

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 9/24/10
Civil Service Commission CB

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

MARGARET MUBIRU-
MUSOKE,

Appellant

v.

DEPARTMENT of
CORRECTION,

Respondent

Case No.: D-09-244

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on September 23, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated August 10, 2010.

The Appellant submitted her comments to the Commission on September 22, 2010. Although they were received more than thirty (30) days after the Recommended Decision was issued and; thus they are untimely, they were still reviewed and considered by the Commission.

The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein, Commissioners) on September 23, 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 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:

Margaret Mubiru-Musoke (*pro se*)

Earl Wilson, 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
CHIEF ADMINISTRATIVE MAGISTRATE

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August 10, 2010

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


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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Re: Margaret Mubiru-Musoke v. Department of Correction
DALA Docket No. CS-10-552
CSC Docket No. D-09-244

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: Margaret Mubiru-Musoke
Earl Wilson, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Margaret Mubiru-Musoke,
Appellant

v.

Docket No. D-09-244
DALA No. CS-10-552

Department of Correction,
Respondent

Appearance for Petitioner:

Mubiru Musoke

5 Wachusett Ave. East
Ayer, MA 01432

Appearance for Respondent:

Earl Wilson, Esq.
Senior Labor Relations Specialist
Mass. Dep't of Correction
P.O. Box 946
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Norfolk, MA 02056

Administrative Magistrate:

Kenneth J. Forton, Esq.

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CIVIL SERVICE COMMISSION

SUMMARY OF RECOMMENDED DECISION

Appeal from one-day suspension without pay denied where prison librarian violated institution work assignment policy and failed to fully and promptly respond during the course of an internal investigation.

RECOMMENDED DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Margaret Mubiru-Musoke, appeals the decision of the Respondent, the Massachusetts Department of Correction, to suspend her for one day without pay from her employment as a Librarian.

The Department alleges that the Appellant violated Rule 19(c) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, as well as Department policies 103 DOC 450 (Institution Work Assignment) and 103 DOC 756 (Information Technology). The appeal was timely filed. The Civil Service Commission referred the matter to the Division of Administrative Law Appeals. A hearing was held on September 17, 2009 at the offices of the Division of Administrative Law Appeals, 98 North Washington Street, Boston. Three cassette tapes of the hearing were made.

I admitted twenty-two (22) documents into evidence. Exs. 1-22. Captain Christopher Wright; Sergeant Paul Clayton; Correction Officer Steven Evans; Correction Officer Anthony DeMoura; and Karen DiNardo, Deputy Superintendent of Classification at MCI-Concord, testified on behalf of the Department. The Appellant testified on her own behalf. The administrative record closed upon receipt of the parties' post-hearing briefs.

FINDINGS OF FACT

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

1. The Appellant, Margaret Mubiru-Musoke, is employed as a Librarian at Massachusetts Correctional Institution in Concord, Massachusetts (MCI-Concord).

Testimony Mubiru-Musoke.

2. She is in charge of two libraries at the facility: a main library and a separate law library. Testimony Mubiru-Musoke, DiNardo.

3. At the time of the incident which is at the root of this appeal, MCI-Concord was a clearing house facility. After inmates were sentenced, they were first

transferred to MCI-Concord, where they were classified, or assigned to a further facility on a more permanent basis. Testimony DiNardo.

4. There is a prescribed procedure by which inmates can be assigned to work jobs within MCI-Concord. First, the inmate has to be classified to MCI-Concord. Second, the inmate has to receive clearance from the Inner Perimeter Security unit before he can begin a work assignment. Testimony DiNardo.

5. Once an inmate has been cleared, then it is up to the work assignment officer to approve the inmate for a specific job assignment. Testimony DiNardo.

The December 1, 2008 Incident

6. On the morning of December 1, 2008, Deputy Superintendent Karen DiNardo was present in the library as part of the preparation for an internal inspection by the Department's Policy Development and Compliance Unit. Testimony DiNardo; Mubiru-Musoke.

