

# The Commonwealth of Massachusetts

SUFFOLK, ss.

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

**JEFFREY HORNER,**  
*Appellant*

v.

**DEPARTMENT OF  
CORRECTION,**  
*Respondent*

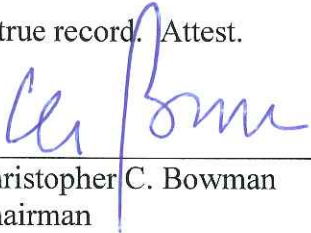
Case No.: D-10-262

## DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on August 11, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated July 1, 2011. No comments were received by the Commission from either party. 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 *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein, Commissioners) on August 11, 2011.

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)(I), 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. *See Curley v. Lynn*, 408 Mass 39, 41-42 (1990).

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 N. Louison, Esq (for Appellant)  
Heidi D. Handler, Esq. (for Appointing Authority)  
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
CHIEF ADMINISTRATIVE MAGISTRATE

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July 1, 2011

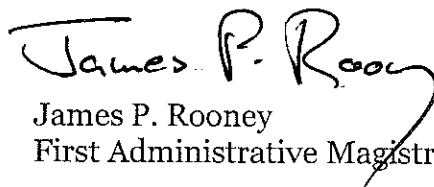
Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

**Re: Jeffrey Horner v. Department of Correction**  
**DALA Docket No. CS-11-91**  
**CSC Docket No. D-10-262**

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.

Sincerely,

  
James P. Rooney  
First Administrative Magistrate

JPR/mbf

Enclosure

cc: Bradford N. Louison, Esq.  
Heidi D. Handler, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

**Jeffrey Horner,**  
Appellant

v.

Docket No. D-10-262  
DALA No. CS-11-91

**Department of Correction,**  
Respondent

**Appearance for Appellant:**

Bradford N. Louison, Esq.  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street, #4  
Boston, MA 02110

**Appearance for Respondent:**

Heidi D. Handler, Esq.  
Department of Correction  
Industries Drive, PO Box 946  
Norfolk, MA 02056

**Administrative Magistrate:**

**Maria A. Imparato, Esq.**

**SUMMARY OF DECISION**

The Department of Correction had reasonable justification for imposing a three-day suspension on the Appellant for his violation of the DOC General Policy 1, Rule 1 and the DOC Policy for the Prohibition of Domestic Violence, 103 DOC 238.

**DECISION**

The Appellant, Jeffrey Horner, is appealing under M.G.L. c. 31, s. 43 the decision of the Respondent, Department of Correction, to suspend him for three (3) days as the result of a domestic dispute which included an allegation of animal cruelty, and to issue a final warning that future violations may result in termination.

I held a hearing on March 11, 2011 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA. I declared the hearing private as neither party filed a request to make it public.

I admitted documents into evidence. (Exs. 1 – 19) Lieutenant Mark McCaw testified on behalf of the Respondent. The Appellant testified on his own behalf.

### **FINDINGS OF FACT**

1. Jeffrey Horner (Horner) is a tenured civil service employee of the Department of Correction (DOC) serving in the position of Correction Officer I (CO I) at the North Central Correctional Institution (NCCI) in Gardner, MA. He has worked for the DOC since June 25, 2000.
2. On April 2, 2009 at about 2:30 p.m., Horner went to the home of his former wife to pick up their 13-year-old son Ryan for a visitation day. Ryan is diabetic. After Horner and Ryan left the house in Horner's truck, Horner returned to the house to retrieve Ryan's insulin. Ryan told Horner that Ryan's stepfather was at home. (Testimony, Horner.)
3. Horner had been informed by Ryan's therapist that Ryan's stepfather had thrown Ryan down the stairs several months previously. Horner wanted to confront the stepfather about the allegation. (Testimony, Horner.)
4. Ryan did not want to speak with his father and stepfather. He pulled a butterfly knife out of his pocket. Horner threw Ryan to the ground to take the knife away from him. Ryan ran into the house. (Testimony, Horner.)
5. Horner chased Ryan into the house. Horner's former wife told him to leave. (Testimony, Horner.)

