

COMMONWEALTH OF MASSACHUSETTS

Decision mailed: 1/29/10
Civil Service Commission *CS*

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

TINA JONES,
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

Case No.: D1-09-294

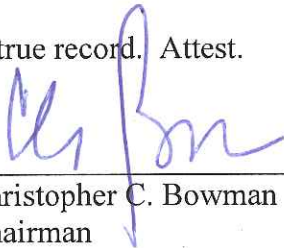
DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on January 28, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated December 9, 2009. The Commission received comments from the Appellant on December 17, 2009. The Commission received comments from the Respondent on January 4, 2010. 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 *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein, and Taylor, Commissioners) on January 28, 2010.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or 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 to:
Bradford N. Louison, Esq. (for Appellant)
Amy Hughes, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
ACTING CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
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December 9, 2009

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

Re: Tina Jones v. Department of Correction
DALA Docket No. CS-09-516

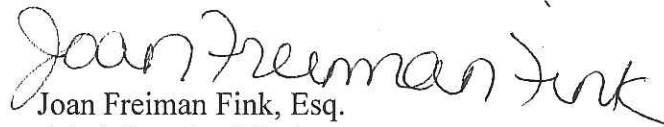
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COMMISSIONER OF MASS
CIVIL SERVICE COMMISSION

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.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,


Joan Freiman Fink, Esq.
Administrative Magistrate

Enclosure

cc: Bradford N. Louison, Esq.
Amy Hughes, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Tina Jones,
Appellant

Docket No. D1-09-294
DALA No. CS-09-516

v.

Department of Correction,
Appointing Authority

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Appearance for Appellant:

Bradford N. Louison, Esq.
Louison, Costello, Condon & Pfaff, LLP
67 BatteryMarch Street
Boston, MA 02110

Appearance for Appointing Authority:

Amy Hughes, Esq.
Department of Correction
P.O. Box 946
Industries Drive
Norfolk, MA 02056

Administrative Magistrate:

Joan Freiman Fink, Esq.

SUMMARY OF DECISION

The Appointing Authority has demonstrated just cause to terminate the Appellant from her position as Correction Officer I with the Department of Correction (DOC). The Appellant associated with and maintained a relationship with a former inmate/parolee without specific approval from the Superintendent or the Commissioner.

RECOMMENDED DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Tina Jones, is appealing the June 19, 2009 decision of the Appointing Authority, the Department of Correction, discharging her from her position as a Correction Officer I with the Department of Correction. (Exhibit 3.) The Appellant filed a timely appeal of this decision with the Civil Service Commission. (Exhibit 2.)

A hearing in this matter was held on September 30, 2009 at the offices of the Division of Administrative Law Appeals, 98 N. Washington Street, Boston, MA. As no written request was received from either party, the hearing was declared to be private. Various documents were entered into evidence at the hearing. (Exhibits 1– 8.) In addition, several tape recorded telephone conversations including one between the Appellant and CV¹, two between CV and his mother, and another between CV and his sister, were played at the hearing. Three cassette tape recordings were made of the hearing. The record in this case was left open until November 5, 2009 for the filing of written closing memoranda.

Peter Carver, an Assistant Parole Supervisor with the Massachusetts Parole Board, and Lieutenant Stephen Gattewood of the DOC, testified on behalf of the Appointing Authority. The Appellant testified in her own behalf.

The Appointing Authority maintains that just cause exists to discharge the Appellant from her employment as a Correction Officer I for violation of various rules including Rule 1,² Rule 2(b)³, Rule 8(c)⁴, Rule 12 (a)⁵, Rule 19 (c)⁶, and Rule 19 (e)⁷ of

¹ In order to protect the privacy of CV, an individual who has been incarcerated in DOC institutions, the parties agreed to refer to him by the initials, CV.

² Rule 1 provides in part that: "Employees should give dignity to their position and be circumspect in personal relationships regarding the company they keep and the places they frequent."

the *Rules and Regulations Governing All Employees of the Massachusetts Department of Correction*. In addition, the Appointing Authority alleges that the Appellant's conduct violated the Sexually Abusive Behavior Prevention and Intervention Policy, 103 DOC 519.⁸

Specifically, the Appointing Authority alleges that the Appellant associated with and maintained a relationship with a former inmate/parolee without having secured specific approval from her Superintendent or the Commissioner to associate with that individual, *i.e.*, CV. The Appointing Authority also alleges that on November 22, 2008, the Appellant permitted CV to drive her vehicle without a license and that CV was arrested at that time. The Appointing Authority contends that on January 23, 2009, parole officers came to the Appellant's home where they arrested CV that the Appellant initially lied to these law enforcement officers as to the whereabouts of CV. The

³ Rule 2 (b) provides in part that: "Report promptly in writing to your Superintendent, DOC Department Head or their designee ... any involvement with law-enforcement officials pertaining to any investigation, arrest, or court appearance."

