

COMMONWEALTH OF MASSACHUSETTS

Decision mailed: 1/29/10
Civil Service Commission
CB

**WILLIAM ROACH,
Jr.,**
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

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

Case No.: D-09-305

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on January 28, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated November 3, 2009. The Commission received comments from the Appellant on December 4, 2009. The Commission received comments from the Respondent on December 22, 2009. By a 3-2 vote, the Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein.

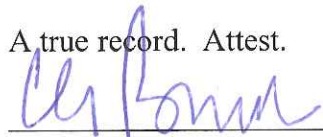
A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

CORRECTION:

Finding of Fact #4: Line 3, insert after the word "authorization" the language "later withdrawn." In line 6, amend (10) days to (1) day.

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman Yes; Henderson, Commissioner – No; Marquis, Commissioner – Yes; Stein, Commissioner – Yes; and Taylor, Commissioner - No) on January 28, 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 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 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:

Robert A. Stewart, Esq. (for Appellant)
Heidi D. Handler, 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
ACTING CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
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November 3, 2009

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

Re: William Roach, Jr. v. DOC
DALA Docket No. CS-09-518

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.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

Joan Freiman Fink
Joan Freiman Fink, Esq.
Administrative Magistrate

JFF/

Enclosure

cc: Robert A. Stewart, Esq.
Heidi D. Handler, Esq.

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CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

William Roach, Jr.,
Appellant

Docket No. D-09-305
DALA No. CS-09-518

v.

Department of Correction,
Appointing Authority

Appearance for Appellant:

Robert A. Stewart, Esq.
Louison, Costello, Condon & Pfaff, LLP
67 Battery March Street
Boston, MA 02110

Appearance for Appointing Authority:

Heidi D. Handler, Esq.
Department of Correction
P.O. Box 946
Industries Drive
Norfolk, MA 02056

Administrative Magistrate:

Joan Freiman Fink, Esq.

SUMMARY OF DECISION

The Appointing Authority has demonstrated just cause to demote the Appellant from his position as Correction Officer II to the position of Correction Officer I with the Department of Correction (DOC). The Appellant committed various violations of DOC Rules and Regulations as well as violation of the DOC's Information Technology Security Policy, 103 DOC 756, all relating to an incident on December 22, 2008, when he witnessed a fellow officer retaliate against an inmate

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RECOMMENDED DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, William Roach, Jr., is appealing the June 29, 2009 decision of the Appointing Authority, the Department of Correction, demoting him from his position as a Correction Officer II to the position of a Correction Officer I with the Department of Correction. (Exhibit 1). The Appellant filed a timely appeal of this decision with the Civil Service Commission (Exhibit 2).

A hearing in this matter was held on September 9, 2009 at the offices of the Division of Administrative Law Appeals, 98 N. Washington Street, Boston, MA. As no written request was received from either party, the hearing was declared to be private. Various documents were entered into evidence at the hearing. (Exhibits 1– 11.) Three cassette tape recordings were made of the hearing. The record in this case was left open until October 13, 2009 for the filing of written closing memoranda.

Captain Edward Hammond, an employee of the DOC for the past seventeen (17) years and who currently serves as an investigator with the DOC Office of Investigatory Services Framingham, testified for the Appointing Authority. The Appellant testified in his own behalf.

The Appointing Authority maintains that just cause exists to demote the Appellant from his employment as a Correction Officer II for violation of various rules including Rule 1,¹ Rule 6(d),² Rule 19(c),³ and Rule 19(d)⁴ of the *Rules and Regulations Governing*

¹ Rule 1 provides in part that: "Employees should give dignity to their position"

² Rule 6(d) provides in part that: "Report all infractions of law, rules and orders to a higher authority."

³ Rule 19(c) provides in part that: "You must respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee or yourself."

⁴ Rule 19(d) provides in part that: "It is the duty and responsibility of all institution and DOC employees to obey these rules and official orders and to ensure that they are obeyed by others. This duty and responsibility is augmented for supervising employees, and increasingly so, according to rank."

All Employees of the Massachusetts Department of Correction as well as violation of the DOC's Information Technology Security Policy, 103 DOC 756.⁵ (Exhibits 3 & 7.)

