

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

PAULA RAHAIM,
Appellant,

v.

D-06-157

DEPARTMENT OF CORRECTION,
Respondent.

Appellant's Attorney:

Stephen Pfaff, Esq.
Louison, Costello, Condon, and Pfaff, LLP
67 Batterymarch Street
Boston, MA 02110

Respondent's Attorney:

Jeffrey S. Bolger
Director of Employee Relations
Department of Corrections
P.O. Box 946
Norfolk, MA 02056

Commissioner:

Daniel M. Henderson¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Paula Rahaim (hereinafter "Rahaim" or "Appellant"), is appealing the decision of the Department of Corrections (hereinafter "DOC") that she be suspended for a period of five (5) days without pay. The appeal was timely filed. A hearing was held on April 17, 2008 at the offices of the Civil Service Commission. As no notice was received from either party, the hearing was declared private. The

¹ The Commission acknowledges the assistance of Legal Intern Kelly Deegan in the preparation of this Decision.

hearing was recorded onto one (1) tape and both parties subsequently submitted post-hearing briefs in the form of a proposed decision.

FINDINGS OF FACT:

Nineteen (19) exhibits were entered into evidence. Based upon the documents entered into evidence and the testimony of:

For the Department of Corrections:

- Mark McCaw, Lieutenant, Department of Corrections

For the Appellant:

- Richard Sitcawich, Sergeant, Department of Corrections
- Paula Rahaim, Appellant/Corrections Officer, Department of Corrections

I make the following findings of fact:

1. The Appellant is a tenured civil service employee in the position of Correction Officer I. The Appellant has been employed by the Department of Corrections (DOC) at the MCI-Concord facility since September 4, 2001. (Testimony of Appellant)
2. The Appellant has access to the Criminal Justice Information System (CJIS) and often uses it to run background checks on visitors coming to MCI-Concord to visit inmates, which is a crucial part of her job. (Testimony of Appellant)
3. The Appellant has the authority to run these checks, which are known as Board of Probation (BOP) checks, to see if there any outstanding warrants. (Testimony of McCaw and Appellant)
4. She can do these checks anywhere from 25-50 times per shift. (Testimony of Appellant)
5. The Appellant also has the authority to perform license plate checks for unauthorized vehicles parked in the front circle directly in front of the entrance to MCI-Concord and was

6. On the date of the incident, the Appellant was working her 3:00pm – 11:00pm shift in the MCI-Concord visitor processing area. (Exhibit 11)
7. One member of management, who had a legal name change, was referred to by his prior name in an anonymous newsletter called “Behind the Lies”. Based on that, he concluded that someone was accessing private information about management through the Criminal Justice Information System (CJIS), a computer system which contains personal information and is most often used to conduct warrant and felony checks on prison visitors. (Testimony of McCaw)
8. At this time, there was friction between management and corrections officers. Some members of management (Captain Robert Tarantino, Captain Stephen Studley, and Lieutenant John Hennessey) reported that their cars were damaged and that they had been receiving threatening phone calls as well as hang-ups. (Testimony of McCaw)
9. On August 30, 2005, the Appellant was a tenured civil service employee in the position of Correction Officer I. The Appellant has been employed by the Department of Corrections (DOC) at the MCI Concord facility since September 4, 2001. (Testimony of Appellant)
10. On the same day, her immediate supervisor was the outer perimeter control sergeant, Richard Sitawich. There was no outer perimeter or exterior lieutenant on that day. (Exhibit 11, Testimony of Appellant)
11. During her shift, there was a vehicle similar to a pick-up truck parked in the front circle, which appeared to be there without authorization. The truck belonged to Lieutenant John Hennessey, with whom the Appellant was familiar. The Appellant thought that it might have