⁴ Rule 8 (c) provides in part that: "You must not associate with, accompany, correspond or consort with any inmate or former inmate except for a chance meeting without specific approval of your Superintendent, DOC Department Head or the Commissioner of Correction. Any other outside inmate contact must be reported to your Superintendent, DOC Department Head or Commissioner of Correction. Treat all inmates impartially; do not grant special privileges to any inmate. Your relations with inmates, their relatives or friends shall be such that you should willingly have them known to employees authorized to make inquiries."

⁵ Rule 12 (a) provides that: "Employees shall exercise constant vigilance and caution in the performance of their duties. You shall not divest yourself of responsibilities through presumption and, must familiarize yourself with assigned tasks and responsibilities including institution and Department of Correction policies and orders."

⁶ Rule 19 (c) provides in part that: "Since the sphere of activity within an institution or 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."

⁷ Rule 19(e) provides that: "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."

⁸ 103 DOC 519 provides that: "Intimate relationships between staff and inmates are expressly prohibited. 103 DOC 519.02 provides that "Intimacy is defined as "any behavior not defined as sexual contact or sexual abuse of an inmate including ... sending/receiving personal letters/cards/gifts or receiving phone calls from an inmate."

Appointing Authority further contends that the Appellant failed to promptly report in writing her involvement with law enforcement officials on November 22, 2008, and January 15, 2009 and that she lied to a DOC investigator regarding the nature of her relationship with CV.

FINDINGS OF FACT

Based on the documents entered into evidence (Exhibits 1 – 8) and the testimony of Peter Carver, Stephen Gattewood, and Tina Jones, I hereby make the following findings of fact:

1. The Appellant, Tina Jones, commenced employment as a Correction Officer with the DOC in August of 2004. At that time, she was assigned to MCI Framingham. (Testimony of the Appellant.)
2. In November of 2005, she was re-assigned to the Massachusetts Alcohol and Substance and Abuse Center in Bridgewater, MA. (Testimony of the Appellant.)
3. Prior to the incident in question, the Appellant had never been the subject of any disciplinary action during the course of her employment with DOC. (Testimony of the Appellant.)
4. The Appellant has known Teresa Lively as a very close friend since 1995 and has known her brother CV since 1999. On September 30, 2008, Teresa Lively moved in with the Appellant at her (Jones's) residence in Taunton, MA. (Testimony of the Appellant.)
5. At the time that Teresa Lively moved in with her, the Appellant was aware of the fact that CV had been in prison for trafficking a controlled substance and had been paroled. (Testimony of the Appellant.)

6. CV, who has an extensive criminal history, was paroled on May 13, 2008. (Exhibit 6; testimony of Lieutenant Gattewood.)

7. On September 30, 2008, the day that Ms. Lively moved in with the Appellant, CV showed up unexpectedly and offered to help both the Appellant and his sister with unpacking. (Testimony of the Appellant.)

8. The Appellant did not report to her supervisor the fact that the sister of a former inmate, now parolee, was her roommate and that the potential for incidental contact with that inmate/parolee was possible. Nor did the Appellant inform her supervisor(s) that CV had actually appeared at her residence on September 30, 2008. (Testimony of the Appellant.)

9. The Appellant was aware of the fact that she was required to report any association with an inmate or former inmate. In 2005, the Appellant reported to the DOC that she was friendly with the grandmother of an inmate at MCI-Framingham, where she was assigned to work at that time. The Appellant made this report on the first day that she observed this inmate at MCI-Framingham. (Exhibit 6.)

10. At no point in time did the Appellant seek formal approval from anyone in authority at the DOC to associate, accompany, or consort with CV. (Testimony of the Appellant.)

11. On November 21, 2008, the Appellant went to a bar with Teresa and Teresa's boyfriend, who had come to visit from Virginia. At approximately 9:30 p.m., CV appeared at the bar accompanied by some friends. (Testimony of the Appellant.)