Specifically, the Appointing Authority alleges that the Appellant filed a false report concerning an incident on December 22, 2008, when he witnessed Officer Tony Rodrigues retaliate against an inmate. The Appointing Authority further alleges that the Appellant used Officer Rodrigues's password to complete and then file a report on behalf of Officer Rodrigues relating to this incident and that the report filed was false. Finally, the Appointing Authority contends that when questioned by the DOC investigator concerning the December 22, 2008 incident and the filing of related reports, the Appellant was less than truthful.

FINDINGS OF FACT

Based on the documents entered into evidence (Exhibits 1 – 11) and the testimony of Edward Hammond, and William Roach, Jr., I hereby make the following findings of fact:

1. The Appellant, William Roach, Jr., commenced employment as a Correction Officer with the DOC on February 22, 1998. At that time, he was assigned to MCI Norfolk. (Testimony of the Appellant.)
2. In 2004, while employed by the DOC, the Appellant earned a degree in Criminal Justice from UMass Boston. (Testimony of the Appellant.)
3. He was promoted to the position of Correction Officer II (Sergeant) on February 4, 2007 and was assigned to MCI Cedar Junction, a maximum security prison. (Testimony of the Appellant.)

⁵ 103 DOC 756 provides in part that: "under no circumstances will passwords be shared with any other staff or individual . . . prohibited activities include . . . (e) revealing your account password to others or allowing use of your accounts by others . . . (f) soliciting another staff member's password."

4. The Appellant has a lengthy prior disciplinary record with the DOC including the following: a three day suspension issued on May 7, 1999 for changing procedures without authorization; a reprimand issued on June 29, 2002, for leaving a key in the door and failing to secure property; a reprimand issued on January 16, 2003, for being familiar with inmates and for having a non-work conversation with an inmate; a ten (10) day suspension issued on March 13, 2003, for attempting to bring contraband into the institution; a two (2) day suspension issued on April 1, 2003, for failure to control access to the segregation building; a Letter of Reprimand issued on July 25, 2008 for excessive tardiness; a Letter of Reprimand issued on August 18, 2008 for tardiness; and a five (5) day suspension and final warning for violation of Rule 19 (d) issued on January 19, 2009, for filing a false report in connection with an investigation into another officer's excessive use of force on an inmate by not including a full and accurate report of what he had witnessed and for failure to fulfill his augmented duties as a Sergeant. (Stipulation of the parties.)

5. In or about December of 2008, the Appellant was assigned to work on "Ten Block," the unit that housed the most disruptive inmates. These inmates were allowed out of their prison cells only one hour per day. (Testimony of the Appellant.)

6. Inmate A, an extremely problematic prisoner, was placed in Ten Block in or about December of 2008 as a result of assaultive behavior towards a DOC employee. (Testimony of Captain Hammond; testimony of the Appellant.)

7. On December 22, 2008, Inmate A threw urine on Correction Officer Tony Rodrigues, a fellow officer. Correction Officer Rodrigues responded by removing the

cover of a food tray he was holding and throwing the food tray directly at the inmate through the prison bars. (Testimony of Captain Hammond, Exhibits 4 & 6.)

8. A videotape was made of the incident and a copy of this video was entered into evidence and played at the DALA hearing on September 9, 2009. (Exhibit 6.)

9. The Appellant witnessed the December 22, 2008 incident involving Correction Officer Rodrigues and Inmate A. (Stipulation of the parties.)

10. The Appellant was Officer Rodrigues's direct supervisor on December 22, 2008. (Testimony of Captain Hammond.)

11. The Appellant had worked with Officer Rodrigues for only the two or three month period prior to December 22, 2008 and had not known him previously. (Testimony of the Appellant.)

12. The Appellant did not reprimand Officer Rodrigues for throwing a food tray at Inmate A. (Testimony of the Appellant.)

13. The Appellant did not investigate to determine whether in fact Inmate A had been injured by the food tray or any of the food that was thrown into his cell. (Testimony of Captain Hammond, Exhibit 6.)