12. Lt. Hennessey had authorization to park there, but the Appellant and her immediate supervisor, Sergeant Richard Sitcawich, did not know this. (Testimony of McCaw, Sitcawich, and Appellant)
13. This search did not yield Lt. Hennessey's license plate number, so about 30 minutes later, the Appellant went outside, got the vehicle's plate number, and searched for that plate number in CJIS. (Exhibit 16, Testimony of Appellant)
14. The Appellant did not obtain any information that she could use to harass or embarrass the individuals who were the subjects of the Appellant's searches. In order to obtain this information, the Appellant would have had to do an "R3" search using the individuals' names and dates of birth. She only searched for the name and the vehicle license plate number. (Testimony McCaw and Appellant)
15. On September 6, 2005, Captain Tarantino complained that unknown staffs at MCI-Concord had conducted Board of Probation Checks on him, Captain Studley, and Lt. Hennessey using CJIS. Department Supervisor Gary Roden ordered a check of the CJIS records to see if anyone had accessed information on Tarantino or the other two people who reported harassment. (Testimony of McCaw)
16. The results of the search found that three R3 entries for Lieutenant Hennessey came up, but no results for either of the two Captains. Two of the entries were name searches for "John Hennessey" that occurred at 7:04pm and 7:05pm. The last entry was a vehicle license plate

17. On September 16, 2005, after obtaining the search results that showed Lt. Hennessey's name was queried, an investigation was ordered to determine who searched for the name and if the search was done for legitimate purposes. Lieutenant Mark McCaw (hereinafter "Lt. McCaw"), an investigator with the Internal Affairs Unit, was assigned the investigation. (Testimony McCaw and Appellant)
18. The investigation revealed that the person who had performed the searches for Lt. Hennessey was the Appellant. (Exhibits 11, 12, and 13, Testimony of McCaw and Appellant)
19. The Appellant admits to searching for Lt. Hennessey's name and vehicle registration because she was asked by a superior officer to find out who owned the vehicle that was parked out in the front circle. That officer also stated that he told her that the vehicle might belong to Lt. Hennessey. (Exhibit 16, Testimony of Sitcawich and Appellant)
20. Lt. McCaw performed a similar R3 search on the CJIS system using the terms the Appellant used in order to determine the information that she would have had access to. When he performed the search, he retrieved a list of 92 people with the name "John Hennessey". He could not determine which of the John Hennessey's on the list was Lt. Hennessey based on the information he entered. (Exhibit 16: Investigation Report pg. 2-3, Testimony of McCaw)
21. Lt. McCaw interviewed the Appellant twice – once on October 17, 2005 and again on October 20, 2005 – approximately seven and seven and a half weeks after the incident occurred. (Exhibit 16: Investigation Report pg. 4-8, Testimony McCaw and Appellant)
22. Sgt. Sitcawich was never interviewed by Lt. McCaw during the investigation, nor was he asked to file a report. (Exhibit 16, Testimony of McCaw and Sitcawich)

23. The Appellant could not remember who asked her to run the queries on August 30, but did say that Lt. Polychrones had asked her to do it several times in the past. (Testimony of McCaw and Appellant)
24. After the investigation had concluded, the Appellant learned that Sgt. Sitcawich was the superior officer who had asked her to run the search, but she did not remember that when she was being questioned. (Testimony of Appellant)
25. Lt. McCaw concluded that the Appellant did search for Lt. Hennessey's name for illegitimate purposes and lied during the course of the investigation. He referred her for a Commissioner's Hearing based on his conclusions. (Exhibit 16: Investigation Report pg. 9-10 and Executive Review and Decisions, Testimony McCaw)
26. A Commissioner's Hearing was held on June 13, 2006 and the Appellant was found to have been in violation of the General Policy Rules 6(b) and 19(c) of the Blue Book as well as the Criminal Justice Information System (CJIS) User Agreement and G.L. c.6 § 178. (Exhibits 3 and 4)
27. Pursuant to G.L. c. 31 § 41, the DOC notified the Appellant that she was suspended for five (5) days for the following conduct in violation of the General Policy Rules 6(b) and 19(c) of the Blue Book as well as the Criminal Justice Information System (CJIS) User Agreement.
28. Employees of the DOC are subject to a set of Rules and Regulations, of which the Appellant was aware and had received a copy. (Exhibit 5)
29. General Policy 1 states in part, "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 full and prompt obedience to all provisions of law..." (Exhibit 6)