12. The Appellant consumed a significant quantity of alcohol that evening and when CV offered to drive her home, she assented and gave him permission to drive her home in her own car. (Testimony of the Appellant.)

13. At approximately 1:15 a.m., the State Police pulled CV over because the car he was driving had a defective plate light. After running a search, the State Police learned that CV's license had been revoked. The police then arrested CV, issuing him an arrest citation for operating a motor vehicle on a revoked license and number plate violation. The police also noted that CV was on probation until 2011. (Exhibit 6.)

14. The Appellant provided her license to the police and was not cited in the incident. (Testimony of the Appellant.)

15. The Appellant failed to report the incident involving the arrest of CV by the State Police to DOC officials nor did she report her contact and association with CV on the evening of November 21, 2008 to the department. (Testimony of the Appellant.)

16. On January 13, 2009, a parole violation warrant was issued for CV for failure to comply with the terms of his parole. (Testimony of Assistant Parole Supervisor Carver.)

17. Assistant Parole Supervisor Carter was assigned the task of investigating and, if appropriate, arresting CV relative to claims of parole violations including providing a false address. On his parole forms, CV had listed his mother's address as his personal residence. (Testimony of Carver.)

18. On January 14, 2009, Parole Supervisor Carter spoke with CV's mother on the telephone and inquired as to where her son was residing. CV's mother confirmed that CV was not living at her home but rather, was residing with his girlfriend, Tina

Jones, in Taunton, MA. CV's mother added that Tina Jones works in a prison.

(Testimony of Carver.)

19. At approximately 8 a.m. on January 15, 2009, Parole Supervisor Carver, accompanied by Taunton police officers, went to the Appellant's home in Taunton, MA to effectuate an arrest of CV. (Testimony of Carver.)

20. The officers knocked on the door and the Appellant answered. Parole Supervisor Carter then advised the Appellant that he had received information that CV was residing at her home. (Testimony of Carver.)

21. The Appellant initially denied that CV was staying there but a short time later admitted that CV was present and showed the officers into her home. Upon entering the residence, Parole Supervisor Carter observed CV leaving a second floor bedroom. CV, who was dressed in a tee shirt and underwear, was in the process of putting on his pants. (Testimony of Carver.)

22. There was no one else at the Taunton residence other than the Appellant and CV when Parole Supervisor Carter arrived at the home on January 15, 2009. (Testimony of Carver.)

23. One of the police officers who accompanied Parole Supervisor Carter to the Taunton residence observed a DOC uniform jacket and asked the Appellant "who works for the DOC?" (Testimony of the Appellant.)

24. The Appellant initially replied that CV's sister worked for the department but a short time later corrected herself and acknowledged that she was employed by the DOC (Testimony of the Appellant.)

25. CV was arrested by Parole Supervisor Carter and the Taunton Police Officers for violating his parole. CV was subsequently committed to MCI-Concord. (Testimony of Lieutenant Gattewood; Exhibit 6.)

26. The Appellant did not report her association with CV on January 14 and January 15, 2009 to the DOC nor did she report that CV had been arrested at her home on the morning of January 15th. (Testimony of Lieutenant Gattewood.)

27. Lieutenant Stephen Gattewood of the DOC was assigned to investigate the Appellant's conduct with respect to her association with CV. During the course of his investigation, Lieutenant Gattewood spoke with CV, Parole Supervisor Carter, Taunton Police Officer Vital, and the Appellant. (Testimony of Lieutenant Gattewood.)

28. On January 15, 2009, Lieutenant Gattewood of the DOC spoke with Parole Supervisor Carter and learned of the Appellant's association with CV at the time of his arrest. (Testimony of Lieutenant Gattewood.)

29. When Lieutenant Gattewood interviewed the Appellant, she did not mention that CV had helped move his sister into her residence. Although the Appellant denied that she was romantically involved with CV, at no time during this interview did the Appellant mention that she had another boyfriend. (Testimony of Lieutenant Gattewood.)

30. On January 16, 2009, the Appellant was detached with pay pending an investigation into her conduct. (Testimony of the Appellant.)

31. On her personnel records with the DOC, the Appellant had listed her specific landline telephone contact number. (Exhibit 6.)

32. On January 20, 2009, CV added the Appellant's same landline telephone number to his prison call list. As CV informed the DOC that the number belonged to his sister, the number was approved for outgoing calls. CV had also listed his mother's telephone number on his prison call list. (Exhibit 6.)

