

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

**MARGARET
MUBIRO-MUSOKE,**
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

Case No.: D-09-426

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

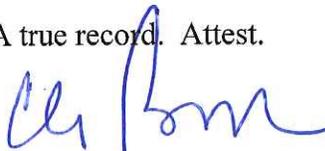
Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No written objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Department of Correction to suspend the Appellant for three (3) days is affirmed and the Appellant's appeal is *denied*.

By a 4-0 vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis and Stein, Commissioners [McDowell – not participating]) on February 6, 2014.

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)(1), 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:

Margaret Mubiro-Musoke (Appellant)

Heidi Handler, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals
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Docket Nos.: D-09-426
CS-09-525

MARGARET MUBIRU-MUSOKE,
Petitioner

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for the Appellant:

Pro se

Appearance for Respondent:

Heidi D. Handler, Esq.
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Division of Human Resources
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Administrative Magistrate:

Richard C. Heidlage, Esq.

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CIVIL SERVICE COMMISSION

SUMMARY OF TENTATIVE DECISION

The Department of Correction had just cause to discipline the Appellant for leaving her office and the cabinets in her office unlocked, for bringing personal property into the facility without permission, for failing to report missing office supplies, for disseminating personal information and the copy machine code to inmates, and for being less than truthful during the ensuring DOC investigation. The Appellant's conduct compromised the discipline, safety and security of the Department. I therefore recommend that the Civil Service Commission dismiss the appeal.

TENTATIVE DECISION

INTRODUCTION

The Appellant, Margaret Mubiru-Musoke, pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission on December 11, 2009, claiming that the Department of

Correction (Department or DOC) did not have just cause to discipline her and issue her a final warning on November 12, 2009.

A pre-hearing was held on January 5, 2010 at the Civil Service Commission, One Ashburton Place, Room 503, Boston, MA 02108.

On May 7, 2010, pursuant to 801 CMR 1.01(11)(c), a Magistrate from the Division of Administrative Law Appeals (DALA) conducted a full hearing at the DALA offices, then located at 98 N. Washington Street, Boston, MA 02114, in accordance with the Formal Rules of the Standard Rules of Practice and Procedure. 801 CMR 1.01.

The Appellant testified on her own behalf. The Respondent called Lieutenant Sandra M. Walsh, formerly of the Office of Investigative Services. The hearing was digitally recorded. As no notice was received from either party, the hearing was declared private.

Twelve joint exhibits were submitted into evidence. The Respondent submitted its proposed decision on June 10, 2010. The Appellant submitted her proposed decision on June 14, 2010, whereupon the administrative record closed.

FINDINGS OF FACT

Based on the documents entered into evidence and the testimony of the witnesses, I make the following findings of fact:

1. At all times relevant to this appeal, the Appellant has worked as a Librarian III at the Massachusetts Correctional Institution at Concord (MCI-Concord). (Exhibits 1, 7 and 9; Testimony of the Appellant.)
2. The Appellant has been disciplined three times. On June 16, 2000, the Appellant received a letter of reprimand for abandoning her post. (Exhibit 10.)

3. On March 25, 2004, the Appellant received a letter of reprimand for failing to declare that she was carrying medication while entering the facility. (Exhibit 10.)

4. On February 2, 2009, the Appellant received a three-day suspension for violating security procedures. On December 1, 2008, the Appellant had allowed an inmate to deliver library books, without a staff escort, to the Special Management Unit (SMU) for use by other inmates. The books had not been searched by security staff and were later found to contain razor blades. The Appellant also assigned the same inmate to work in the library without proper clearance, and had left her office unsecured, giving inmates access to her department email. The Appellant was also less than truthful during the ensuing Department investigation, which was undertaken by Captain Christopher Wright. (Exhibit 10.)

5. On April 3, 2009, the appointing authority hearing was held with Joseph S. Santoro presiding as hearing officer. The Appellant was represented by Kevin Joyce, Field Representative of SEIU Local 509. (Exhibit 10.)

6. On April 28, 2009, after reviewing Mr. Santoro's report and supporting documentation, Commissioner Harold W. Clarke accepted the hearing officer's report. However, the Commissioner reduced the suspension to one day.¹ (Exhibits 10 and 11.)

