COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

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

LOVETTE B. McKOY,
Appellant

v.

DEPARTMENT OF CORRECTION,
Respondent

Case No.: D-11-284

DECISION

The Civil Service Commission (Commission) voted at an executive session on September 20, 2012 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated July 23, 2012. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby ***dismissed.***

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on September 20, 2012.

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)(l), 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.

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:
Robert V. Henderson (for Appellant)
Amy Hughes, Esq. (for Respondent)
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

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BOSTON, MA 02114

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July 23, 2012

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

Re: Lovette McKoy v. Department of Correction
DALA Docket No. CS-12-104
CSC Docket No. D-11-284

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,

Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Amy Hughes, Esq.
Robert V. Henderson

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

Lovette B. McKoy,
Appellant

v.

Massachusetts Dept. of Correction,
Appointing Authority

Docket Nos. D-11-284/
CS-12- 104 (DALA)
Dated: JUL 23 2012

Appearance for Appellant:

Robert V. Henderson
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Mattapan, MA 02126

Appearance for Appointing Authority:

Amy Hughes, Esq.
Department of Correction
Division of Human Resources
One Industries Dr.
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Administrative Magistrate:

Sarah H. Luick, Esq.

SUMMARY OF RECOMMENDED DECISION

The Department of Correction had just cause for imposing a three day suspension without pay on Correction Officer Lovette B. McKoy for neglecting her post, engaging in distracting activity, and not being forthcoming with information during an investigation.

RECOMMENDED DECISION

Pursuant to G. L. c. 31, § 43, the Appellant, Correction Officer (CO) Lovette B. McKoy, is appealing the September 7, 2011 decision of her Appointing Authority, the Department of

Correction (DOC), suspending her for three days without pay as a result of her actions during her duty shift in the Intensive Care Unit (ICU) at the Lemuel Shattuck Hospital on April 4, 2011. (Exs. 2 & 3.) The appeal was timely filed. (Ex. 1.) A hearing was held for the Civil Service Commission on March 9, 2012 at the offices of the Division of Administrative Law Appeals, 98 North Washington Street, 4th Floor, Boston, MA 02114. The hearing was private as no written request was received from either party for a public hearing.

Various documents are in evidence. (Exs. 1-8). The parties entered into a few stipulations of fact. (Ex. A.) The hearing was digitally recorded and three (3) tapes were used. The Appointing Authority presented the testimony of DOC Captain Donna Driscoll and Deputy Superintendent Anne Manning, both of Lemuel Shattuck Hospital's DOC Unit. Deputy Superintendent Manning produced Chalk 1. The Appellant testified on her own behalf. The Appointing Authority filed a pre-hearing memorandum. (Ex. B.) Both parties made arguments on the record. The record closed on May 24, 2012 after receipt of further documentation. (Ex. 8, Post Orders on Outside Hospital Details at Lemuel Shattuck Hospital.

FINDINGS OF FACT

Based on the testimony and evidence presented, and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. Lovette McKoy is a tenured CO with DOC, with the rank of CO I. She has worked at the DOC Unit at the Lemuel Shattuck Hospital for over twenty-five years. (Exs. A & 1. Testimony.)

2. On August 22, 2008, CO McKoy received a one day suspension without pay for being disrespectful to, and for challenging the authority of, her supervisor, during roll-call on July 10, 2008. On February 8, 2006, she received a five day suspension without pay for neglect of duty for playing the computer game of solitaire with her back to an inmate. On May 14, 2004, CO

McKoy received a three day suspension without pay for giving inconsistent statements during two investigation interviews about an encounter between two COs. On November 7, 2002, CO McKoy was suspended without pay for two days for removing some lettuce and tomatoes from a DOC salad bar and placing them into her own container without paying for them. (The parties agreed that this matter would not be pursued in another forum and the punishment would not serve as precedent for any other case.) On September 19, 1994, CO McKoy received a three day suspension without pay that was later settled to be a one day suspension without pay, over an incident with the Chief Executive Officer of Lemuel Shattuck Hospital. (Ex. 6.)