6. Horner went around the side of the house where the family's two Burmese Mountain dogs were kept. One of the dogs started walking towards Horner; Horner pushed the dog aside. (Testimony, Horner.)
7. Ryan's stepfather then drove up in his truck. Horner asked the stepfather to step out of the truck. Words were exchanged. Horner got into his truck and left. (Testimony, Horner.)
8. After this incident, Horner was angry at his former wife. Horner called his former father-in-law to tell him that Horner's former wife had contacted her biological parents, but had not told her adoptive parents about that contact. Horner did this to "air things out." Horner felt that his former wife should have told her adoptive parents, and since she did not, he decided that he would. (Testimony, Horner.)
9. On April 8, 2009, Horner's former wife reported the incident to the Sturbridge Police. Both she and her husband filed Voluntary Statements. Horner's former wife alleged that Horner entered her home on April 2, 2009 while intoxicated, looking for her husband. She alleged that Horner grabbed one of her dogs by the collar and threw her to the ground. She alleged that Horner grabbed and wrestled to the ground his 13-year-old son because his son did not want to go with him. She alleged that when her husband pulled up, Horner told him to get out of the truck and punched him three times while holding his thumb to her husband's throat. (Ex. 15.)

10. The Voluntary Statement of Horner's former wife's husband alleges that Horner grabbed him by the throat and punched him three times in the head with a closed fist. (Ex. 14.)
11. On April 8, 2009, Sturbridge Police Officer Lombardi contacted Horner at NCCI to ask for his side of the story. Horner indicated that he had no comment. Officer Lombardi issued a verbal "no trespass" order to Horner. Officer Lombardi spoke with Horner's supervisor, Captain Cumberledge, who reported that Horner had no comment to Captain Cumberledge's inquiry about the incident. Based on Horner's refusal to give his version of events, Officer Lombardi filed a criminal complaint against Horner on April 9, 2009. (Ex. 9: 1, 2, 3; Ex. 10, Statement of Facts.)
12. On April 9, 2009, Horner's former wife filed a complaint with the DOC, alleging that on April 2, 2009, she believed Horner was intoxicated when he entered her home without permission, engaged in a verbal dispute with her, assaulted her dog and exited the home. She alleged that Horner then had a physical altercation in the front yard with their 13-year old son, and a second physical altercation with her present husband by punching him three times on the side of the head while choking him. It was noted that Horner faced charges of Assault and Battery, Assault and Battery Domestic, Animal Cruelty, and Breaking and Entering for a misdemeanor. The complaint was referred to OIS (Office of Investigative Services) for review and advice. (Ex. 5; Ex. 10: 11.)

13. On June 12, 2009, a civil restraining order issued against Horner with respect to his son Ryan. Horner was ordered to refrain from abuse, stay away, and surrender guns and ammunition. The order expired on June 24, 2010.  
(Ex. 12.)
14. On October 15, 2009, Horner pleaded to sufficient facts with respect to assault and battery on the former wife's husband, animal cruelty and breaking and entering for misdemeanor. The charge of assault and battery on his son was dismissed. The case was continued without a finding, and Horner was placed on probation until October 14, 2010. Horner was also required to attend an anger management program, and to receive drug and alcohol evaluation and treatment. (Ex. 10.)
15. On October 12, 2009, the DOC investigation was reassigned to Lt. Mark McCaw (McCaw). McCaw interviewed Horner on January 12, 2010 in the presence of Horner's union representatives. Horner stated, among other things, that he would not speak with Officer Lombardi because he wanted to speak with his attorney before speaking with the police, that he pleaded to sufficient facts because of the cost of fighting the charges in a jury trial, and that his wife filed the charges only because she was angry about the information Horner shared with her adoptive father. (Exs. 6, 7, 11.)
16. McCaw concluded in his report of February 10, 2010 that Horner's behavior violated the DOC General Policy, and the DOC policy of zero tolerance for domestic violence. (Ex. 7.)

