

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

CHARLES G. RILEY, JR.,
Appellant

v.

D-17-109

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Charles G. Riley, Jr., Pro Se

Appearance for Respondent:

Joseph S. Santoro
Department of Correction
P.O. Box 946 – Industries Drive
Norfolk, MA 02056

Commissioner:

Paul M. Stein

DECISION

The Appellant, Charles G. Riley, Jr., acting pursuant to G.L.c.31,§43, appealed to the Civil Service Commission (Commission) challenging the decision of the Respondent, the Massachusetts Department of Correction (DOC), to suspend him for five (5) days from his tenured position of DOC Correction Officer III (Lieutenant).¹ The Commission held a pre-hearing conference in Boston on June 6, 2017 and held a full hearing on July 18, 2017 at that location, which was digitally recorded.² The full hearing was declared private. Witnesses were not sequestered. Twenty-seven (27) exhibits were received in evidence at the hearing (*Exhs.1*

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² CDs of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

through 27). Post-hearing proposed decisions were not submitted. For the reasons stated below, Lt. Riley's appeal is denied.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by DOC:

- Daniel F. Callis, Jr., DOC Assistant Dep. Comm'r, Prison Division, Southern Sector

Called by the Appellant:

- Charles G. Riley, Jr., DOC Lieutenant, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Charles G. Riley, Jr., served as a DOC Correction Officer III (Lieutenant). At the time of this appeal he had thirty-seven (37) years of service with the DOC and 27 years of service as a DOC Lieutenant. Since May 2017 he had been assigned to the Massachusetts Treatment Center (MTC) which houses sex offenders and sexually dangerous persons. (*Exhs. & 10; Testimony of Appellant*)³

2. Lt. Riley's prior disciplinary record included:

- 11/24/1992 – One Day Suspension – Called in sick to attend a wedding
- 8/16/2002 – Written Reprimand – Failed to comply with direct order resulting in staff injury
- 8/3/2015 – Written Reprimand – Put foot on civil commitment to get his attention
- 10/7/2016 – Written Reprimand – Poor judgement as supervisor contributing to unrest and ensuing lockdown of MASAC

(*Exhs. 11 through 16*)

3. In March 2017, Lt. Riley was a shift commander at the Massachusetts Alcohol and Substance Abuse Center (MASAC), then located on the campus of Bridgewater State Hospital.

(*Testimony of Appellant & Callis*)

³ While this appeal was pending, Lt. Riley retired effective October 1, 2019. (*DOC e-mail 10/22/2019*)

4. At that time, the DOC was in the process of implementing a Governor's Initiative that, among other things, directed the privatization of the Bridgewater State Hospital as well as the transfer of MASAC's operations from Bridgewater to Plymouth. (*Testimony of Callis*)

5. On Friday afternoon, March 10, 2017, DOC posted notice that, on Monday, March 13, 2017, all MASAC personnel at the soon to be closed Bridgewater location would be required to bid for replacement jobs. (*Exh. 10; Testimony of Appellant & Callis*)

6. Lt. Riley reported for duty at approximately 6:30 am on Saturday, March 11, 2017. He was immediately "pummeled with questions in anger about the bids being released on Friday afternoon" from most of the two dozen officers on the 7-11 shift under his command along with the officers on prior shift who were being relieved. He said the officers "weren't just mad, they were angry" about the surprise announcement and short notice. He said the "whole shift was abuzz as to how could this happen, its just not fair." (*Testimony of Appellant*)⁴

7. As the word of the bid notice spread, some affected officers contemplated protesting the action by refusing to bid, which, if they followed through, would complicate the closure and transfer of operations from Bridgewater to Plymouth within the timeframe DOC was expected to complete the move as directed by the Governor's Initiative. (*Testimony of Callis*)

8. At the end of his shift on March 10, 2017, Lt. Riley sent an internal e-mail message to MASAC Superintendent Lisa Mitchell, Assistant Deputy Commissioner Callis, and several other DOC senior managers. The message stated:

"There is a very unhappy workforce currently at this facility."

⁴ Complicating the bid release notice to MASAC officers was the fact that a week or two earlier, the employees of Bridgewater State Hospital had already bid on their replacement jobs, which left far fewer options for MASAC employees to find comparable positions to their current assignments (in terms of shift and rotation schedules) at the relocated MASAC in Plymouth or other DOC facilities. (*Testimony of Appellant*)

“Posting the bids at the end of the day (Friday) going into the weekend was not the best way.”

