forth rules of conduct for employees of the Department of Correction, including but not limited to the General Policy, which provides, in pertinent 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, from his/her constant obligation to render good judgment [and] full and prompt obedience to all provisions of law, and to orders not repugnant to rules, regulations, and policy issued by the Commissioner, the respective Superintendents, or by their authority. All persons employed by the Department of Correction

> are subject to the provisions of these rules and regulations. 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. Your acceptance of appointment to the Massachusetts Department of Correction shall be acknowledged as your acceptance to abide by these rules and regulations. (Ex. 6)

3. The Rules and Regulations of the Department of Correction set forth rules of conduct for employees of the Department of Correction, including but not limited to Rule 1 which states in pertinent part:

> 1. STANDARDS OF CORRECTIONAL SERVICE
> You must remember that you are employed in a disciplined service which requires an oath of office. Each employee contributes to the success of the policies and procedures established for the administration of the Department of Correction and each respective institution. Employees should give dignity to their position and be circumspect in personal relationships regarding the company they keep and the places they frequent. (Ex. 6)

4. The Rules and Regulations of the Department of Correction set forth rules of conduct for employees of the Department of Correction, including but not limited to Rule 18(b) which states in pertinent part:

> 18. ATTENDENCE AND ABSENCES
> (b) Employees who abuse sick leave, fail to produce satisfactory medical evidence of illness [physician's slip] when requested, or use sick leave for personal matters not related to illness, will be denied sick leave, and may be subject to disciplinary action up to and including discharge, in compliance with all valid collective bargaining agreements. (Ex. 6)

5. The Rules and Regulations of the Department of Correction set forth rules of conduct for employees of the Department of Correction, including but not limited to Rules 19 (c), (d) and (e) which state in pertinent part:

> 19. ADMINISTRATIVE PROCEDURES
>
> (c) Since the sphere of activity within an institution of 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.
>
> (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.
>
> (e) 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. (Exhibit 6)

6. DOC has an explicit and well-defined policy prohibiting sexual harassment. The Appellant acknowledged receipt of a copy this policy while at the training academy on October 16, 2000, and again in January 2002, when she was given another copy of this policy by Sgt. McCaw, to remind her of her reporting obligations and all remedies available to her. However, at no time during the entire course of her employment (October 15, 2000-September 19, 2002) did the Appellant file a complaint alleging sexual harassment with DOC – either with DOC's Affirmative Action Office or with Supt. Bissonnette. (The Appellant Testimony; McCaw Testimony; Ex. 7 and 17).
7. The Commonwealth of Massachusetts and MCOFU entered into a collective bargaining agreement for the period January 1, 2001 through December 31, 2002. The collective bargaining agreement details what information must be contained in a medical note in order for the note to be deemed "satisfactory medical evidence", to wit: the note must be a "signed statement by a licensed physician, physician's

assistant, nurse practitioner, chiropractor or dentist that he/she has personally examined the employee, and shall contain the nature of the illness or injury, and the prognosis for return to work for the employee" and "the statement shall be on letterhead of the attending physician or medical provider mentioned above and shall list an address and telephone number". (Ex 11)

8. Officers assigned to NCCI are able to "bid" for a particular post, with assigned days off. Bids are awarded based on seniority. Officers who did not win a post are assigned throughout the facility, by the day-shift commander, based on institutional needs. (Bissonnette Testimony)
9. The Appellant testified that she was unfairly assigned to the Pedestrian Trap "3-4 days per week". Pedestrian Trap officers are responsible for ensuring that no weapons or other contraband enter the facility, and play a critical role in monitoring and securing the facility. (Heuer Testimony; McCaw Testimony)
10. For the first ten (10) months of her employment, the Appellant made no complaints about her working conditions or her colleagues. Thereafter, whenever the Appellant brought a complaint to the attention of her supervisors, a thorough investigation was completed. (Heuer Testimony; Bissonnette Testimony)
11. On October 13, 2001, Captain Gagnon notified Supt. Bissonnette that the Appellant told him that she was receiving hang-up telephone calls while on duty. The Appellant also notified Captain Gagnon in mid-September that she noticed that someone had written "Heuer is a cunt" in the G-building log book. (Ex. 40)