7. Upon appointment to a Department position, Department employees acknowledge their receipt and acceptance of the Rules and Regulations. The following Department Rules and Regulations provide:

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

¹ *Mubiru-Musoke v. Department of Correction*, Docket Nos. D-09-244, CS-10-552, Recommended Decision, (August 10, 2010), *adopted by Final Decision*, 23 MCSR 568 (2010).

full and prompt obedience to all provisions of law, and to all orders not repugnant to rules, regulations, and policy issued by the Commissioner, the respective Superintendents, or by their authority. All persons employed by the Department of Correction are subject to the provisions of these rules and regulations. Improper conduct affecting or reflecting upon any correctional institution or the Department of Correction in any way will not be exculpated whether or not it is specifically mentioned and described in these rules and regulations. Your acceptance of appointment to the Massachusetts Department of Correction shall be acknowledged as your acceptance to abide by these rules and regulations. ...

Rules and Regulations

Department Rule 1:

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

Rule 10(b):

When suspicious behavior is noted you should take steps to satisfy yourself that nothing is being done to jeopardize the good order or safety of the institution. The fact that an inmate has been detailed to another employee or department does not relieve you from such inquiry. Nothing in these rules prevents you from discussing any given situation with your direct supervisor before writing a formal disciplinary report against an inmate. Disciplinary reports must be factual, impartial, complete and impersonal, and processed in compliance with institution and Department of Correction policy. A disciplinary report must be completed and submitted to the Superintendent's designee prior to the end of our tour of duty on a given work shift. Supervising employees shall not suppress you from writing a disciplinary report, however, it is generally acknowledged that the employee who succeeds in maintaining good discipline with a minimum number of formal reports deserves the highest commendation.

Rule 16:

Employees must not bring personal property other than personal effects and car, on or within the precincts and dependencies of the institution without the prior approval of the Superintendent or his/her immediate subordinate. You must permit your car and effects to be searched or inspected, which should be done in your presence, except, where the safety and good order of the institution is considered sufficiently important to warrant otherwise. The posting of political or other handbills is forbidden on the property of the institution. Pictures or

photographs of institution property or inmates may only be taken with the knowledge and approval of the Superintendent.

Rule 19(c) provides:

Since the sphere of activity within an institution of the Department of Correction may on occasion encompass incidents that require thorough investigation and inquiry, you must respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee or yourself.

103 DOC 225 provides in part:

§ 225.01. It is the policy of the Massachusetts Department of Correction to ensure that all employees ... maintain professional boundaries with inmates. Any act by an employee ... that violates professional boundaries is prohibited. All allegations and incidents involving the violations of professional boundaries shall be reported and fully investigated and may result in action ranging from discipline, including termination, to criminal prosecution ...

§225.02. Violations of professional boundaries include but are not limited to misuse of power and control over an inmate; giving or receiving from an inmate any unauthorized item; granting special privileges of any kind to an inmate; spending excessive time with an inmate that is not warranted by official duties; discussing the personal life or issues of any employee, including one's self, with an inmate or in the presence of an inmate; discussing the personal life or issues of another inmate with an inmate or in the presence of an inmate; engaging in any act that may undermine the ability of any employee to effectively manage an inmate.

§225.03(3). When boundaries are blurred or non-existence, inmates may develop inappropriate relationships with staff, which may jeopardize the operation of the Department's institutions and division.

(Exhibits 1, 5 and 6.)

8. On February 20, 2009, in a letter addressed to Commissioner Clarke, Inmate B alleged staff misconduct at MCI-Concord. Inmate B alleged that the staff allowed unauthorized inmates to use the copy machine and computer equipment in the library, downloaded and searched websites that were sexual and offensive, locked unit worker in early so that they could gamble in staff office areas, brought in food, cosmetics, cologne, chewing tobacco, and unauthorized reading materials for inmates, admitted to using illegal substances while on- or off-duty, allowed inmates to use coffee makers and microwave ovens, discussed sexual activities

with inmates, used inappropriate language and made explicit sexual comments to inmates, promised to “set someone up” if an inmate were disliked by staff, gave away state-funded supplies, openly used racial, sexual, and other inappropriate comments or language about other inmates or staff. The letter was copied to Richard Cutter, Esq. of the Criminal Justice Policy Coalition, Secretary of Public Safety Kevin Burke, State Representative Kay Khan, and State Senator Harriet Chandler. (Exhibit 3; Testimony of Lt. Walsh.)