14. Although the Appellant filed a report of this incident on the day in question, December 22, 2008, he did not mention in that report that Officer Rodrigues took retaliatory action by throwing a food tray at Inmate A. (Stipulation of the parties; Exhibit 4.)

15. Immediately after the incident, the Appellant also notified Lieutenant Strafford, his superior, that something had occurred on Ten Block. Lieutenant Strafford arrived a short time later and asked the Appellant what had occurred. The Appellant

related that Inmate A had thrown urine at Officer Rodrigues but failed to report that Officer Rodrigues had retaliated by throwing a food tray back at the inmate. (Testimony of the Appellant.)

16. Shortly after the incident, Officer Rodrigues left the institution to seek medical attention. He did not return to MCI Cedar Junction until several days later. (Stipulation of the parties.)

17. After he arrived home on December 22, 2008, Officer Rodrigues called the Appellant, who was still at work at MCI Walpole. Officer Rodrigues asked the Appellant to stop by his home after work to retrieve some industrial accident paperwork to deliver to the institution the following day. The Appellant assented to this request and picked up the paperwork from Officer Rodrigues and delivered it to the institution the next day. (Testimony of the Appellant, Exhibit 5.)

18. On the next day, December 23, 2008, Officer Rodrigues again called the Appellant at work from his (Rodrigues's) home. During this conversation, Officer Rodrigues informed the Appellant that he (Rodrigues) had been asked to come to MCI Walpole to file an incident report on the Information Management System (IMS) concerning the incident involving Inmate A that had occurred the previous day. (Testimony of the Appellant.)

19. Officer Rodrigues told the Appellant that he (Rodrigues) was very upset and asked the Appellant to file the report on his behalf. When the Appellant agreed to that request, Officer Rodrigues supplied the Appellant with his personal system password. (Testimony of the Appellant, Exhibit 5.)

20. The Appellant then logged into the IMS system and wrote a report using Officer Rodrigues's profile. The report, which on its face appears to be written by Officer Rodrigues, does not mention that Rodrigues threw a food tray at Inmate A in retaliation for Inmate A having thrown urine at the Officer. (Testimony of the Appellant, Exhibit 6.)

21. Prior to logging into the IMS system, all employees of the DOC must check a box indicating that they are aware of all DOC policies and procedures relative to computer security (Information Technology Security Policy). This system was in effect on December 23, 2008. (Testimony of Captain Hammond.)

22. DOC Policy on Information Technology Security, 103 DOC 756, 756.07 (e) and (f) provides in pertinent part that: "The intent of this policy is to provide authorized access for personnel, dependent on their job assignment to any information technology system maintained by the department. To ensure the system security and integrity, the following guidelines shall be adhered to ... (e) ... under no circumstances will this password be shared with any other staff person or individual ... (f) under no circumstances should any staff member solicit another staff member's password or offer their own." (Exhibit 7.)

23. Also on December 23, 2008, the day after the incident involving Officer Rodrigues and Inmate A in Ten Block, Captain Hammond was assigned to investigate the entire incident. (Testimony of Captain Hammond.)

24. During the course of his investigation, Captain Hammond learned that the District Attorney's Office had decided not to prosecute the case against Inmate A as it was felt the failure of both the Appellant and Officer Rodrigues to document Rodrigues's

retaliatory action had compromised their credibility to such a degree that a successful prosecution of Inmate A was not likely. (Testimony of Captain Hammond, Exhibit 4.)

25. Captain Hammond interviewed the Appellant twice, once on January 5, 2009, and again on February 4, 2009, in connection with the December 22, 2008 incident involving Inmate A and Officer Rodrigues. (Testimony of Captain Hammond; Exhibit 5.)

26. During the January 5, 2009 interview, Captain Hammond asked the Appellant why he omitted Officer Rodrigues's action in throwing the food tray at Inmate A from his report. Captain Hammond further inquired as to whether the Appellant had colluded with Officer Rodrigues to obfuscate the truth since Rodrigues had also omitted the tray incident from his (Rodrigues's) report and the reports were remarkably similar. (Testimony of Captain Hammond, Exhibit 5.)