3. On April 4, 2011, CO McKoy was the senior officer on a four person team assigned to guard a Class A[1] Escape Risk inmate[2] for the 7:00 AM to 3:00 PM shift in the ICU of Lemuel Shattuck Hospital. She was one of two armed COs for that detail. Although she had performed guarding duty in the ICU many times before, she had never performed this work with three other COs. She had previously worked this guarding duty at the ICU as an armed CO. (Ex. 7. Testimony.)

4. The ICU. holds inmates as well as civilian patients, and is categorized as an "Outside Hospital" by DOC. It is not a secured DOC facility. (Exs. 5, 7 & 8. Testimony)

5. Policies for COs to follow in the Lemuel Shattuck Hospital ICU are set forth in 103 DOC 521, titled "Outside Hospital Procedures." Security Detail,103 DOC 521.01(A)(5)(a) states:

> Security Risk inmates shall have a minimum security detachment of four (4) officers (2 armed, 2 unarmed) for Level A inmates.

(Ex. 5.) Security Equipment, 103 DOC 521.03(B) states:

> Firearms shall be issued to the senior officer of the detail in accordance with 103 DOC 508. The senior officer shall obtain a firearm from the institution prior to departing for detail.

[1] Class A is given to inmates considered to be at highest risk of attempting escape.
[2] Because the inmate need not be identified, he will be referred to as Inmate A.

(Ex. 5.) 103 DOC 521.03(B)(1) further explains:

> The armed employee should position himself outside the room containing the inmate allowing for unobstructed access to the room. Only in an emergency shall the armed employee enter the room housing the inmate.

(Ex. 5.)

6. The Outside Hospital Post Order 14 that CO McCoy had to follow, at Special Instructions, page 4, number 23(D), provides guidelines for guarding inmates in the Lemuel Shattuck Hospital ICU hallways:

> The corridor and doorways cannot be blocked with chairs, tables, feet, etc. (safety regulation). Chairs must be up against the wall.

(Ex. 8.)

7. On April 4, 2011 CO McKoy arrived at Inmate A's ICU room at approximately 7:00 AM. When Inmate A was being examined by medical staff, CO McKoy and two other COs performing this duty moved to an empty room adjacent to Inmate A's ICU room. The fourth CO, Bryan Moore, who was unarmed, remained stationed at the doorway of Inmate A's room. CO McKoy placed herself in the adjacent room, in part to comply with the requests of ICU hospital staff that COs not be in the hallway because they can get in the way of hospital staff. CO McKoy sat in a chair facing the wall of Inmate A's ICU room with at least some ability to see inside Inmate A's room through a window in this wall. She had seen that Inmate A had leg and arm restraints on him. She saw that Inmate A was on oxygen and other monitors. She felt that CO Moore was a large man who would be hard for Inmate A to get around in an escape attempt. (Ex. 7. Chalk 1. Testimony.)

8. The large window in the wall CO McKoy was facing that allowed for viewing into Inmate A's ICU room could be covered by two curtains. One curtain could be drawn from inside

Inmate A's room. The other curtain could be drawn from inside this adjacent room. The three COs sat in chairs in a semi-circle facing the wall with this window. The curtain or curtains were closed except for a small portion that allowed CO McKoy to view into Inmate A's ICU room to be able to see his bed, and to see CO Moore at the doorway of Inmate A's room to some degree. She did not have a full unobstructed view into Inmate A's ICU room. (Ex. 7. Chalk 1. Testimony.)

9. CO McKoy was seated in the semi-circle of the three COs in the adjacent room in a chair closest to the outside wall and closest to the visible area through the window. Seated next to her in the middle of the semi-circle was the other armed CO. Ahead of the seated COs was a small television on top of a small piece of furniture or hospital equipment. The television was on while the COs were seated in the adjacent room From her seat, CO McKoy had the ability to view the television if she wanted to. This room was not brightly lit. For CO McKoy to leave the room if there was any disruption by Inmate A, she would have needed to exit by the two other COs in the room to reach Inmate A's ICU room. (Ex. 7. Chalk I. Testimony.)