12. The Appellant never filed a written report about the logbook incident, and never maintained a copy of the alleged offensive remark. Rather, she informed Captain Gagnon that she simply crossed it out. (Ex. 40)
13. In response to Heuer's allegations, Supt. Bissonnette and Sgt. McCaw established a telephone trap on the Appellant's work telephone. Sgt. McCaw also confiscated the logbook, but was unable to confirm whether there was a negative comment, as the writing in the margin was completely crossed out. (Bissonnette Testimony; McCaw Testimony)
14. At the end of October 2001, the Appellant asked to meet with Supt. Bissonnette, at which time she asked to have the phone trap removed, as everything was better. (Bissonnette Testimony)
15. In December 2001, the Appellant made a complaint against her union steward, Derrick Andrews (hereinafter "Andrews"), alleging that Andrews threatened her. (Bissonnette Testimony)
16. The incident between Andrews and the Appellant arose out of a discussion they had regarding the Appellant's desire to take Christmas Day, which was on a Tuesday in December 2001, off due to her father's poor health. The Appellant, along with other newly hired officers, originally had Monday and Tuesday as her scheduled off days (Exhibit 12)
17. On December 6, 2001, the Appellant's days off were changed to Thursday and Friday. This decision was the result of a complaint filed by NCCI union representatives that, under the original schedule, senior employees would have to work Christmas (a Tuesday) while new hires would have the day off. (Id.)

18. On or about December 11, 2001, the Appellant was provided with the application and medical certification forms necessary to seek authorization for leave under the Family and Medical Leave Act (hereinafter "FMLA"). The Appellant returned the application, but did not return the medical certification, until mid-January 2002, after Christmas 2001. Consequently, the Appellant was not considered for FMLA on Christmas 2001.[1] (Bissonnette Testimony; Exhibit 12)

19. On December 21, 2001, the Appellant contacted Andrews to ask what would happen if she used FMLA for the Christmas holiday, despite not having completed the necessary paperwork. Andrews advised the Appellant she would be disciplined for an unauthorized absence. This conversation initially occurred over the telephone, and, later that afternoon, the Appellant spoke with Andrews in person. (Ex. 13 and 15)

20. At the in-person meeting, Andrews advised the Appellant that many of her co-workers had heard she intended to call in sick for the holidays, and were upset about the prospect of a rookie having the day off, while more senior employees were required to work. Andrews further told the Appellant that if she called in sick, she would generate animosity towards her amongst the staff. (Ex. 15)

21. That day (December 21, 2001), the Appellant filed a report with Supt. Bissonnette regarding her conversation with Andrews. Notably, the Appellant's report did not contain any mention that she felt threatened by Andrews. (Ex. 14)

[1] The Appellant testified she wanted to spend Christmas with her father and family. However, the Commission notes that this was not a permissible reason to use FMLA, even had the Appellant timely completed the required medical certification forms.

22. Supt. Bissonnette received two additional incident reports regarding the Appellant's conversation with Andrews, one from Captain Steve Pucko and one from Lt. Ken Sena. (Ex. 18-19)
23. On December 24, 2001, Supt. Bissonnette called the Appellant at her post to discuss the reports that she had received about her and Andrews. The Appellant stated that Andrews had been "very harsh" with her and that she felt he was "threatening her almost". Supt. Bissonnette gave the Appellant essentially the same advice as Andrews –that historically staff did not call in sick on holidays because their absence may result in another officer being forced to work an overtime shift. (Bissonnette Testimony; Ex. 20)
24. On December 27, 2001, Supt. Bissonnette assigned Sgt. McCaw to investigate the Appellant's complaint. (McCaw Testimony; Bissonnette Testimony)
25. On January 8, 2002, Sgt. McCaw interviewed the Appellant, who claimed that since her conversation with Andrews, people had been "messing with her". The Appellant claimed she felt alienated by other staff, and that she was receiving hang-up telephone calls. (Ex. 12)
26. Sgt.McCaw confirmed that the staff felt the Appellant complained about her post assignments, and would, as a result of these complaints, receive new assignments. (McCaw Testimony)
27. Sgt.McCaw also directed the Appellant to keep a log documenting the date and times of the hang-up calls she received. The Appellant never provided this information. (McCaw testimony; Ex. 12)