9. On February 21, 2009, Inner Perimeter Security (IPS) Correction Officer Brian Estevez interviewed Inmate B. Inmate B stated that the Appellant was giving special privileges to another inmate, Inmate A, and himself. He said that she brought in food for them, and allowed the two of them to use the laptop in the library. On one occasion, according to Inmate B, Inmate A was allowed to take the laptop and return it the next day. The Appellant also gave the two inmates office supplies such as special binders and large paper clips that could be converted into weapons. Inmate B also stated that he was able to make unlimited copies in the library because the Appellant had given him the access code to the copy machine. Estevez submitted a confidential incident report to the Department. (Exhibit 3; Testimony of Lt. Walsh.)

10. On February 23, 2009, Sergeant Ciccone interviewed Inmate B, who said that Inmate A had introduced him to the Appellant. The Appellant brought snacks into the facility for him. Inmate B said that he worked for the Appellant in the library, although he was not cleared to work there. Inmate B said that at the moment Inmate A continued to work for the Appellant in the library, although she had been disciplined for hiring him without authorization. (Exhibits 3, 7, and 10; Testimony of Lt. Walsh.)

11. Inmate B said that the Appellant had given him a pair of gloves, yogurt, cosmetics, file folders that contained metal pieces, pens, permanent markers, butterfly paperclips,

and other items. The Appellant also gave Inmate B a folder with institutional telephone extensions and provided others upon request. Inmate B also took a cigarette lighter that the Appellant had left on her desk. According to Inmate B, when the Appellant left the laptop cabinet open, Inmate A took a laptop back to his cell overnight. Inmate B also alleged in the letter that the Appellant would download internet information for him, including a joke called "Blowjob Etiquette." (Exhibit 3; Testimony of Lt. Walsh.)

12. Inmate B stated that he wanted to trade this information so that he could have Inmate C as his cell mate. (Exhibit 3.)

13. At the end of the interview, Inmate B gave Sgt. Ciccone two green binders; one black binder that contained metal pieces; a yellow folder containing library memoranda; an organizational chart of MCI-Concord; a Department policy list; another yellow folder containing pornographic material copied from the library copy machine; several copies of Inmate B's ID card; copies of Inmate B's self-inflicted injuries; copies of instructions for boxing, fencing, Judo, Sumo, wrestling, karate, Jun Fu Taolu, Jung Fu Sanshou, Ju-Jitsu, Tae Kwan Do, kickboxing, Sombo and Kendo; a large butterfly clip; one roll of labels; a LaYogurt fruit cup; Clinique Happy body smoother lotion; one Aveeno daily moisturizing lotion; dental floss; Integra correction tape; and one pair of Work Wear signature series gloves. (Exhibit 3; Testimony of Lt. Walsh.)

14. On February 24, 2009, Sgt. Ciccone conducted a search of the library and confiscated the laptop. Sgt. Ciccone was also able to use the copy machine with the access code provided by Inmate B. The laptop was examined by Technology Services, but was found to have a dead port, i.e. no network interface card. Because of the dead port, the laptop had no internet

access, internet capability or the ability to be accessed via a wireless card. (Exhibit 3; Testimony of Lt. Walsh.)

15. When Sgt. Ciccone re-interviewed Inmate B on February 24, 2009, the inmate gave him a copy of his letter to Commissioner Clarke. Sgt. Ciccone forwarded the letter to MCI-Concord Superintendent Peter Pepe. (Exhibit 3; Testimony of Lt. Walsh.)

16. On February 25, 2009, Sgt. Ciccone returned the laptop to the library. The staff was unaware that it had been removed. (Exhibit 3; Testimony of Lt. Walsh.)

17. An investigation commenced on February 26, 2009, and was originally assigned to Sgt. Rowdy Hough after he was briefed by Sgt. Ciccone. The matter was re-assigned to Lieutenant Sandra M. Walsh of the Internal Affairs Unit on March 24, 2009. (Exhibit 3.)

18. On March 4, 2009, Sgt. Ciccone submitted a confidential incident report to the IPS Department. (Exhibit 3; Testimony of Lt. Walsh.)

19. On May 12, 2009, Lt. Walsh interviewed Inmate B in the presence of Sergeant Donald Perry of the Office of Investigative Services (OIS). When shown a copy of the letter addressed to Commissioner Clarke, Inmate B admitted that it was his and that he had sent it to Commissioner Clarke. Inmate B said that he had provided the information to Sgt. Ciccone because he knew the Appellant was under an IPS investigation due to her conduct with Inmate A. (Exhibit 3; Testimony of Lt. Walsh.)