10. At approximately 10:00 AM, DOC Deputy Superintendent Anne Manning was doing her rounds in the ICU. She entered Inmate A's room where she found CO Moore at the doorway and a Certified Nurses Aide inside. She left that room. As she walked by the adjacent room she saw CO McKoy and the other two COs inside. She was aware that there were to be four COs, two armed, guarding Inmate A, and that they were all supposed to be in the hallway and doorway area of Inmate A's ICU room. She stopped at the doorway of the adjacent room and asked the three COs what they were doing. None of the COs responded. She stepped further into the room, noticed a television was in front of the semi-circle where all three were seated and facing in the direction of the television. She asked what they were watching. The COs gave no

response. After that, she walked to the television, turned it off and left the room without saying anything further to them. None of the COs followed her to speak to her about what they were doing in the room with the television on in front of them. The three COs did not change their location after this encounter. (Ex. 7. Testimony.)

11. Deputy Superintendent Manning went right away to speak with the supervising officer of these three COs, and requested that they be reassigned to a different duty. (Ex. 7. Testimony.)

12. The three COs were reassigned and ordered to write reports about their encounter with Deputy Superintendent Manning in the room adjacent to Inmate A's ICU room. Reports were also obtained from CO Moore and Deputy Superintendent Manning. CO Moore was not reassigned. (Ex. 7. Testimony.)

13. On April 4, 20011, Deputy Superintendent Manning wrote a report describing what she had seen involving the three COs and her reaction to their conduct:

> As I approached the three officers they did not appear to be in the proper position so I asked them what they were doing. None of the officers responded to my inquiry. Their lack of response prompted me to step further into the area in which they were congregated to ascertain what had their attention. It was then I noticed what appeared to be either a small television set or some sort of surveillance monitor angled in their direction. I then asked them what they were watching. Again, no response from any of the three officers. I stood there in disbelief as I could not comprehend that they would be watching television while assigned to I.C.U. to monitor a Level A inmate with such a serious history of institutional violence. After a few moments, I realized the officers were indeed watching television ... I maneuvered through the semi-circle and manually shut off the television set ... None of the three officers moved from their positions as I did this. I then maneuvered again through their formation and exited the area ....

(Ex. 7.)

14. On April 4, 2011, CO McKoy wrote a brief report about her conduct when Deputy Superintendent Manning saw her in the ICU:

> I ... was assigned to the I.C.U. I was position (sic) to the side of the room so that I won't be in the I.C.U. nurse's way. Deputy Manning came in the Unit and

asked what was on T.V. as Deputy Manning proceeded to turn the T.V. off. (Ex. 7.) The other two COs in the room wrote brief reports with similar content. (Ex. 7.)

15. Captain Donna Driscoll was assigned to investigate the actions of the three COs, and to determine if their actions violated any DOC rules, regulations and orders. (Ex. 7. Testimony)

16. Captain Driscoll visited the ICU, Inmate A's ICU room, and the room adjacent to it where the three COs had been found by Deputy Superintendent Manning. Captain Driscoll interviewed each of the four COs assigned to guard Inmate A. She interviewed Deputy Superintendent Manning. She interviewed CO McKoy on April 8, 2011. CO Robert Henderson, her MCOFU Steward, was present. (Ex. 7. Testimony.)

17. Officer McKoy reported to Captain Driscoll that she was in the room adjacent to Inmate A's room when Deputy Superintendent Manning came to the ICU. She emphasized that while in the adjacent room, she was seated in such a location that she could look into Inmate A's ICU room through the window in the wall ahead of her. She felt she was properly positioned to be doing her guarding job as one of four COs guarding Inmate A. She noted that she did not have a direct view of the television from her seat; that the television was angled so it was not directly in front of her. When questioned about the "Outside Hospital" policies and post orders, and where to be positioned to do this kind of guarding duty, CO McKoy responded that she found it confusing when in the ICU because the medical staff do their rounds and the medical staff do not want the COs in the hallway. CO McKoy noted that she had not previously guarded a Level A inmate in the ICU. CO McKoy noted that she was familiar with Inmate A, knew about his disruptive history at DOC, and was aware of his prior escape attempt from Lemuel Shattuck Hospital. She did not feel, as an armed CO guarding Inmate A, that she should have been where

CO Moore was located at Inmate A's ICU room. She felt she had used good judgment by being where she was and how she was positioned in the adjacent room. (Ex. 7.)