7. Inmate Eric Mathison was present in the library while she was there, though Mathison was not cleared to work in the library and had not been approved by the work assignment officer for work in the library. Testimony DiNardo; Mubiru-Musoke.

8. The SMU is a temporary disciplinary confinement area within MCI-Concord. Testimony DiNardo, Clayton.

9. Ms. DiNardo observed several boxes of books on the floor. The Appellant noted that one of the boxes had books waiting to be delivered to the Special Management Unit (SMU). Ms. DiNardo asked the Appellant to clean up the area and to have the box for the SMU delivered. Ms. DiNardo did not instruct Mathison to deliver the books to the SMU. Testimony DiNardo.

10. At approximately 3:30 p.m., Mathison arrived unaccompanied at the SMU to deliver a box of books to the SMU. Testimony Clayton; Ex. 8.

11. Sgt. Alfred Clayton was assigned to the SMU when Mathison arrived with the books. It was not standard procedure for an inmate to appear at the SMU without a staff escort. After Sgt. Clayton questioned him, Mathison informed Sgt. Clayton that the books were from the library and that the Appellant had asked him to deliver the books. Testimony Clayton; Ex. 8.

12. Following standard procedure, Sgt. Clayton searched the books and found razor blades in them. A subsequent search using an x-ray machine revealed additional razor blades in the books. Testimony Clayton.

13. Sgt. Clayton prepared an incident report, which resulted in an investigation. Capt. Christopher Wright, the Inner Perimeter Security Commander, was assigned to conduct the investigation. Testimony Clayton, Wright.

14. One topic of the investigation was Mathison's presence in the library. On November 4, 2008, the Appellant sent an email to Director of Classification Michael Sedgwick asking whether Mathison could be classified to MCI-Concord so that it would be worth her while to employ him in the library. Mr. Sedgwick responded several days later by email that he did not think Mathison would be a good candidate to work in the library because "his history shows he will be a problem." The Appellant made no further request to have Mathison assigned to work in the library. Ex. 9; Testimony Wright, Mubiru-Musoke.

15. During the course of the investigation, the Appellant denied ever requesting that Mathison be sent to the library to work. Ex. 7; Testimony Mubiru-Musoke, Wright.

16. Corrections Officer Steven Evans was assigned to housing unit J-6. Inmate Mathison was assigned to that housing unit from October 24 to November 21, 2008. On two occasions, the Appellant contacted CO Evans to request that Mathison be sent to the library to work. Testimony Evans, Mubiru-Musoke.

17. CO Anthony DeMoura was assigned to housing unit J-4. Mathison was assigned to J-4 from November 24 to December 1, 2008. The Appellant contacted CO DeMoura to ask that Mathison be sent to the library to work. Testimony DeMoura.

Prior Disciplinary History

18. In comments in the Appellant's work evaluation dated July 8, 2008, Ms. DiNardo reviewed hiring and security procedures with the Appellant. She noted that the Appellant was not allowed to employ any inmate unless the inmate had been cleared by the Assignment Sergeant. Ex. 21.

19. On January 9, 2007, Ms. DiNardo reviewed with the Appellant a memorandum which detailed reports from inmates that they were required to "volunteer" in the library and that they must know someone working in the library before they could get jobs working there. Ms. DiNardo reiterated that under no circumstances was the Appellant to hire an inmate in either library without prior approval of the Assignment Sergeant and the Inner Perimeter Security Commander. Ex. 11.

20. By letter dated March 28, 2006, Ms. DiNardo memorialized a conversation with the Appellant concerning the Appellant having left the library while inmate workers were in the library, thereby failing to properly supervise inmate workers in the library. Ex. 12.

21. On March 25, 2004, the Appellant received a formal letter of reprimand for violating 103 DOC 501.04 by failing to declare over-the-counter and prescription medication when entering MCI-Concord. Ex. 13.