20. Inmate B said that he continues to go to the library and the Appellant continues to give him office supplies, including pens and white-out. As a matter of fact, the Appellant had given him white-out on the previous day, May 11, 2009. Inmate B denied current use of the copy machine, and said that the Appellant made copies for him after he told her that the

paperwork would be sent to the governor and the secretary of public safety. (Exhibit 3; Testimony of Lt. Walsh.)

21. Inmate B told Lt. Walsh and Sgt. Perry that the Appellant had given him numerous new items not available in the canteen. He said that she allowed him and Inmate A to make copies of fighting instructions and copies of his self-inflicted wounds after a suicide attempt. When he asked for office supplies, she would open the cabinets and say that he could take what he needed. Although he denied asking the Appellant for the yogurt or the gloves, Inmate B said that she gave him the gloves because his hands were cold when he carried food trays. (Exhibit 3; Testimony of Lt. Walsh.)

22. Inmate B said that he discussed personal issues with the Appellant. The Appellant told him that she traveled back and forth to Africa, that her husband was a professor at Harvard, and that she worked for a law firm. Inmate B said that the Appellant also told him that she was under investigation because Inmate A had delivered books from the library to the SMU containing razor blades. (Exhibit 3; Testimony of Lt. Walsh.)

23. The Appellant also discussed her relationships with fellow employees with the inmate. She said that she was not getting along with Karen DiNardo, the Deputy Director of Classification, and called her a "stupid bitch." The Appellant also said that if DiNardo knew what work was, DiNardo would not "be bothering her." The Appellant also said that she was laying low because Sgt. Ciccone had handed her keys one day, and she took it as a threat from the Department. (Exhibit 3; Testimony of Lt. Walsh.)

24. When Inmate B asked for DiNardo's extension so that he could have assistance in retrieving his stolen sneakers, the Appellant showed him a Department telephone extension sheet containing Department employees' telephone numbers. (Exhibit 3; Testimony of Lt. Walsh.)

25. He said that the Appellant printed "blow job" jokes from a jokes.com website and that he and Inmate A photocopied them. When he was questioned about the laptop, Inmate B told Lt. Walsh and Sgt. Perry that the Appellant unlocked the laptop cabinet for only inmate A and himself. He said that Inmate A was able to take the laptop to his cell by concealing it under his winter coat. Although Inmate A said that he had accessed the internet from the library laptop, Inmate B could not confirm that this was true. (Exhibit 3; Testimony of Lt. Walsh.)

26. Inmate B denied ever working for the Appellant, but said that he entered her office in her absence, but with her permission. Later in the interview, he told Lt. Walsh and Sgt. Perry that he used to work for the Appellant, and frequented the library since then. He said that the Appellant told him that her daughter had gotten into law school. He denied knowing the Appellant's address, or that she had corresponded with him or his family members. He said that she gave him the Clinique Happy lotion and that she gave him dental floss because it is not sold in the canteen. (Exhibit 3; Testimony of Lt. Walsh.)

27. According to Department records, Inmate B was never approved for or assigned for institutional employment while at MCI-Concord. (Exhibit 7; Testimony of Lt. Walsh.)

28. Inmate B denied that his library privileges were revoked. He told Lt. Walsh and Sgt. Perry that although she had unit workers for this task, the Appellant had Inmate A and Inmate B post work lists in housing units for inmates. Inmate B also said that he turned over the Appellant's gifts to Sgt. Ciccone because he knew she was being investigated, and he did not want to get caught up in it. He denied taking anything without her knowledge. (Exhibit 3; Testimony of Lt. Walsh.)

29. When asked if he would be willing to assist Sgt. Ciccone in the investigation, Inmate B stated that he probably would not be able to because of his letter to Commissioner

Clarke and because he had already filed suit against the Department. (Exhibit ; Testimony of Lt. Walsh 3.)

30. On May 12, 2009, Lt. Walsh interviewed the Appellant in the presence of Sgt. Perry. The Appellant said that, while she was familiar with Inmates A and B, at no time had either inmate worked for her. She denied giving inmates special privileges, including allowing them admittance to her office when she was not present. She denied that her office was left unattended. She denied discussing her personal life with Inmate B but admitted that her husband had attended Harvard and was a lawyer. She said that she may have imparted this information during class, and that she may also have mentioned her daughter during class. (Exhibit 3; Testimony of the Appellant, Testimony of Lt. Walsh.)