18. Captain Driscoll evaluated CO McKoy's conduct against the requirement that guarding a Level A highest security risk inmate must involve "the utmost security and due to the ICU being an unsecured area ..., staff needs to be on their highest alert because there is the threat of inmate escape as well as potential outside intrusion by unknown threats." She concluded that CO McKoy had engaged in "inappropriate" conduct and was not sufficiently forthcoming in addressing her conduct during the investigation as she was required to be. Captain Driscoll listed nine DOC Rule and Regulation violations she found from CO McKoy's conduct. She explained her investigation report conclusions as follows :

> CO McKoy ... denied watching television but admitted the television was on in the area she was located. When questioned about this matter by Deputy Manning, she failed to respond to her inquiry. Due to the lack of response by the three officers present, Deputy Manning personally shut the television off ... I believe that CO McKoy is being less than truthful about watching television and seeing Deputy Manning enter the unit from where she was located ... CO McKoy's explanation of the location of the television being behind her also seems not credible based on testimony by all staff. Although CO McKoy stated at the time she did not feel that she was off her post, the facts reveal that she was not properly posted up according to 103 DOC 521 OUTSIDE HOSPITAL SECURITY PROCEDURES section 5221.03 Security Equipment ... CO McKoy was the senior officer on site as well as one of the armed officers; CO McKOy was off her post as she was located in a room adjoining inmate [A's] room, not outside of the room as policy requires. Also, as one of the armed officers, CO McKoy was located further into the room than the unarmed officer, which would have inhibited her response time if an emergency had occurred. Although CO McKoy stated the medical staff doesn't want correctional staff in the ICU hallway, hospital staff does not dictate to DOC staff how to provide security coverage to inmates on outside hospital details.

(Ex. 7.)

19. Captain Driscroll sent her investigation report and conclusions about CO McKoy's conduct to the Superintendent of the DOC Unit at Lemuel Shattuck Hospital, who recommended

to the DOC Assistant Deputy Commissioner of Administration, that a Commissioner's hearing be held to address discipline. The Superintendent concluded: "The level of vigilance displayed in this case is not consistent with DOC protocol nor, with that which should have been ascribed to the individual under her supervision." (Ex. 7.)

20. Officer McKoy received a written Notice of Charges and Hearing on July 19, 2011. Her actions were alleged to be those found by Captain Driscoll during her investigation. She was charged with violating DOC's Outside Hospital Security Procedures, at 103 DOC 521.03(B)(1): "The armed employee should position himself outside the room containing the inmate allowing for unobstructed access to the room. Only in an emergency shall the armed employee enter the room housing the inmate." (Exs. 3 & 5.) She was also charged with violating seven of the Rules and the General Policy found in the DOC Rules and Regulations governing the conduct of all DOC COs:

> General Policy I, ... 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 or, from his/her constant obligation to render good judgment and full and prompt obedience to all provisions of law, and to all orders not repugnant to rules, regulations, and policy issued by the [DOC] 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 ....
>
> 6(c), Interpersonal Relationships Among Employees ... The duties assigned to you should demand your entire attention ....
>
> 6(d), ... You should not receive or follow orders of any kind emanating from any person who is not officially connected with the institution or Department of Correction ....

> 7(c), General Conduct – Employees, … Any Department of Correction or institution employee who is found sleeping at his/her post during the course of their official duties, or otherwise flagrantly, wantonly, or willfully neglecting the duties and responsibilities of his/her office shall be subject to immediate discipline up to and including discharge.
>
> 7(d), … Employees should not read, write or engage in any distracting amusement or occupation during their required work hours, except to consult rules or other materials necessary for the proper performance of their duties.
>
> 10(c), Institution Discipline … Employees assigned to or having duties related to inmates confined in isolation, segregation, hospital or special housing sections must comply with institution and Department of Correction policy and orders relative to the daily medical attention, hourly care (unless special situations such as medical concerns indicate closer or more frequent observation), and custody of such inmates.
>
> 12(a), Care, Custody, Safety and Good Order … 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.
>
> 19(c) , Administrative Procedures … 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.