27. The Appellant told Captain Hammond that he (Roach) was not trying to hide anything and that he had omitted the information because he knew the inmate was not injured and that he also knew that the whole incident was captured on videotape. (Exhibit 5; testimony of the Appellant.)

28. At no time during the January 5, 2009 interview did the Appellant inform Captain Hammond that he had visited Officer Rodrigues at home on the evening of December 22, 2008. During that January 5, 2009 interview, the Appellant also failed to inform Captain Hammond that Officer Rodrigues had called him (Roach) at MCI Walpole and asked him to write a report on his (Rodrigues's) behalf and that the Appellant had actually written Rodrigues's report logging into the IMS system as Officer Rodrigues. (Testimony of Captain Hammond, Exhibit 5.)

29. During an interview that Captain Hammond held with Officer Rodrigues on January 23, 2009, the Captain learned that the Appellant had visited with Rodrigues at home on December 22, 2008, that Rodrigues had called the Appellant at work on December 23, 2008 and asked the Appellant to write an incident report using Rodrigues's profile, and that the Appellant had in fact written a report and submitted it as Officer Rodrigues's own work. (Testimony of Captain Hammond, Exhibit 5.)

30. During his second interview with Captain Hammond held on February 4, 2009, the Appellant acknowledged that he had gone to Officer Rodrigues's home to retrieve some documents and also that Rodrigues had given him his security password information. The Appellant also admitted to Captain Hammond that he (Roach) had written a report and submitted it to DOC officials as if it had been written by Officer Rodrigues. (Testimony of Captain Hammond, Exhibit 5).

31. At the second interview, Captain Hammond asked the Appellant why he had not been truthful during the previous interview held on January 5, 2009 concerning his trip to Officer Rodrigues's home. The Appellant failed to offer an explanation and was withdrawn and uncommunicative. (Testimony of Captain Hammond.)

32. At the second interview, when Captain Hammond asked the Appellant why he violated departmental computer security policies, the Appellant replied that he thought since he was Officer Rodrigues's supervisor, he was authorized to write a report on behalf of his subordinate. (Testimony of Captain Hammond.)

33. When Officer Rodrigues returned to work at MCI Walpole approximately one week after the initial incident of December 22, 2008, he was transferred from Ten Block to another unit. On December 31, 2008, Officer Rodrigues was involved in

another incident in his new unit. As a result of these two incidents, Officer Rodrigues was terminated from employment effective June 22, 2009. (Exhibit 9.)

34. On May 1, 2009, the Appointing Authority sent the Appellant a Notice of Contemplated Action indicating that a hearing pursuant to G.L. c. 31, § 41 would be held on June 9, 2009 to determine whether he had violated various DOC Rules and Regulations relating to the incident of December 22, 2008. (Exhibit 2.)

35. By letter dated June 29, 2009, the Appointing Authority informed the Appellant that, after holding a hearing, it had decided to demote him from his position as Correction Officer II (Sergeant) to Correction Officer I. (Exhibit 1.)

36. The Appellant filed a timely appeal of this decision with the Civil Service Commission. (Stipulation of the parties.)

CONCLUSION AND RECOMMENDATION

After reviewing all the testimony and evidence in this case, I conclude that the Appointing Authority has demonstrated by a preponderance of the evidence that just cause exists to demote the Appellant from his position as a Correction Officer II (Sergeant) to the position of Correction Officer I with the Department of Correction. The Appointing Authority established that the Appellant, by failing to include in his official departmental report the fact that Officer Rodrigues took retaliatory action against Inmate A by throwing a food tray at his cell, violated Rule 1, Rule 6(d) and Rule 19(c) of the Rules and Regulations of the DOC. In addition, the Appointing Authority established that the Appellant violated the DOC Information Technology Policy, 103 DOC 756, by receiving and using another employee's security password. The Appellant then submitted to DOC officials a report that he himself had authored under that other

employee's computer profile. Finally, the Appointing Authority demonstrated that the Appellant violated Rule 19(c) of the Rules and Regulations of the DOC by being less than truthful during the entire course of the investigation into the incident of December 22, 2008 involving Officer Rodrigues and Inmate A. Specifically at no time during his January 5, 2009 interview with Captain Hammond did the Appellant inform the Captain that he (Roach) had visited Officer Rodrigues at home on the night of December 22, 2008. The Appellant likewise did not inform Captain Hammond that he (Roach) had received Officer Rodrigues's security password and then had written and submitted an official report under Rodrigues's computer profile.