31. The Appellant denied giving the inmates the access code to the copying machine in the library. She stated, "I put the code in. I don't know if the inmates have the code." The Appellant stated that the access code appears on the monthly statistic reports generated by the copy machine, and that it was possible for inmates to glean the code therefrom. The Appellant avowed that her office is locked, and the cabinets were unlocked when it was necessary. However, she admitted, "I am sure there are a lot of things missing, but I never paid much attention. I do bring in some powder, some lipstick, and eye pencil." (Exhibit 3; Testimony of the Appellant, Testimony of Lt. Walsh.)

32. The Appellant could not provide a reason why Inmate B said that she brought in contraband for him and Inmate A. She first said that, "It is total myth to me," then recalled that inmates, including Inmate B, had said that they were going to sue her. The Appellant then said that she thought Inmate B was joking. (Exhibit 3; Testimony of Lt. Walsh.)

33. The Appellant shared that Inmate B wanted a job in the library, but she did not think that he was serious because he failed to pursue it. (Exhibit 3; Testimony of Lt. Walsh.)

34. The Appellant denied readily handing out items to inmates, and stated that they had to sign a form showing indigency before requesting supplies such as pencils and envelopes. She denied bringing in food, beauty supplies, and men's gloves. She admitted keeping lotion in her drawer. (Exhibit 3; Testimony of the Appellant, Testimony of Lt. Walsh.)

35. The Appellant denied that there was internet access on her work computer and denied bringing internet documents into the facility for inmate use. The Appellant stated that the library laptop was for inmate use, and that inmates were not allowed to remove it to their cells. She stated that white-out was for use in the library only. She denied knowledge of games on the laptop and further stated, "I have never touched it." (Exhibit 3; Testimony of the Appellant, Testimony of Lt. Walsh.)

36. Later in the interview, the Appellant admitted that she had left her office unattended but continued to deny that Inmate B had free access to the items in her office. When she was shown the dental floss and moisturizer that Inmate B had given to Sgt. Ciccone, she acknowledged that they were hers and had been in her desk. She denied discussing NiDardo with Inmate B, adding, "She has been very good to me." The Appellant said that she last saw the Appellant in the library in February 2009. (Exhibit 3; *See supra* Findings of Fact 20 and 30; Testimony of Lt. Walsh.)

37. On July 2, 2009, Lt. Walsh interviewed Inmate A at Old Colony Correctional Center in the presence of Estevez. Inmate A said that he had worked for the Appellant in either 1999 or 2000, and that he knew Inmate B. Inmate A said that inmates would go to the library to

speak with the Appellant, no one had access when she was not there, and the Appellant always locked the library when she left. (Exhibit 3; Testimony of Lt Walsh.)

38. Inmate A said that inmates received supplies after filling out forms and satisfying certain criteria. Inmate A denied receiving special privileges from the Appellant or receiving any unauthorized items. The Appellant required all inmates had to fill out forms in order to receive office supplies. He said that he was unaware of her giving out food or lotion. He said, "If she is tight with state shit, I would think she would be tight with her own stuff and I think that she is." Inmate A denied removing the laptop from the library, and said that there was no point to taking the laptop to his cell "when he could not even get radio stations in." He denied ever receiving internet copies of jokes or instructions. Although he signed into the library several times since January 2009, Inmate A never used the copy machine or had access to its code. In years past, certain inmates made the copies, but now inmates had to fill out forms. (Exhibit 3; Testimony of Lt. Walsh.)

39. Inmate A said that he never heard the Appellant discuss her personal affairs or her coworkers, and found that she was always fair in dealing with the different groups of inmates. He never asked her to bring items into the facility for him. He admitted that he did take postings from the library back to his housing unit, but for the guys in his unit, not necessarily for the Appellant. He advised that Lt. Walsh take Inmate B's allegations "with a grain of salt." (Exhibit 3; Testimony of Lt. Walsh.)

