

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JANE JASON,
Appellant

Docket No.: D-04-219

v.

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:

James Nason, Atty.
Massachusetts Correction
Officer's Federated Union
159 South Main Street, St. A
Milford, MA 01757

Respondent's Attorney:

Jeffrey S. Bolger
Director of Employee Relations
50 Maple Street
Milford, MA 01757

Commissioner:

Daniel M. Henderson¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant Jane Jason (hereinafter "Appellant") filed an appeal with the Civil Service Commission (hereinafter "Commission"), claiming that the Department of Correction (hereinafter "DOC," or "Appointing Authority") did not have just cause for

¹ The Commission acknowledges the assistance of Legal Intern Basannya Babumba in the preparation of this decision.

suspending her for three (3) days for her failure to report to her regularly scheduled shift. A hearing was held on May 29, 2008 at the offices of the Commission. One (1) tape was made of the hearing and is retained by the Commission. As no notice was received from either party, the hearing was declared private.

FINDINGS OF FACT

Fifteen (15) exhibits were entered into evidence. Based on these exhibits and the testimony of:

For the Appointing Authority:

- Patrick Depalo, Administrative Captain, Director of Security
- Jorma Maenpaa, Shift Commander, Director of Security
- Richard Dechellis, Correction Officer

For the Appellant:

- Appellant, Jane Jason, Correction Officer I

I make the following findings of fact:

1. The Appellant, Jane Jason, a tenured civil service employee, has been employed by the DOC as a Correction Officer I since 2000. (Testimony of Appellant)
2. She received and signed for a copy of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction (hereinafter "Blue Book") on September 12, 2000 (Exhibit 10)
3. The Appellant was assigned to the MCI Framingham facility, where she worked the 11:00 p.m. – 7:00 a.m. shift. (Exhibit 13)
4. Swap shifts are governed by the Swap Agreement, an official agreement between the Massachusetts Department of Correction and The Massachusetts Correction Officer's Federated Union. (Exhibit 8)

5. Swap shift are a regular occurrence at MCI-Framingham. A shift swap occurs when correction officers trade work assignments. (Exhibit 8)

The swap process is as follows:

- a. Officers fill out a swap slip which is a carbonless copy form (Exhibit 15).
 - b. Swap slips are submitted to the Shift Commander's for approval.
 - c. Approval of the swap is recorded in the swap log.
 - d. Shift Rosters are updated with the swap information.
 - e. Copies of approved swap slips are returned to both officers involved.
6. Under the swap agreement, swap slips must be approved forty-eight (48) hours in advance by the appropriate Shift Commanders. Furthermore, the swap slips must be signed by the Shift Commander. If two (2) shifts are affected, the signature of the Shift Commander on each shift is required. Officers may not approve their own Swap request. (Exhibit 8)
7. The Appellant and Officer Richard Dechellis (hereinafter "Dechellis") swapped shifts on a regular basis. These swaps were always approved by their supervisors prior to August 11, 2003. He has never had any problems with swaps before this. Sometimes Dechellis would hand in 3-4 swap slips at one time. (Testimony of Appellant and Testimony of Dechellis)
8. The Appellant and Dechellis are regular "swap partners". They did approximately 18 swaps between January and August of 2003. (Testimony of Appellant)
9. The Appellant had been out on medical leave (FMLA), from July 1, 2003 to August 10, 2003, due to her father's illness. (Testimony of Appellant)
10. Dechellis agreed to swap schedules with the Appellant for her regularly scheduled shift on August 11, 2003. (Exhibits 3 and 5)

11. On August 11, 2003, Dechellis reported to work a swap for the Appellant on the 11:00 p.m. – 7:00 a.m. shift. (Testimony of Dechellis)
12. It was noted on the working shift roster for the 11:00 p.m – 7:00 a.m. shift that Dechellis was working for the Appellant on August 11, 2003. (Exhibit 6, Testimony of Maenpaa)
13. However, the Administration at MCI Framingham claims it had no official record of a swap being approved between Dechellis and the Appellant for August 11, 2003. (Exhibits 3 and 5)
14. Neither the Appellant nor Dechellis had access to the working shift roster. There are a limited number of designated and identifiable employees who have access to the shift roster, including control staff and shift commanders. (Testimony of Maenpaa and Testimony of Depalo)
15. On August 11, 2003, Patrick Depalo (hereinafter “Captain Depalo”) called Dechellis and asked him if he had any documentation for this swap. Dechellis said no but that he had received a phone call from the Appellant that day telling him that the swap was all set. Captain Depalo told Dechellis to go home that he would be working for free. Depalo was aware at that time that both the Appellant and Dechellis worked a lot of swaps. Dechellis then left the facility, instead of working the Appellant’s shift as he had planned. (Exhibit 6, Testimony of Depalo)
16. Captain Maenpaa instructed Sgt. Hulme to contact the Appellant and have her report to work. (Exhibit 6, Testimony of Maenpaa)
17. Sgt. Hulme was unable to reach the Appellant, but left a message on her answering machine. (Exhibit 6)
18. On the night of August 11, 2003 the Appellant was at her parent’s home taking caring of her elderly father who was seriously ill. (Testimony of Appellant)

19. The Appellant returned home on August 12, 2003 and listened to the message from Sgt. Hulme evening before, and realized that the swap was unauthorized. She then called the institution immediately, but cannot recall who she spoke with. (Testimony of Appellant)
20. The DOC assigned Captain Maenpaa to conduct an investigatory interview with the Appellant about her failure to report to work. (Exhibit 5, Testimony of Maenpaa)
21. Captain Maenpaa did not determine whose handwriting had made the notation on the working roster, but admitted that it would have been a serious violation of the rules and regulations to have made an unauthorized notation on a roster. (Exhibit 5, Testimony of Maenpaa)
22. The better practice for the DOC would have been to allow Dechellis to work the shift for the Appellant, as he had planned since he was present and willing to work. The problem or error, if any, could then have been addressed later, without the shift being left understaffed. (reasonable inference)
23. The Appellant received a three (3) day suspension on November 6, 2003 for alleged violations of rules: General Policy 1 and 18 (a) of the Blue Book. (Exhibit 4)
24. The Rules are as follows:

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, full and prompt obedience of 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.”