17. On February 18, 2010, Deputy Commissioner James Bender determined that there was probable cause to believe that Horner had violated the General Policy section of the Blue Book as well as Section 1, and probable cause to believe Horner violated 103 DOC 238 Prohibition of Domestic Violence Policy. He referred the matter for a Commissioner's Hearing. (Exs. 3, 4, 8.)
18. Commissioner Howard W. Clarke issued to Horner a Notice of Charges and Hearing on April 30, 2010, indicating that the purpose of the hearing was to determine whether Horner violated DOC rules, regulations or policies, and if so, to determine the appropriate level of discipline. (Ex. 2.)
19. On July 7, 2010, Susan E. Herz, Labor Relations Advisor, held a hearing to determine whether Horner had violated DOC rules. In her report dated July 13, 2010, she concluded that Horner violated General Policy I and Rule 1, as well as the DOC policy with respect to Domestic Violence, 103 DOC 238. (Ex. 18.)
20. By letter of September 15, 2010, received by Horner on September 27, 2010, Commissioner Clarke informed Horner that he found substantial evidence that Horner engaged in the conduct charged. The Commissioner suspended Horner for three working days and issued a final warning that any future violations of the DOC rules "may result in your termination from employment with the Department." (Exs. 1, 19.)
21. Horner appealed his suspension to the Civil Service Commission on October 6, 2010. (Ex. 19.)
22. Horner does not have any previous discipline. (Testimony, Horner.)

## CONCLUSION AND RECOMMENDATION

The Department of Correction has demonstrated just cause by a preponderance of the evidence for the imposition of a three day suspension on Jeffrey Horner for violation of General Policy I, Rule 1, and the Policy for the Prohibition of Domestic Violence, 103 DOC 238. I recommend that the Civil Service Commission uphold the discipline.

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). 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 rule of law. *Id.* at 304, quoting *Selectmen of Wakefield v. Judge of First District Court 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).

The Appointing Authority's burden of proof is one of a preponderance of the evidence, which is established "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). 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. *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).

#### **General Policy (Ex. 16.)**

In the Rules and Regulations Governing all Employees of the Massachusetts Department of Correction (also known as the Blue Book), the General Policy states in part that all employees have a “constant obligation to render good judgment and full and prompt obedience to all provisions of law.” The General Policy further provides that “[i]mproper 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.”

#### **Rule 1, Standards of Correctional Service (Ex. 16.)**

Rule 1 provides in part, “Employees should give dignity to their position and be circumspect in personal relationships regarding the company they keep and places they frequent.”

#### **DOC Policy for the Prohibition of Domestic Violence, 103 DOC 238 (Ex. 17.)**

Under 103 DOC 238.01, the Commonwealth “has a zero-tolerance policy for domestic violence occurring within or outside the workplace.”

Domestic violence, defined section 238.03, includes attempting or causing physical harm, or placing a family or household member in fear of imminent serious physical harm. Family or household members include persons who are or were married to each other, persons who are or were residing in the same household, persons who are related by blood or marriage, and/or persons who have a child in common. A victim can be protected from an abuser through the issuance of a restraining order.

### **Conclusion**

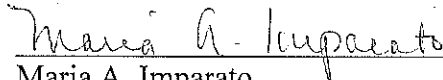
The Appellant's former wife and her husband did not testify at hearing. Their version of the events of April 2, 2009 contained in the criminal complaint does not therefore rise to the level of substantial evidence. I based my findings regarding the events of April 2, 2009 solely on the Appellant's testimony at hearing.

Even so, the Appellant's behavior in seeking to confront his son's stepfather over allegations that the stepfather had thrown the Appellant's son down the stairs, entering his ex-wife's home without permission, pushing the dog, and having a verbal altercation with his former wife's husband in public showed a lack of "good judgment and prompt obedience to all provisions of law" within the meaning of the General Policy, and did not "give dignity" to the Appellant's position as a Correction Officer, in violation of Rule 1.

The Appellant's physical altercation with his son over the butterfly knife in which the Appellant threw his son to the ground resulted in the issuance of a civil restraining order against the Appellant, directing him not to abuse, and to stay away from his son for a year. This demonstrates a violation of the Policy for the Prohibition of Domestic Violence because the Appellant placed his son, to whom the Appellant is related by blood and with whom he used to reside, in fear of serious physical harm.

The DOC has met its burden of proof. I recommend that the Civil Service Commission affirm the Appellant's three day suspension.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Maria A. Imparato  
Administrative Magistrate

DATED: **JUL - 1 2011**