40. Through the investigation, Lt. Walsh found that the Appellant had failed to maintain her constant obligation to render good judgment and full and prompt obedience to all the Rules and Regulations and proper orders of the Department pursuant to General Policy I. Lt. Walsh found that the Appellant brought contraband into the facility in violation of the Rules and

Regulations, Rule 16. Lt. Walsh also found that the Appellant was less than truthful during her May 12, 2009 interview, in violation of Rule 19(c). She acknowledged leaving her office unlocked after first denying that she left it open when she was not there. Although the Appellant said that Inmate B never worked for her, Department work records showed that he worked for her in the library in 2005. Although she said that she did not see Inmate B after February 2009, according to the library sign-in sheets, the inmate signed in nine times since March 2009. According to DiNardo, the only report submitted by the Appellant is a monthly climate report, which lacks any copy machine code information. Although she admitted that she knew items were missing, the Appellant failed to notify the Department in violation of Rule 10(b). The investigation revealed that the Appellant discussed her relationships with her coworkers with Inmate B in violation of Department Rule I and 103 DOC 225 Professional Boundaries. The Appellant admitted that she disseminated information about her family and that she was aware that items were missing from her office but did not report it. Given her prior history with Inmate A, Lt. Walsh found that the Appellant had a propensity of getting familiar with inmates in violation of 103 DOC 225. Both Inmates A and B had been allowed to work for her without authorization, the Appellant allowed inmates to enter her office when she was not present, and more likely than not gave the copy machine code to inmates. (Exhibits 3 and 6; *See supra* Findings of Fact 4-7; Testimony of Lt Walsh.)

41. The Department's investigation revealed that the Appellant had engaged in conduct in violation of departmental rules, regulations and policies, to wit, General Policy I, Rules 1, 3(a), 10(b), 16, 19(c) and the Professional Boundaries Policy 103 DOC 225, §§ 225.01, 225.02, and 225.03, and listed the following charges:

1. On or about divers dates in 2009, you left your office and cabinets within your office unlocked and unattended, thereby allowing inmates access to the copy machine, office supplies, and personal items stored in and around your office.
2. You brought personal property into the institution without the prior approval of the Superintendent or his/her immediate subordinate, including, but not limited to, dental floss, hand lotion, and miscellaneous cosmetics.
3. You were aware that you were missing office supplies and personal items, and failed to report these incidents.
4. You disseminated personal information about your family to inmates.
5. You gave the copy machine code to inmates.
6. You were less than truthful when interviewed by a Departmental investigator in connection with an investigation into the above-mentioned incidents.

(Exhibit 2; Testimony of Lt Walsh.)

42. The investigation was supported by the following evidence: Inmate B's February 20, 2009 letter to Commissioner Clark; two green binders; one black binder that contained metal pieces; a yellow folder containing library memoranda; an organizational chart of MCI-Concord; a Department policy list; another yellow folder containing pornographic material copied from the library copy machine; several copies of Inmate B's ID card; copies of Inmate B's self-inflicted injuries; copies of instructions for boxing, fencing, Judo, Sumo, wrestling, karate, Jun Fu Taolu, Jung Fu Sanshou, Ju-Jitsu, Tae Kwan Do, kickboxing, Sombo and Kendo; a large butterfly clip, one roll of labels; a LaYogurt fruit cup; Clinique Happy body smoother lotion; one Aveeno daily moisturizing lotion; dental floss; Integra correction tape; one pair of Work Wear signature series gloves; photographs of the MCI-Concord library; Inmate B's termination report from his position of his Library Clerk; library sign-in sheets from 8/19/2008-4/23/2009; a Web Sense Reporting Tool for the Appellant; and an email form Sgt. Ciccone in regard to the copy machine access code. (Exhibit 3.)

43. On August 19, 2009, Deputy Commissioner James R. Bender recommended the matter for a Commissioner's Hearing. (Exhibit 3.)

44. On September 25, 2009, the DOC issued a Notice of Charges and Hearing to the Appellant in accordance with G.L. c. 31, § 41. (Exhibits 1, 2 and 8.)

45. The appointing authority hearing was held on October 20, 2009, with Susan E. Herz presiding as hearing officer. The Appellant was represented by Darrel P. Cole, Field Representative of SEIU Local 509. (Exhibits 1, 2 and 8.)

46. The Appellant argued that the real issue was “understaffing:” that her job carried an “incredibly difficult” set of responsibilities, that she now understood that bringing personal property into the facility was inappropriate and would not do it again, and that she would benefit from re-training. The Appellant also argued that the Department Investigator misunderstood her, and that at no time did she attempt to deceive him, that the charges were “blatantly untrue,” and that the credibility of the inmate who had come forward was compromised. (Exhibit 8; Testimony of Lt. Walsh.)