33. The DOC records telephone conversations made by prisoners from the prison and keeps the tapes in a secure location. Inmates are all apprised of the fact that their calls are monitored and recorded. Several of these tapes were played by the DOC at the hearing. (Testimony of Lieutenant Gattewood.)

34. On January 23, 2009, CV called the Appellant's landline telephone. The Appellant accepted the collect call from the then prisoner CV. The Appellant told CV that Teresa was not in and that he could call back in an hour. CV also discussed with the Appellant a lack of letter writing to him. (Tape recording played at the hearing.)

35. The Appellant did not report this telephone conversation with CV to the DOC until she was asked about it by Lieutenant Gattewood on February 4, 2009. (Testimony of the Appellant.)

36. On January 23, 2009, CV called his mother and referred to the Appellant as a friend of the family. CV's mother replied that the Appellant was suspended pending an investigation. CV seemed upset by this information and asked his mother how the Appellant was doing. CV asked his mother to call the Appellant on her cell phone but the mother refused. When CV asked his mother how long the Appellant thought he would be in prison, his mother responded that he should not discuss this matter over a recorded line. CV then ended the conversation by saying that he could not believe that he could not call her (referring to the Appellant.) (Tape recording played at the hearing.)

37. On January 23, 2009, CV called his mother and his sister, who was present at the mother's home, got on the line. CV asked his sister whether the Appellant wants him to be with her or not to which the sister replied that he should write the Appellant as often as possible. (Tape recording played at the hearing.)

38. On January 26, 2009, CV called his mother and related to her that someone from the DOC Internal Affairs Division came to see him and asked him about his relationship with the Appellant. CV told his mother that he had informed Internal Affairs that he and the Appellant were just friends and then refused to answer any additional questions. (Tape recording played at the hearing.)

39. On March 31, 2009, the Appointing Authority sent the Appellant a Notice of Contemplated Action indicating that a hearing pursuant to G.L. c. 31, § 41 would be held on June 9, 2009 to determine whether she had violated various DOC Rules and Regulations relating to her association with CV. (Exhibit 2.)

40. By letter dated June 19, 2009, the Appointing Authority informed the Appellant that, after holding a hearing, it had decided to discharge her from her position as Correction Officer I with the DOC. (Exhibit 3.)

41. The Appellant filed a timely appeal of this decision with the Civil Service Commission. (Exhibit 1.)

CONCLUSION AND RECOMMENDATION

After reviewing all the testimony and evidence in this case, I conclude that the Appointing Authority has demonstrated by a preponderance of the evidence that just cause exists to terminate the Appellant from her position as a Correction Officer I with the Department of Correction. The Appointing Authority established that the Appellant,

by having unauthorized conduct with former inmate CV on at least four occasions between September of 2008 and January of 2009 violated Rule 1, Rule 2(b), Rule 8(c), and Rule 19(e) of the Rules and Regulations of the DOC. In addition, the Appointing Authority established that the Appellant violated Rule 2(b) by failing to report her involvement with law enforcement officials on November 22, 2008, when she had given CV permission to drive her home in her own vehicle and that vehicle was later stopped by the police and CV was arrested. The Appellant also allowed CV to stay at her home in January of 2009. When Parole Supervisor Carver accompanied by Taunton Police Officers appeared at her home on January 15, 2009, and asked if CV were present, the Appellant initially lied to the officers. She also lied to the police officers concerning whether she was the owner of a DOC jacket that the officers had seen in the home. Such conduct was in violation of Rule 19(c). Although CV was arrested for parole violations by the officers during that visit of January 15, 2009, the Appellant did not report this incident to the DOC in violation of Rule 2 (b). The Appellant accepted a telephone call from CV at the time he was in prison at MCI-Concord on January 23, 2009. This conduct violated the Department's Sexually Abusive Behavior Prevention and Intervention Policy, 103 DOC 519. Finally, the Appointing Authority demonstrated that the Appellant violated Rule 19(c) of the Rules and Regulations of the DOC by being less than truthful and forthcoming during the entire course of the investigation into her association with CV.

The Civil Service 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). In reviewing an appeal brought pursuant to G.L. c. 31 § 43, if the Civil Service 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 basis of my conclusion rests with my finding that the testimony of Parole Supervisor Carter and Lieutenant Gattewood was extremely credible. In *Connor v. Connor*, 77 A.2d 697 (Pa. 1951), the Pennsylvania Appeals Court held that the "opportunity to observe demeanor and appearance of witnesses in many instances becomes the very touchstone of credibility." *School Committee of Wellesley v. Labor Relations Commission*, 376 Mass. 112, 120 (1978); *New England Canteen Service, Inc. v. Ashley*, 372 Mass. 671 (1977).