22. The Appellant received a letter of reprimand dated June 16, 2000 for abandoning her post without properly informing her supervisor. Ex. 14.

Current Discipline

23. By letter dated February 2, 2009, MCI-Concord Superintendent Peter A. Pepe, Jr. informed the Appellant that she had violated Rule 19(c) and Department policies 103 DOC 450 and 103 DOC 756. He imposed a three-day suspension without pay. Ex. 6.

24. The Appellant appealed Superintendent Pepe's decision. On April 3, 2009 a hearing was held before Labor Relations Advisor Joseph S. Santoro. In a report dated April 22, 2009, Mr. Santoro found that the Appellant had violated the rules and policies as alleged and concluded that there was just cause for Superintendent Pepe's imposition of a three-day suspension. Ex. 5.

25. By letter dated April 28, 2009, Corrections Commissioner Harold W. Clarke found that there was just cause for the imposition of disciplinary action, but he reduced the suspension from three days to one day. Ex. 2.

26. The Appellant appealed the one-day suspension imposed by the Commissioner by filing an appeal dated May 13, 2009 with the Civil Service Commission. Ex. 1.

CONCLUSION

In a discipline case, the role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was

reasonable justification for the action taken by the appointing authority.” *City of Cambridge v. Civil Service Comm’n*, 43 Mass. App. Ct. 300, 304 (1997). See also *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003); *Police Dep’t of Boston v. Collins*, 48 Mass. App. Ct. 408, 411 n.5 (2000); *Town of Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). An action is “justified” when it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” *City of Cambridge*, 43 Mass. App. Ct. at 304 (quoting *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928)); *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 259 Mass. 211, 214 (1971).

The Commission determines justification for discipline by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.” *School Committee of Brockton v. Civil Service Comm’n*, 43 Mass. App. Ct. 486, 488 (1997) (quoting *Murray v. Justices of Second Dist. Court of Eastern Middlesex*, 389 Mass. 508, 514-15 (1983)). If the Commission finds that the appointing authority has proven 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; otherwise it shall reverse such action and the person concerned 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. *Town of Falmouth v. Civil Service Comm’n*, 61 Mass. App. Ct. 796, 800 (2004); *Town of Watertown*, 16 Mass. App. Ct. at 334.

“[T]he question before the commission [is] not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there

was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” *Town of Watertown*, 16 Mass. App. Ct. at 334.

After reviewing the testimony and documentary evidence in this matter, I conclude that the appointing authority has proven by a preponderance of the evidence that there was just cause to suspend Margaret Mubiru-Musoke for one day as a result of having violated Rule 19(c) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, which concerns conduct during investigations, and Department policy 103 DOC 450, which governs institution work assignment. I conclude, however, that the appointing authority has not proven by a preponderance of the evidence that the Appellant has violated Department policy 103 DOC 756, which governs access to staff-associated computers.

Department policy 103 DOC 450 governs inmate work assignment. Assignment of inmates to work sites is the job of the institution classification board and/or the work assignment officer. An inmate’s skills, abilities, security clearance and work history are the criteria used to match inmates to the available work assignments. The Department alleges that, on and before December 1, 2008, the Appellant employed Inmate Eric Mathison without clearing his employment through the institution classification board or the work assignment officer at MCI-Concord.

The Appellant has advanced several contradictory versions of events, which she claims show that she did not employ Mathison. First, during the investigation that ensued after the December 1, 2008 razor blade incident, she claimed that she never hired Mathison to work in the library. She also said that Mathison was only in the library when his housing unit was scheduled to be at the library and that she had never called his

housing unit to have him sent over to work. At the hearing in this matter, however, after listening to convincing testimony from CO Evans and CO Demoura that they both received calls from the Appellant requesting that Mathison be sent over to the library to work, the Appellant changed her story. She admitted that she had called Mathison's housing units on multiple occasions to have him sent over to work, but only during his housing unit's scheduled library time.