47. Ms. Herz found that the Appellant’s conduct was in violation of General Policy I, Rules 1, 3(a), 10(b), 16, 19(c) and the Professional Boundaries Policy 103 DOC 225, §§ 225.01, 225.02 and 225.03, and issued six findings:

1. On or about diverse dates in 2009, Librarian Margaret Mubirumusoke [*sic*] left her office and cabinets within her office unlocked and unattended, thereby allowing inmates access to the copy machine, office supplies, and personal items stored in and around her office.
2. Librarian Mubirumusoke brought personal property into the institution without the prior approval of the Superintendent or his/her immediate subordinate, including, but not limited to, dental floss, hand lotion, and miscellaneous cosmetics.
3. Librarian Mubirumusoke was aware that she was missing office supplies and personal items, and failed to report these incidents.
4. Margaret Mubirumusoke disseminated personal information about her family to inmates.
5. Librarian Margaret Mubirumusoke gave the copy machine code to inmates.
6. Librarian Mubirumusoke was less than truthful when interviewed by a Departmental investigator in connection with an investigation into the above-mentioned incidents.

(Exhibit 8.)

48. After reviewing Ms. Herz's report and supporting documentation, Commissioner Harold W. Clarke adopted the hearing officer's report. In a letter dated November 12, 2009, the Commissioner informed the Appellant that he found that she had engaged in the conduct charged, in violation of General Policy I, Rules 1, 3(a), 10(b), 16, 19(c) and 103 DOC 225, the Professional Boundaries Policy. The Commissioner suspended the Appellant for three days without pay. Due to the seriousness of the matter, Commissioner Clarke advised the Appellant that any future violation of the Department's rules, regulations, and/or policies regarding attendance could result in her termination. (Exhibit 1.)

49. On December 11, 2009, the Appellant filed a timely appeal with the Commission. (Exhibit 9.)

CONCLUSION AND ORDER

A. *Applicable Legal Standards*

G.L. c. 31, § 43, provides:

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

An action is "justified" if 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." *Commissioners of Civil Service v. Municipal Ct. of Boston*, 359 Mass. 211,

214 (1971); *Cambridge v. Civil Service Comm'n*, 43 Mass. App. Ct. 300, 304, *rev. den.*, 426 Mass. 1102, (1997); *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). 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.” *School Comm. v. Civil Service Comm'n*, 43 Mass. App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof by a preponderance of the evidence 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).

“The commission’s task . . . is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘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.’” *Falmouth v. Civil Service Comm'n*, 447 Mass. 814, 823 (2006). See *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983) and cases cited.

Under Section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” *Falmouth v. Civil Service Comm'n*, 447 Mass. 814, 823 (2006), and cases cited. 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 Service Comm'n*, 43 Mass. App. Ct. 300,

304, *rev. den.*, 426 Mass. 1102, (1997). *See also Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003); *Police Dep't of Boston v. Collins*, 48 Mass. App. Ct. 411, *rev. den.* (2000); *McIsaac v. Civil Service Comm'n*, 38 Mass App. Ct. 473, 477 (1995); *Watertown v. Arria*, 16 Mass. App. Ct. 331, 390 Mass. 1102 (1983).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 189, 190-91 (2010), *citing Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 824-26 (2006). *See also Methuen v. Solomon*, Docket No. 10-01813-D, at *10 n.7 (Essex Sup. Ct. July 26, 2012). The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether just cause was shown.

Moreover, it is inappropriate for the Civil Service Commission to modify an employee's discipline where it finds the same core of consequential facts as the appointing authority regarding the misconduct of the employee, but makes different "subsidiary" findings of fact. *Falmouth v. Civil Service Comm'n*, 61 Mass. App. Ct. 796, 797-99 (2004).

B. Analysis

The DOC has shown, by a preponderance of the evidence, that Margaret Mubiru-Musoke failed to comport herself to the standards to which DOC employees are held, and in violation of General Policy I, Rules 1, 3(a), 10(b), 16, 19(c) and the Professional Boundaries Policy 103 DOC 225, §§ 225.01, 225.02 and 225.03.

It is undisputed that the Appellant's actions violated General Policy I, Rules 1, 3(a), 10(b), 16, 19(c) and the Professional Boundaries Policy 103 DOC 225, §§ 225.01, 225.02 and 225.03.

General Policy I provides that Department employees' primary charge remains the safe-keeping and custodial care of inmates, and a constant obligation to render good judgment and

full and prompt obedience to provisions of the law and Department orders not averse to its rules and regulations. I find that the Department had good cause to impose the three-day suspension of the Appellant due to her shocking lapse of judgment which preceded and accompanied her acts, all in violation of the rules and regulations and policies of the Department.