28. McCaw also provided the Appellant with a copy of the Department's sexual harassment policy so she would understand reporting requirements and options for bringing complaints. Thereafter, McCaw would contact the Appellant on a regular basis to see how she was doing.[2] Sgt. McCaw also arranged with Lt. Kathleen Progen to meet with the Appellant to provide advice on how to improve her rapport with her co-workers. (Id.; Ex. 23)

29. On January 29, 2002, the Appellant told Sgt. McCaw that work was good, and that she had not received any telephone hang-up calls. (McCaw Testimony)

30. On January 30, 2002, the Appellant contacted Sgt.McCaw to complain about two hang-up calls. Sgt.McCaw reviewed the phone trap and was able to determine the location from which each call was made. However, because both calls were made from widely accessible institutional phones, the identity of the caller could not be identified. (McCaw Testimony; Ex. 12)

31. The Appellant did not report any further hang-up calls, and the telephone trap remained in place until February 12, 2002. (Ex. 12)

32. On June 9, 2002, the Appellant submitted an application for employment as a Correction Officer with the Federal Bureau of Prisons (BOP) at the Federal Medical Center in Devens, MA, and was interviewed for this position by a three-member panel on June 14, 2002. (Sheridan Testimony; Ex. 34)

[2] Even after conclusion of his formal investigation, McCaw would periodically check in on The Appellant to see how she was doing. On one occasion, The Appellant alleged that someone had punctured her tire. Sgt. McCaw accompanied her to the parking lot, jacked up her car, removed her tire and determined that The Appellant had run over a wire (but that it had not been intentionally caused). On other occasions, when The Appellant complained that her car had been blocked in, Sgt. McCaw would check the parking lot to verify the allegation. However, Sgt. McCaw never observed The Appellant's car blocked in by other staff. (McCaw Testimony)

33. On August 1, 2002, Lisa Albee, a Human Resource specialist at BOP, contacted the Appellant to obtain financial documents needed to address issues raised during the course of the June 14, 2002 interview. (Ex. 34)
34. During the course of the August 1, 2002 conversation, the Appellant informed Ms. Albee that she was recently "laid off" from her position at DOC. She stated that she could not afford to be without a job and began to cry. (Ex. 34)
35. On August 2, 2002, the Appellant received a letter of appointment from Warden David Winn of FMC Devens. (Ex. 34)
36. On August 6, 2002, the Appellant worked a 3:00 p.m. to 11:00 p.m. "swap" shift for another correction officer at the Department of Correction, completed her shift and went home. (Appellant Testimony)
37. The Appellant testified that when she arrived at her assigned station on August 6, 2002, she was told be a fellow officer that she was "not wanted here" and to leave the floor and "watch your back". (Testimony of Appellant)
38. The Appellant testified that, after the above-referenced conversation with a fellow correction officer, she called Toby Belton, the coordinator of DOC's Stress Unit. According to the Appellant, Belton told her to finish the shift and walk out with another officer that night. (Testimony of Appellant)
39. At approximately 3:00 a.m. on August 7, 2002, Toby Belton contacted the shift commander to report that the Appellant was sick and would be out indefinitely. (Ex.1)
40. On August 9, 2002, Millie Sheridan, Human resource specialist at BOP, contacted the Appellant to inform her that her financial waiver had been approved and that she

would commence her employment at FMC Devens on August 11, 2002. The Appellant again represented that she was recently laid off from DOC, and was, therefore, very excited to start her new job. (Ex. 34)