(Exs. 3 & 4.)

21. An Appointing Authority hearing was held on August 8, 2011. CO McKoy testified at the hearing. DOC found CO McKoy's conduct on April 4, 2011 merited discipline, and suspended her for three days without pay. (Ex. 2. Testimony.)

22. DOC concluded CO McKoy had violated all the DOC Rules and Regulations she had been charged with violating: Rule 6(c); Rule 6(d); Rule 7(c); Rule 7(d); Rule 10(c); Rule 12(a); and, Rule 19(c). She was also found to have violated the General Policy I Rule, and the DOC Policies on Outside Hospital Security Procedures at 103 DOC 521. (Exs. 2, 3, 4 & 5.) DOC

found these rule and policy violations based on finding that CO McKoy had engaged in the following conduct:

> [Y]ou were the senior officer assigned to provide security coverage for a Level A Escape Risk inmate in the Intensive Care Unit … at Lemuel Shattuck Hospital. As the senior officer and armed with a weapon, you failed to properly maintain your post on that assignment. You were positioned in the room adjoining that of the Level A Escape Risk inmate, rather than outside the room as required by policy. The room you were positioned in had a television on. Further, despite being an armed officer, you were located further into the adjoining room than the two (2) unarmed officers on the security detail, which would have delayed your response if an emergency occurred. In an attempt to justify your misconduct, you claimed that medical staff did not want correctional staff in the ICU hallway. Additionally, you were less than truthful when questioned by Captain Donna Driscoll on April 8, 2011, regarding the above matter.

(Ex. 2.)

23. CO McKoy timely appealed the discipline to the Civil Service Commission seeking a G.L. c. 31, § 43 hearing. (Ex. 1)

Conclusion and Recommendation

The Appointing Authority must satisfy a preponderance of the evidence standard to show just cause for suspending a civil service employee. *Gloucester v. Civil Service Commission*, 408 Mass. 292 (1990). Just cause is found when an employee has engaged in "substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." *Murray v. 2nd District Court of Eastern Middlesex*, 389 Mass. 508, 514 (1983); *School Committee of Brockton v. Civil Service Commission*, 43 Mass. App. Ct. 486, 488 (1997). On appeal, the Civil Service Commission determines whether or not the Appointing Authority had a reasonable justification for the action it took. *Watertown v. Aria*, 16 Mass. App. Ct. 331, 334 (1983). This means the Appointing Authority's action had to be "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." *Cambridge v. Civil Service Commission*, 43 Mass.

App. Ct. 300, 304 (1997), quoting *Wakefield v. 1st District Court of Eastern Middlesex*, 262 Mass. 477, 482 (1928); *Civil Service Commission v. Municipal Court of Boston*, 359 Mass. 211, 214 (1971). In making this determination, the Civil Service Commission cannot simply substitute its decision for that of the Appointing Authority. *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 304; *School Committee of Salem v. Civil Service Commission*, 348 Mass. 696, 699 (1965).

I find that DOC had just cause to impose a three day suspension without pay for the reasons it relied upon. There is sufficient proof that CO McKoy's conduct on April 4, 2011 and during her investigation interview with Captain Driscoll on April 8, 2011, violated the DOC Rules and Regulations and the policies on Outside Hospital Security as set forth in the DOC letter of decision. CO McKoy admits she decided to sit in an adjacent room to Inmate A's ICU room rather than be in the hallway to guard Inmate A. She further admits that she did so at least in part in order to please hospital staff. DOC Rules and Regulations require that her actions not be influenced by outside groups or individuals. She was the senior CO and had been working at Lemuel Shattuck Hospital for over twenty-five years. She had experience performing guarding duty in the ICU. She knew or should have known that if the Hospital staff were interfering with her security duty over a Level A Escape Risk inmate that she should seek help from her supervisor, but not leave her proper guarding post. By her own admission her positioning was in acquiescence to the wishes of the hospital staff.