“Speaking as the most senior Lieutenant in this department with 25 years as a lieutenant. All ranks are not being treated fairly.”

“On Monday you will be walking into a hornets nest. If you are allergic bring your EPI-PEN.”

(Exh. 10)

9. Lt. Riley testified that he knew, right after he “hit send”, that he was “sunk”. He agreed that the last line of his message was neither “professional” nor or “courteous”. After leaving work, he had a “change of heart” and realized that he had “done something wrong”. *(Testimony of Appellant)*

10. On March 13, 2017, Assistant Deputy Commissioner Callis issued Lt. Riley a five-suspension for his failure to exercise good judgment expected of. . . someone of your stature and tenure with the Department . . .” He found the email message violated DOC Rules and Regulations that mandated the exercise of good judgment, compliance with all DOC policies,⁵ and the duty to exercise utmost patience, discretion and respect in all working relationships as becoming correctional professionals. *(Exhs. 8, 9 & 17 through 20; Testimony of Callis)*

11. Lt. Riley requested a hearing to contest the discipline and, eventually, appealed to the Commission. *(Exhs.1 through 7, 24 & 25; Claim of Appeal)*

APPLICABLE LEGAL STANDARD

G.L.c.31,§41-45 requires that discipline of a tenured civil servant may be imposed only for “just cause” after due notice, hearing (which must occur prior to discipline other than a suspension from the payroll for five days or less) and a written notice of decision that states “fully and specifically the reasons therefore.” G.L.c.31,§41. An employee aggrieved by such

⁵ Among the relevant policies, DOC E-Mail Policy, 103 DOC 758.02 puts all personnel on notice that “users shall regard e-mail messages as the equivalent of letters sent on official letterhead. As such, users shall write all e-mail messages in a professional and courteous tone . . . [Generally] e-mail messages are considered public records, copies of which may be requested by any member of the public.” *(Exh. 20)*

disciplinary action may appeal to the Commission, pursuant to G.L.c.31,§42 and/or §43, for de novo review by the Commission “for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited.

The Commission’s role 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, rev.den., 426 Mass. 1102 (1997). See also Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n, 38 Mass.App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, rev.den., 390 Mass. 1102 (1983).

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., 359 Mass. 211, 214 (1971); City of 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) See also Mass. Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001).

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 Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’ ” Town of

Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of “merit principles” which govern civil service law that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “separating employees whose inadequate performance cannot be corrected.” G.L. c.31,§1.

G.L.c.31, Section 43 vests the Commission with “considerable discretion” to affirm, vacate or modify discipline but that discretion is “not without bounds” and requires sound explanation for doing so. See, e.g., Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594, 600 (1996) (“The power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio . . . accorded the appointing authority”) Id., (*emphasis added*). See also Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006), quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

ANALYSIS

The preponderance of the evidence in this appeal established that the DOC had just cause to impose discipline upon Lt. Riley for the poor judgment that he exercised in sending the March 10, 2017 e-mail. Lt. Riley, himself admits that, in hindsight, he realized that sending the e-mail in the form he chose was “wrong”. His actions were unprofessional and inconsistent with his duty as a superior officer to exercise good judgment commensurate with his position as a supervisor and role model.

I have not overlooked the fact that Lt. Riley may have had the best of intentions when he sent the e-mail to give senior management a “heads up” about the rebellious attitude that was percolating among the rank and file, but DOC is entitled to expect that such a message, properly, be confined to communicating relevant facts without inappropriate and sarcastic hyperbole. Especially, as a superior officer and role model, Lt. Riley, had a heightened duty to remain cool

under pressure and not to let the heat of the moment influence his judgment or actions. I credit Lt. Riley for acknowledging his mistake in hindsight. Nevertheless, under the substantially undisputed facts of this case, the five-day suspension imposed on Lt. Riley was fully justified and should stand.

For these reasons, the appeal of the Appellant, Charles Riley, Jr., in Case Nos. D-17-109 is hereby **DENIED**.

Civil Service Commission

 /s/ Paul M. Stein
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 7, 2019.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice:

Charles G. Riley, Jr. (Appellant)
Joseph Santoro (for Respondent)