41. On August 12, 2002, the Appellant signed an Appointment Affidavit, which included an Oath of Office. That day, the Appellant also began a two week Institution Familiarization Program at FMC Devens. (Ex. 34)
42. On August 15, 2002, Supt. Bissonnette, unaware that the Appellant was now working at the Federal Bureau of Prisons, informed the Appellant that her sick leave benefits would be depleted by August 24, 2002, but that she could seek additional sick time by completing an application for leave under FMLA. (Ex. 34)
43. On August 19, 2002, Supt. Bissonnette was making rounds at NCCI when she was informed by another staff member that there was a rumor that the Appellant was working as a Correction Officer for the Federal Bureau of Prisons. Supt. Bissonnette directed her deputy superintendent, Mark Nooth, to contact FMC Devens in order to confirm or deny the rumor. Mr. Nooth spoke with Lisa Albee at FMC Devens, who confirmed that the Appellant was employed as a Correction Officer. Mr. Nooth advised Ms. Albee that the Appellant was on sick leave from DOC. (Bissonnette Testimony; Ex. 33)
44. On August 20, 2002, Supt. Bissonnette spoke with Ms. Albee, who confirmed that the Appellant was employed as a Correction Officer at FMC Devens. Supt. Bissonnete also advised Ms. Albee that the Appellant was on sick leave from DOC. Ms. Albee then advised Supt. Bissonnette that the Appellant had claimed that she had been laid

off from her position at DOC, and forwarded a copy of The Appellant's application packet to Supt. Bissonnette.

45. On August 21, 2002, BOP assigned Special Investigative Supervisor John Pittman (hereafter "SIS Pittman") to undertake an internal investigation into allegations that the Appellant provided false statements during the course of her application process. SIS Pittman interviewed and obtained sworn affidavits from Lisa Albee, Millie Sheridan and The Appellant. The Appellant told Pittman that she was "burning sick leave"[3] so she could get paid for it, but stated that she did not want to include that statement in her affidavit. Instead, the Appellant signed an affidavit in which she indicated that she wanted the opportunity to resign from DOC in order to maintain her position with the BOP. (Ex. 33)

46. SIS Pittman determined that the Appellant lied to BOP personnel about her employment status at DOC during the application process.

47. On August 23, 2002, two (2) days after her interview with SIS Pittman, the Appellant contacted Supt. Bissonnette and informed her that she had been out sick due to "stress and harassment, I guess." Supt. Bissonnette informed the Appellant that DOC was aware of her employment status at BOP, and that the Appellant would need to provide a medical note in order to return to duty because she had been absent more than five (5) days. In response, the Appellant, minutes later, resigned from BOP. (Bissonnette Testimony; Ex. 33, 42)

48. On August 27, 2002, the Appellant submitted a medical note to DOC from Solomon Katz, Ed.D, stating that she was able "to resume normal duties without restriction on

[3] DOC Correction Officers do not get paid for unused sick time if they resign or are terminated. (Bolger Testimony)

August 28, 2002."[4] The next day, August 28, 2002, the Appellant returned to work. (Ex. 1, 8)

49. On August 28, 2002, Supt. Bissonnette authorized another investigation into the Appellant's allegations of harassment and receiving a threat. When interviewed that day by Sgt. McCaw, the Appellant replied that she "did not recognize the voice [of the person who threatened to assault her]. It was on the telephone." The Appellant also alleged that she continued to receive hang-up telephone calls, and had maintained a log of the calls, but that it would take her some time before she could produce the log. However, the Appellant never produced the purported records; as a result, DOC was unable to sustain her charge or take any action against a responsible party. (Bissonnette Testimony; McCaw Testimony; Ex. 22)

50. On September 2, 2002, Supt. Bissonnette received a written report, dated August 28, 2002, from the Appellant reiterating that on August 6, 2002, she received a threat via the telephone system, in which the caller allegedly threatened to "kick [her] ass in the parking lot."[5] (Ex. 21)