Further, CO McKoy claims that she believed her positioning was consistent with DOC standards of conduct, even if influenced by hospital staff, because she claims at all times she was able to adequately observe Inmate A, see the activities going on in his room, and because it would have been hard for Inmate A to have escaped by CO Moore due to his size. CO McKoy

felt there would have been enough time for her to reach the doorway to Inmate A's room if she needed to. It does not matter if her reasoning made sense to her. She was held to a different standard of conduct of having "unobstructed access" to the Inmate A's ICU room as called for in the DOC policies and due to the underlying DOC Rules and Regulations she must follow. The findings of fact show CO McKoy would not have been able to respond to an incident involving Inmate A as quickly as she could have if she had been in the hallway outside Inmate A's ICU room. She was the individual furthest inside the adjacent room, and her path to get to the doorway of Inmate A's room involved getting by other COs and objects. While DOC Rules and Regulations may not define what constitutes unobstructed access, the amount of effort that would have been required of CO McKoy to respond as quickly as CO Moore to a security issue in Inmate A's room makes her positioning unacceptable under any reasonable interpretation of the DOC Rules, Regulations, policies, and post orders.

I conclude CO McKoy was able to view the television in the adjacent room whether or not she was watching television at all or most of the time. CO McKoy's claim that she was unable to view the television and was not distracted by it is unconvincing. Based on her own testimony, the television was in an area where she could have easily seen it, the room was not well lit, and it is reasonable to assume she was distracted by the television. The testimony did not show if the television sound was loud, but that matter does not alter my conclusion about the television being a distraction to CO McKoy's job performance.

I credit the account of events provided by Deputy Superintendent Manning. No evidence shows she had some vendetta against CO McKoy or against the other two COs to have exaggerated her account in order to cause the COs to be disciplined. Her version of the course of events is very plausible, that because the three COs were in the adjacent room, they were not

adequately or properly guarding the Level A Escape Risk inmate. Deputy Manning was involved in doing her regular round within the ICU when she came across the COs not at their required post of guarding Inmate A. She knew what that assignment involved of having two armed COs and four COs in total guarding Inmate A because he was a Level A Escape Risk inmate and because the ICU is an unsecured area of Lemuel Shattuck Hospital. She immediately sought to correct the situation she saw by going to see their supervisor. Her report matched the testimony she provided. Captain Driscoll's testimony and her investigation confirmed Deputy Superintendent Manning's account.

Finally, as to CO McKoy not being forthcoming with Captain Driscoll during her investigation interview, I accept Captain Driscoll's conclusions on this claim. Officer McKoy's statements were contradictory to those made by Deputy Manning and to the set up Captain Driscoll found when she went to the adjacent room to make observations of it and of Inmate A's ICU room. Captain Driscoll found CO McKoy did not acknowledge that having the television on was a distraction to the attention she needed to devote to her duty, and that her claim that she had a full view of Inmate A in his room through a fully unobstructed window was self-serving and not believable. I conclude that CO McKoy failed to acknowledge within the investigation interview that any of her actions on April 4, 2011 were even ill-advised. During a DOC investigation interview CO McKoy is obligated to be fully forthcoming and completely truthful according to the DOC Rules and Regulations she is held to satisfy. Her account given to Captain Driscoll did not meet this standard of conduct.

My conclusions match the conclusions reached by DOC following the G.L. c. 31, § 41 hearing where CO McKoy testified as she did at this Civil Service Commission hearing. No different information was presented at the Civil Service hearing than at the Appointing Authority

hearing.

Prior Discipline

Officer McKoy has received prior discipline. The Civil Service Commission should consider Officer McKoy's discipline from February 2006 and May 2004 while reviewing the punishment imposed. The current case is the second charge against Officer McKoy stemming from distractions while on duty. In February 2006, Officer McKoy was found to have been playing solitaire while guarding an inmate. In May 2004, Officer McKoy was found not to have been forthcoming during the course of an investigation, as in this case.

Recommendation

For the foregoing reasons, I recommend that the Civil Service Commission affirm the three day suspension without pay.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Sarah H. Luick

Sarah H. Luick, Esq.
Administrative Magistrate

DATED: JUL 23 2012