The Appellant had already been suspended on February 2, 2009 for having an authorized inmate, Inmate A, work for her in the library. Yet until May 11, 2009, she provided Inmate B with white-out. It is likely that she was under scrutiny by the Department, and Inmate B and possibly other inmates were aware that she had been disciplined.

I find that the Appellant discussed herself and her family with inmates in violation of Rule 1. She admitted that she may have discussed her family in her lectures. Inmate B knew that the Appellant's husband was a Harvard-trained lawyer and that her daughter had been admitted to law school. The Appellant also discussed her relationship with Karen DiNardo and Sgt. Ciccone with Inmate B.

The Appellant denied giving Inmate B two green binders; one black binder that contained metal pieces, a yellow folder containing library memoranda, photocopies of pornographic materials, photocopies of fighting instructions, a LaYogurt fruit cup, Clinique Happy body smoother lotion, Aveeno daily moisturizing lotion, dental floss, Integra correction tape and one pair of Work Wear signature series gloves. However, she admitted that she was missing items but had not reported the loss to the Department. The Appellant was required to satisfy herself that nothing had been done to jeopardize the good order or safety of MCI-Concord. I find that she failed to do so in violation of Rule 10(b).

I find that in violation of Rule 16, the Appellant brought cosmetics and personal items into the facility, including "some powder, some lipstick and eye pencil." She neither sought nor

was granted approval from the Superintendent or his immediate subordinate. Some of this contraband, the dental floss, the Clinique Happy lotion, the Aveeno moisturizing lotion became Inmate B's possessions. Although Inmate B said they were given to him, the Appellant maintained that they were removed from her desk drawers.

I find that during the investigation, the Appellant failed to respond fully and promptly when questioned by Lt. Walsh and Sgt. Perry in violation of Rule 19(c). First, she denied discussing her husband's and daughter's education and profession with Inmate B. Then she changed her story during the interview. She admitted that she may have mentioned them during her lectures. She denied providing Inmate B with supplies other than pencils and envelopes, but he was able to provide Sgt. Ciccone with butterfly paperclips and files including metal pieces. None of these items was available in the canteen. The Appellant denied bringing food for Inmate B, but Inmate B provided Sgt. Ciccone an unused carton of yogurt.

I find that the Appellant failed to maintain professional boundaries in accordance with 103 DOC 225. The Appellant's behavior with Inmates A and B was a pattern of conduct, and Inmate B was aware of it due to the Appellant's familiarity with him. Inmate B was aware that the Appellant had been disciplined because Inmate A had worked for her without authorization. Inmate B believed that he was also working without authorization, and attempted to leverage that information so that he could have a different cell mate transferred into his cell. (Finding of Fact 12.)

Even if the Appellant violated the boundaries with Inmate B with the best of intentions, she was dealing with a manipulative member of the prison population who took advantage of her kind nature. He used the relationship with the Appellant to gain favorable treatment, but

revealed it to Department officials when he thought he could gain by it. The professional boundaries policy was established precisely for this reason.

The Department of Correction has proved by a preponderance of the evidence that the Appellant compromised the safety of the facility when she violated the Department's Rules and Regulations. Because of the inmates' unfettered access to her office, the copy machine and office supplies, including those with metal parts, the Appellant risked her safety, the safety of the inmates and the safety of correction officers and other DOC employees, not only at MCI-Concord, but within the entire DOC system. It is disturbing that these actions with Inmate B ended on May 11, 2009, although the Appellant was disciplined in the same year - on February 2, 2009 for similar behavior. The Appellant's lack of good judgment could have had more serious repercussions.

Based on testimony given and evidence presented, the Department had just cause to discipline the Appellant and has stated sound and sufficient grounds for doing so. The Appellant had recently received a three-day suspension, later reduced to one day, for giving another inmate unauthorized access and employment in the library. This three-day suspension is thus in keeping with the principle of progressive discipline and does not warrant modification by the Commission. There is no evidence that the appointing authority's decision was based on political considerations, favoritism or bias. Thus the Department's decision to terminate the Appellant is "not subject to correction by the Commission." *Cambridge*, 43 Mass. App. Ct. at 305.

Based on the preponderance of credible evidence presented at the hearing, I conclude that the Department of Correction had just cause to discipline the Appellant Margaret Mubiru-Musoke. Accordingly, I recommend that the appeal be dismissed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Richard C. Heidlage
Chief Administrative Magistrate

DATED: **DEC - 9 2013**