[4] The medical note submitted by The Appellant did not comply with the standards codified in the collective bargaining agreement. (Ex. 11) The August 27, 2002 note was not signed by a recognized medical provider, did not indicate that the writer personally examined the Appellant, did not state the nature of the The Appellant's illness or injury, and did not contain a statement that The Appellant was unable to perform her duties due to said injury/illness. (Ex. 8) Thus, it appears that DOC erred when it substantiated The Appellant's August 27, 2002 note on September 23, 2002 (four days after termination of The Appellant's employment). (Ex. 9) However, notwithstanding this clerical error, the credible testimony of Jeffrey Bolger (DOC Director of Employee Relations) established that even assuming *arguendo* that The Appellant's August 27, 2002 note did satisfy the applicable standard of "satisfactory medical evidence", DOC has nonetheless disciplined employees for misuse/abuse of sick leave where they have engaged in activities (e.g.- sporting events, second jobs) in contravention of an "approved" medical note. (Bolger Testimony)

[5] The Commission notes that in direct contravention of her August 28, 2002 written report, the Appellant testified at hearing that she was threatened in person, and further, identified her alleged attacker (for the very first time) by name. This significant deviation from her prior written statements strongly suggests that the Appellant modified her testimony at hearing in an attempt to bolster her case.

51. On September 4, 2002, Sgt. McCaw re-interviewed the Appellant, who he (again) instructed to document the alleged hang-up calls. However, the Appellant never complied with this order. (Ex. 23)
52. On September 16, 2002, Supt. Bissonnette requested that the Appellant provide specific information in order to assist in investigating the Appellant's complaints. However, the Appellant never responded to this request. (Bissonnette Testimony; Ex. 27)
53. On September 19, 2002, DOC concluded that the Appellant misused sick leave and lied to BOP (which reflected negatively on DOC). Due to the seriousness of these charges, as well as the Appellant's short tenure with DOC, the Appellant's employment was terminated by letter dated September 19, 2002.
54. The Appellant filed a timely appeal with the Civil Service Commission.
55. I find the testimony of Sergeant Mark McCaw; Superintendent Lynn Bissonnette; Jeffery Bolger, and Millie Sheridan to be highly credible. All of these witnesses were composed, and presented information in a clear and concise manner. Nor was their testimony in any way discredited upon cross-examination. Further, the objective documentary evidence supported their testimony. In particular, the Commission notes the credibility of Millie Sheridan, who had no ulterior motives, and credibly testified that the Appellant unequivocally (and falsely) stated that she had been laid off by DOC.
56. Conversely, I find the testimony of the Appellant to be lacking in credibility. The Commission notes that the Appellant admitted at hearing that she filed a false report with DOC and gave false testimony to DOC's investigator regarding an alleged threat

she received on August 6, 2002 (thereby undermining her credibility generally). Further, the Commission does not look favorably upon the Appellant's intimation that she provided false information to Sgt. McCaw at the suggestion of the chief union steward. Without ruling on whether or not any such suggestion was in fact made, the mere fact that the Appellant would even consider following such advice suggests that she lacks the confidence, intelligence and internal moral compass necessary to perform the duties of a correction officer. Finally, the Commission notes that a significant portion of her testimony was contradicted by the objective documentary evidence and credible testimony of DOC's witnesses.

57. The credible documentary and testimonial evidence supports the conclusion that the Appellant repeatedly lied about her employment status at DOC in order to support her employment application for a position with BOP. The Appellant's false statements in turn reflected negatively upon DOC, in violation of the General Policy and Rules 1 and 19 of the Rules and Regulations of the Department of Correction.

58. The credible documentary and testimonial evidence supports the conclusion that the Appellant, in violation of Rule 18 of the Rules and Regulations of the Department of Corrections, abused her sick leave by using it for personal matters unrelated to illness (to wit: on the job training at the BOP), and attempted to "burn" her sick leave as part of a scam to get double pay from DOC while in the employ of the BOP. Further, the fact that the Appellant was unsuccessful in her gambit is of no moment[6]; the very fact that the Appellant engaged in this scheme is the critical issue.