30. Rule 6(b) states in part, “Be particularly discreet in your interest of the personal matters of any co-worker... You must not inspect... official documents or papers other than that which is necessary in the official performance of your duties.” (Exhibit 6)
31. Rule 19(c) states in part, “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... another employee or yourself.” (Exhibit 6)
32. The Criminal Systems History Board Criminal Justice Information System User Agreement states in part, “The data found within, or made available through the CJIS is provided to criminal justice agents and agencies for the performance of their legally authorized, required functions. Inquiries and other types of transactions, which are not done pursuant to a criminal justice purpose, are strictly prohibited.” (Exhibits 2 and 15)

CONCLUSION

The role of the Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the Appointing Authority.” Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300, 304 (1997). See Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003); Police Dep’t of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); McIsaac v. Civil Serv. Comm’n, 38 Mass. App. Ct. 473, 477 (1995); Watertown v. Arria, 16 Mass. App. Ct. 311 (1983). An action is “justified” when it is done upon adequate reasons sufficiently supported by credible evidence, when weighted by an unprejudiced mind, guided by common sense and by correct rules of law. Commissioners of Civil Serv. v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971); Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 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. of Brockton v. Civil Serv. Comm’n, 43 Mass. App. Ct. 486, 488 (1997); Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof is one of a preponderance of the evidence which is established “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, 35-6 (1956). In reviewing an appeal under G.L. c. 31 § 43, if the Commission finds that there was just cause for an action taken against the Appellant by a preponderance of the evidence, the Commission shall affirm the action of the Appointing Authority. Falmouth v. Civil Serv. Comm’n, 61 Mass. App. Ct. 796, 800 (2004). The issue for the Commission is “not whether it would have acted as the Appointing Authority had acted, but whether, on the facts found by the Commission, there was reasonable justification for the action taken by the Appointing Authority in the circumstances found by the Commission to have existed when the Appointing Authority made its decision.” Watertown at 334; *see also* Stratton at 727-8; Commissioners of Civil Serv. v. Municipal Ct. of Boston at 86. If the Commission decides to modify a penalty, it must provide an explanation of its reasons for doing so, because a decision to modify shall be reversible if unsupported by the facts or based upon an incorrect conclusion of law. Police Comm’r of Boston v. Civil Serv. Comm’n, 39 Mass. App. Ct. 594, 602 (1996); Faria v. Third Bristol Division of the Dist. Ct. Dep., 14 Mass. App. Ct. 985, 987 (1982). When the Commission modifies an action taken by the Appointing Authority, it must remember that the power to modify penalties is granted to ensure that employees are treated in a uniform and equitable manner, in accordance

with the need to protect employees from partisan political control. Falmouth v. Civil Serv. Comm'n. at 801; Police Comm'r of Boston v. Civil Serv. Comm'n. at 600.

The Appellant is charged with three counts of misconduct in violation of the General Policy Rules 6(b) and 19(c) of the Blue Book as well as the Criminal Justice Information System (CJIS) User Agreement. The violations are conducting improper CJIS searches on the name of a superior officer and failing to respond fully and truthfully during each of the two interviews over the course of the investigation.

The first charge was that the Appellant conducted three inappropriate searches on Lieutenant Hennessey using the CJIS system. The first two searches were name queries of John Hennessey done at 7:04pm and 7:05pm. The Appellant was told by her superior officer to determine who owner of the vehicle parked out in the restricted parking area was. She was also told that it might have been Lt. Hennessey's car, so she looked up his name in the CJIS system to see if his license plate matched the one of the car parked outside. The search did not provide any results that the Appellant could use, either to match the license plate as the Appellant claims or find incriminating information as the Respondent claims. Therefore, it does not make sense that she would repeat an unsuccessful search one minute after conducting it the first time. The Appellant testified that the first time she conducted the search, she got a blank screen and because of that, she had to type in the query again; this is the only explanation that makes sense. The second time she typed in those queries, she got a screen with 92 names. The 92 names could not give her any information – license plate or personal – on Lt. Hennessey. This also shows that the Appellant was not very familiar with the CJIS system. Again, whatever her intent was, the search she conducted was bound to give her fruitless results. If the Appellant was truly proficient with CJIS, she would not have conducted that search because she would have known that it

would not yield any usable results. The other search that the Appellant was disciplined for was a search for Lt. Hennessey's license plate number. When the first searches did not yield any results that the Appellant could use, it makes sense that she would run the license plate number in the system to find the owner. Although she performed an R3 search, which had the potential to generate personal information, she did not enter any data that would give her access to this information. The Appellant was also originally thought to have done similar searches on two captains: Captain Tarantino and Captain Studley, who also complained of harassment. However, the records showed that the Appellant did not conduct any searches on either of these men, even though Captain Tarantino was the person who complained of unknown staffs conducting unauthorized BOP checks on him.