Parole Supervisor Carter gave compelling testimony concerning his visit to the Appellant's home on January 15, 2009 and his subsequent arrest of CV for parole violations. Parole Supervisor Carter detailed how the Appellant lied about CV's whereabouts and also about her ownership of a DOC issued jacket. Lieutenant Gattewood described the import of the DOC regulations strictly regulating all contact with inmates and the necessity of reporting any association and/or contact with DOC officials. Lieutenant Gattewood stressed that the Appellant, despite being fully apprised of the regulations concerning inmate association and being fully cognizant of CV's prior criminal record and incarceration, failed to notify the Department of her association with him and further failed to seek approval for continued contact.

Arguing in her own behalf, the Appellant offered that her relationship with CV was remote and tangential, not at all romantic, and that she knew him only as her friend's brother. While she acknowledged that she was aware of his criminal record and the fact that he had recently been released from prison, she felt that she did not have to report her association with him as she considered it to be sporadic and inconsequential. She noted that she had a long-time boyfriend with whom she was in a committed relationship. She testified that she was not aware of the fact that CV was going to help his sister move into her (Jones's) home in September of 2008 and that she was surprised when he showed up. She further testified that she did not know that CV was going to be at the same bar where she and several friends were dining on the evening of November 22, 2008. She also testified that she was not aware of the fact that CV's driver's license had been revoked at the time she let him drive her home from that bar in November of 2008.

With respect to the visit by Parole Supervisor Carter and the Taunton Police Officers, the Appellant admitted that she initially did not tell the truth about CV's presence in her home. She noted that she lied about both his presence and about her ownership of the DOC uniform jacket because she was "nervous."

I do not find the Appellant's explanations to be persuasive or convincing. In the first instance, the Appellant was completely aware of the fact that she was required to report any association or contact with inmates or former inmates. In 2005, the Appellant, at the instant she became aware of the presence of a certain inmate at the institution where she was working, *i.e.*, MCI-Framingham, filed a report with DOC detailing her friendship with that inmate's grandmother. Moreover, the Appellant should have known that by having CV's sister move in with her, there was at least a good

likelihood that CV would come to visit on some occasions. Thus, the Appellant had no reasonable explanation for her failure to report her multiple associations with CV and further to seek authorization and permission from DOC officials relative to her roommate situation.

The Appellant also violated departmental regulations when she let CV drive her home in her own personal vehicle. Despite her assertion that she was unaware of the fact that CV's driver's license had been revoked, she was cognizant of departmental regulations prohibiting such close fraternization with former inmates. The Appellant argued that since her relationship with CV was strictly platonic, she did not feel that she had violated the departmental policy prohibiting sexual contact. While I do not question or dispute the Appellant's assertions with respect to the nature of her relationship with CV, nonetheless, DOC regulations are clear and emphatic that all associations with inmates and former inmates must be reported and approved, regardless of the nature of the relationship. At the hearing, the Appellant, in disclaiming any romance with CV, testified that she had a long-term boyfriend. Notwithstanding that fact, when she was questioned by Lieutenant Gattewood concerning her relationship with CV, the Appellant did not mention that she had a serious boyfriend.

The Appellant's explanation as to why she was less than truthful when questioned by Parole Supervisor Carter as to whether CV was at her home on the morning of January 14, 2009 was not plausible. The Appellant was fully cognizant of the fact that departmental regulations required her to be truthful, especially when questioned by law enforcement officials. DOC Rules and Regulations require all employees to respond

fully to all questions relative to the conduct of an inmate, a visitor, another employee, or themselves.

In determining the appropriateness of the discipline to be imposed, I carefully reviewed the entire record in this case. The record reflects that the Appellant, deliberately and knowingly repeatedly violated department regulations, regulations designed to protect the safety and welfare of departmental employees and the public at large. I find that the Appellant's conduct was so egregious that the imposition of a discharge was fully warranted by the facts in this case.

Accordingly, I recommend that the Civil Service Commission affirm the action of the Appointing Authority discharging the Appellant from her position as a Correction Officer I with the DOC.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Joan Freiman Fink
Administrative Magistrate

Dated:

12/9/09