[6] DOC 's Attendance Calendar establishes that The Appellant received paid sick leave from DOC for August 2-3, 2002 and August 7-11,2002. She was not paid for the period when she was employed by the BOP (August 12-23., 2002). Rather, the Attendance Calendar indicates that she was on "Time Without Pay" for this period. (Ex. 35)

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." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300,304 (1997). *See* Town of Watertown *v.* Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of 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); Commissioners of Civil Service v. Municipal 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 Committee of Brockton v. Civil Service Commission, 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 The Appellant, the Commission shall affirm the action of the Appointing Authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for 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, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The Department of Correction has satisfied its burden of proving reasonable justification for terminating the Appellant. Specifically, the evidence proffered by DOC is sufficiently reliable to warrant a reasonable mind to find that the Appellant committed the acts for which she was penalized.

It is the function of the agency hearing the matter to determine what degree of credibility should be attached to a witness' testimony. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978). Doherty v. Retirement Board of Medicine, 425 Mass. 130, 141 (1997). The hearing officer must provide an analysis as to how credibility is proportioned amongst witnesses. Herridge v, Board of Registration in Medicine, 420 Mass. 154, 165 (1995).

Here, the Commission assigns little credibility to the testimony of the Appellant. The Appellant admitted at the hearing before the Commission that she filed a false report with DOC and gave false testimony to DOC's investigator regarding an alleged threat she

received on August 6, 2002 (thereby undermining her credibility generally). Further, the Commission does not look favorably upon the Appellant's intimation that she provided false information to Sgt. McCaw at the suggestion of the chief union steward. Finally, the Commission notes that a significant portion of her testimony was contradicted by the objective documentary evidence and credible testimony of DOC's witnesses, including Sergeant Mark McCaw; Superintendent Lynn Bissonnette; Jeffery Bolger, and Millie Sheridan. In contrast to The Appellant, all of these witnesses were composed, and presented information in a clear and concise manner. Nor was their testimony in any way discredited upon cross-examination.

The credible documentary and testimonial evidence supports the conclusion that the Appellant repeatedly lied about her employment status at DOC in order to support her employment application for a position with the BOP. The Appellant's false statements in turn reflected negatively upon DOC, in violation of the General Policy and Rules 1 and 19 of the Rules and Regulations of the Department of Correction. A major component of a correction officer's job, similar to a police officer, is to write reports and testify in various forums, whether in inmate grievance and disciplinary matters, employee disciplinary matters or civil rights cases. As such, the need for honesty in all aspects of a correction officer's job goes to the very crux of one's responsibilities. *See e.g.* City of Boston v. Boston Police Patrolmen's Association, 443 Mass. 813 (2005).

The credible documentary and testimonial evidence also supports the conclusion that the Appellant, in violation of Rule 18 of the Rules and Regulations of the Department of Correction, abused her sick leave by using it for personal matters unrelated to illness (to wit: on the job training at the BOP), and attempted to "burn" her sick leave as part of a

scam to get double pay from DOC while in the employ of the BOP. Further, the fact that the Appellant was unsuccessful does not right the wrong.

DOC has proven, by a preponderance of the evidence, that it had just cause for terminating Monique Heuer from her position as a correction officer for violating General Policy and Rules 1, 18 and 19 of DOC Rules and Regulations. At hearing, the Appellant contended that she was subject to extreme sexual harassment, such that she was forced to seek alternative employment. However, the evidence established that at no time during the entire course of her employment (October 15, 2000-September 19, 2002) did the Appellant file a complaint alleging sexual harassment with DOC – either with DOC's Affirmative Action Office or with Supt. Bissonnette. There is no evidence of inappropriate motivations or objectives that would warrant the Commission modifying the discipline imposed upon her.

For all of the above reasons, the appeal under Docket No. D-02-790 is hereby ***dismissed***.

_____
Christopher C. Bowman, Commissioner

By a vote of the Civil Service Commission (Bowman, Guerin, Marquis, Commissioners [Taylor – Absent]) on March 8, 2007.

A true record. Attest:

_____
Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:
Elizabeth Day, Esq.
Daniel Rice, Esq.