On its face, this story makes little sense. MCI-Concord is broken down into housing units. Throughout the day, the housing units move around the facility together as a unit to different parts of the prison to participate in assigned activities, like a visit to the library or the gym. There would be no need to call the housing unit to ask for Mathison to be sent to the library if he was already scheduled to be there along with the rest of his housing unit.

Several other pieces of evidence make it more likely than not that the Appellant employed Mathison without proper authorization. First, Mathison had worked for the Appellant in the past during an earlier period of incarceration and had been fully trained as a library employee. The Appellant was having difficulty finding library employees, so she sent an email to Director of Classification Michael Sedgwick asking whether Mathison could be classified to MCI-Concord so that it would be worth her while to employ him in the library. Mr. Sedgwick responded several days later that he did not think Mathison would be a good candidate to work in the library because "his history shows he will be a problem." Second, on the day that Mathison delivered the books to the SMU, he was scheduled to be in the library from 1:00 p.m. to 2:20 p.m. But, Mathison delivered the books to the SMU at approximately 3:30 p.m., well after he

should have been out of the library. Finally, Mathison himself confirmed that the Appellant had been calling his housing unit to have him sent over to the library to work.

This evidence, coupled with the testimony of CO Evans and CO Demoura, proves by a preponderance of the evidence that the Appellant violated Department policy 103 DOC 450 by employing Inmate Mathison in the library without clearance from the institution classification board and/or the work assignment officer.

In a related charge, DOC accuses the Appellant of failing to respond fully and promptly during the course of the investigation into the December 1, 2008 razor blade incident. Rule 19(c) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction requires DOC employees to “respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee or [the responding employee].” After the incident, Appellant was interviewed by Captain Wright. She told Captain Wright that Mathison was never hired to work in the library and that she never called for him to work there. As explained above, Appellant now admits that she did call Mathison’s housing units multiple times to have him come work for her. Therefore, I conclude that she did not respond fully and promptly to Captain Wright’s questions when he interviewed her and that she, therefore, violated Rule 19(c).

Finally, DOC charged Appellant with violating 103 DOC 756, which governs access to computers. DOC alleges that Appellant allowed an inmate access to her computer and email. To prove its case DOC relies primarily on the testimony of another inmate, Jacob Znoj, who claims that he knew Mathison was not cleared to work in the library because he saw an email to that effect on Appellant’s computer. A November 4,

2008 email from Director of Classification Michael Sedgwick states that Mathison would not be a good candidate to work in the library.

I do not find Inmate Znoj's alleged statement credible, however, as he and several other inmates appeared to be biased against Mathison because Mathison was allowed to work in the library while the rest of the inmates were forced to follow the usual procedure for getting hired in the library. In addition, Inmate Znoj was not available for testimony or for cross-examination, which makes this hearsay evidence unreliable. *See, e.g., Mailhiot v. Milton Retirement Bd.*, CR-04-446 (DALA 2006) (hearsay letter not reliable where letter's author unavailable for cross-examination). Because the statement is unreliable it does not constitute substantial evidence. *See* G.L. c. 30A, § 11(2) ("Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs."). The only other testimony that DOC cites in support of its argument is statements from other inmates that they had seen Mathison working in the library and inside Appellant's office. DOC has not proven by a preponderance of the credible evidence that Appellant violated 103 DOC 756.

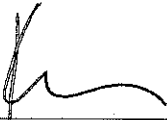
Nevertheless, failure to follow the institution work assignment policy and failure to respond fully and promptly in the course of an internal investigation is "substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service." *School Committee of Brockton*, 43 Mass. App. Ct. at 488. I find, therefore, that a one-day suspension without pay was justified in these circumstances.

Conclusion

The Department of Corrections has proven by a preponderance of the credible evidence that there was just cause to suspend Margaret Mubiru-Musoke for one (1) day. The appeal is therefore denied.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton, Esq.
Administrative Magistrate

DATED: **AUG 10 2010**