The Respondent argues that if she knew or thought that the vehicle belonged to Lt. Hennessey, she could have just called him and asked if the truck was his. However, the Appellant was given a direct order by a superior officer to run the search and she followed orders as she is required to do by General Policy 1, which the Respondent cited in its argument. It would be unfair and unwarranted to punish her for following reasonable, direct orders. The Respondent also questions the delay between the first two searches and the final one, which was performed half an hour later. The Appellant stated in the investigation report and in her testimony that she had other duties that she had to complete before resuming her search. This is a credible response; the Appellant needs to prioritize her tasks every day and that is what she was doing here. Finally, the Respondent suggests that the Appellant was more familiar with the computer system than she stated and knew what she was doing when she conducted those searches. Investigator McCaw concluded that she ran them with the intent of obtaining personal information on Lt. Hennessey. However, if this was the case, the Appellant would have known

that she needed more information to get the results she wanted and would have either entered it if she had it or would not have bothered to conduct the search at all since she would have known she would not be able to get the information she wanted.

The remaining charges are that the Appellant was untruthful on October 17, 2005, and October 20, 2005 during her interviews regarding this incident. In the first interview, she stated that she did not remember running the inquiry on Lt. Hennessey's name, but did remember searching for the license plate number on the vehicle parked in front of the building. In the second interview, she made some statements that were inconsistent with those made in her prior interview. The Respondent argues that the Appellant must have been lying because her responses "did not make sense" and contradicted each other and because she stated that it was too dark to see the license plate number of the truck parked out front. This argument is not convincing.

Investigator McCaw stated that the Appellant's answers to his questions did not make sense and that some statements from the second interview contradicted those made in the first. The Appellant's answers do make sense when her proficiency with the CJIS system is taken into consideration; she stated over the course of the interviews the reasons why she conducted the searches she did and her reasoning behind conducting the searches that she ran. These interviews were conducted seven weeks after the Appellant ran the searches on Lt. Hennessey, so it is expected that there will be some inconsistencies between what happened in August and what she remembered about it in October. In the first interview, the Appellant did not recall running the searches for Lt. Hennessey's name or who asked her to search for the license plate, but that is understandable given the period of time that had elapsed since she ran the searches. In the second interview, the Appellant stated that she did remember running all three searches. This is inconsistent with what she said in the first interview, but it doesn't mean she intentionally lied

the first time. She was able to remember running the searches after thinking about it in the three days between the two interviews. Inconsistent statements occur often when there is a significant period of time between an event and questions about it. The inconsistency itself is not proof of intentional lying and thus the allegation was not proven by the preponderance of the evidence.

Finally, Investigator McCaw determined that the sunset did not occur until 7:21pm and correctly stated that the Appellant performed her first search at 7:04pm. Investigator McCaw did not make the observation that the sun had set at 7:21pm and that it was light outside up until that moment, but rather he looked it up in the Farmer's Almanac. He had no personal knowledge of the event and therefore cannot credibly testify to it. The Appellant was not asked about this on the stand and therefore the amount of light there was at the time the Appellant looked outside cannot be determined. There is not enough evidence to prove by a preponderance of the evidence that the Appellant was intentionally untruthful in either interview.

The facts that the Appointing Authority used to justify suspending the Appellant for five days are not substantiated by the evidence. Therefore, the Appointing Authority abused its discretion by finding that the Appellant conducted three illegal searches to obtain personal information when it is not disputed that the Appellant retrieved no personal information and when she gave reasonable responses for why she had conducted the searches that she did.

For all of the above reasons, the Appellant's appeal under Docket No. D-06-157 is hereby *allowed*. The Appellant shall be made whole for any loss of earnings and benefits.

Civil Service Commission

Daniel M. Henderson, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein, and Taylor, Commissioners on November 25, 2009)

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. 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:

Stephen Pfaff, Esq. (Appellant)

Michael B. Halpin, Esq. (Department of State Police)