Rule 18(a) Punctual attendance for your regular hours of duty must be strictly observed. Delay in terminating your tour of duty will not compensate for tardiness at its beginning. Notification of anticipated delay or absence due to unavoidable detention must be telephoned or sent promptly to the person designated by the Superintendent or DOC Department head to receive and record such calls, in order that provisions may be made to cover your assignment. Absence from duty without permission or notice shall not be allowed.

25. On March 22, 2004, after a hearing pursuant to M.G.L. c. 31 § 41, the DOC notified the Appellant that it was upholding her three (3) day suspension for violation of General Rule 1 and Rule 18(a) of the Blue Book (Exhibit 2).

26. Since there was no approved swap for August 11, 2003 and since the Appellant failed to report for work as scheduled, her absence was deemed unauthorized. (Exhibit 2)
27. The Appellant was the only employee disciplined as a result of the circumstances surrounding August 11, 2003. (Testimony of Appellant, Testimony of Dechellis, Testimony of Depalo, and Testimony of Maenpaa)
28. It is noted that the swap slip offered into evidence, (Exhibit 15) was not the same type of swap slip used at the time of this incident. (Testimony of Depalo)
29. The Appellant and Dechellis both appeared to be reliable and credible witnesses. Their testimony was brief but he withstood cross-examination and she was not cross-examined.. I did not discern any inconsistency or incompatibility in their testimony. I find their testimony to be credible. (Testimony and demeanor of Appellant and Dechellis)

CONCLUSION

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 Serv. Comm'n, 43 Mass. App. Cts, 304 (1997). See Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Serv. Comm'n, 38 Mass. App. Ct. 473, 477 (1995); Police Dep't of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); 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); Commissioner of Civ. Serv. 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 Comm. of Brockton v. Civil Serv. Comm'n, 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 Appellant, the Commission shall affirm the action of the Appointing Authority. Falmouth v. Civil Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (2004).

The issue before 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 at 334. *See* Commissioners of Civ. Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton at 727-728.

The appointing authority is afforded some clear guidance in successfully completing its task of properly investigating and disciplining an employee for misconduct, by reference to basic merit principles defined in the civil service law. **G. L. Chapter 31: Section 1. Definitions** "Basic merit principles", shall mean (a) recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; (b) providing of equitable and adequate compensation for all employees; (c) providing of training and development for employees, as needed, to assure the advancement and high quality

performance of such employees; (d) retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected; (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.

The DOC failed to establish through a preponderance of the evidence, either through witness testimony and/or exhibits presented at the hearing, that the Appellant violated General Policy 1 or Rule 18(a) of the Blue Book. The DOC offered no evidence that the Appellant failed to follow the proper procedures of the swap agreement. To the contrary, the evidence supported the Appellant's assertion that she did follow the procedures. The Appellant and Dechellis were regular swap partners and had successfully followed the requirements to effectuate these swaps many times previously. The Appellant testified that she had a swap scheduled with Officer Dechellis on August 11, 2003. The fact that the swapped shift was identified on the shift's working roster, a document to which the Appellant lacks access, and the fact that Dechellis appeared to work for the Appellant, supports the Appellant's testimony that she followed the proper procedures. The DOC's failure to identify how the notation appeared on the roster, and its failure to properly interview Dechellis specifically in regard to his involvement in the incident demonstrates that there was an improper investigation. Ideally, the Appellant should have spoken to someone in command to ensure that the shift had final approval. However, she had completed so many successful swap agreements with Dechellis previously that she believed this swap would be automatic. Additionally, given the

severity of her father's illness, the Appellant's time was consumed with taking care of him to the point where she had to assume the role as the primary caretaker while also working a full time job. She had just returned to work after being out on medical leave, FMLA, from July 1, 2003 to August 10, 2003.

Given the facts that the swap was recorded on the roster and that Dechellis showed up and was willing to work the swap for the Appellant, the DOC lacked reasonable justification to discipline the Appellant with the issuance a three (3) day suspension to the Appellant.

For all of the above stated reasons, the Appointing Authority has not shown by a preponderance of the evidence that it had just cause to suspend the Appellant from employment for three (3) days.

The Appellant's appeal filed under Docket No. D-04-219 is hereby **allowed**. The Appellant shall be returned to her position without any loss of pay, compensation or other benefits.

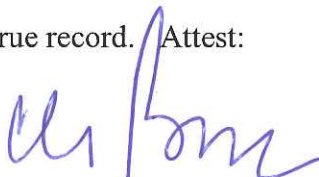
Civil Service Commission



Daniel M. Henderson
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman -No; Henderson -Yes, Marquis -No, McDowell -Yes, and, Stein -Yes, 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)(1), 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 sent to:

James Nason, Esq. (for Appellant)

Jeffrey S. Bolger (for Appointing Authority)