The Civil Service 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." *Murray v. Second Dist. Ct. of E. Middlesex*, 389 Mass. 508, 514 (1983); *School Committee of Brockton v. Civil Service Commission*, 43 Mass. App. Ct. 486, 488 (1997). In reviewing an appeal brought pursuant to G.L. c. 31 § 43, if the Civil Service Commission finds 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. *Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004).

The basis of my conclusion rests with my finding that the testimony of Captain Hammond was extremely credible. In *Connor v. Connor*, 77 A.2d 697 (Pa. 1951), the Pennsylvania Appeals Court held that the "opportunity to observe demeanor and appearance of witnesses in many instances becomes the very touchstone of credibility."

School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978); *New England Canteen Service, Inc. v. Ashley*, 372 Mass. 671 (1977).

Captain Hammond gave compelling testimony concerning the Appellant's failure to document in his official report a vital segment of the incident involving Inmate A and Officer Rodrigues on December 22, 2008. Captain Hammond further testified that the Appellant was not forthcoming nor was he truthful during the January 5, 2009 interview that he (Hammond) held with the Appellant relating to the official departmental investigation of that incident.

The Appellant acknowledged that, in his initial report of the December 22, 2008 incident, he did not mention that Officer Rodrigues had thrown his food tray at Inmate A in retaliation for the inmate's assault. He offered that he failed to report Officer Rodrigues's action as he (Roach) knew that the inmate was not splattered with any food. The Appellant further offered that since Officer Rodrigues was relatively new to Ten Block, a difficult assignment, he (Roach) decided to give him (Rodrigues) "the benefit of the doubt." In addition, the Appellant argued that since he was aware of the fact that the entire incident was captured on videotape, he felt that there was no need to include the additional facts relating to Officer Rodrigues's retaliatory response in his (Roach's) departmental report.

The Appellant acknowledged that he used Officer Rodrigues's security password to write and then submit a report to DOC officials under Rodrigues's security profile. However, the Appellant noted that he thought, as Officer Rodrigues's supervisor, he (Roach) had the authority to write and submit a report for his subordinate.

Finally, the Appellant offered that the reason he did not inform Captain Hammond of his visit to Officer Rodrigues's home, his receipt and subsequent use of Rodrigues's security password, and his submission of a report under Rodrigues's computer profile was that Captain Hammond did not ask him any questions concerning those issues.

I do not find the Appellant's explanations to be persuasive or convincing. In the first instance, the Appellant should have included the fact that Officer Rodrigues threw a food tray at Inmate A in his report. Inmate A could have been injured by Rodrigues's action as neither the Appellant nor Rodrigues checked on his well-being after the incident. The fact that the entire incident was videotaped does not excuse the Appellant from his duty to give a fair and accurate report of a significant incident that occurred at the institution, especially in light of the fact that videotapes do not reflect a full image of events that transpire in a given location. In addition, the fact that the Appellant failed to include in his report that his colleague took retaliatory action against Inmate A may have played a role in the District Attorney's decision not to prosecute Inmate A for throwing urine at Officer Rodrigues.

Despite the Appellant's assertions that he mistakenly thought he had the authority to use Officer Rodrigues's security password and then submit a report under the Officer's computer profile, I find the Appellant's explanation to be disingenuous. In accordance with Rule 12 of the "Blue Book"⁶ all employees of the DOC are charged with familiarizing themselves with the policies and procedures of the DOC including the Information Technology Policy, 103 DOC 756. 103 DOC 756.07 (1)(e) and (f) provides that "under no circumstances will (an employee's) password be shared with any other

⁶ The Rules and Regulations Governing All Employees of the Massachusetts DOC.

staff person or individual” and further that “under no circumstances should any staff member solicit another staff member’s password or offer their own.” This Policy is clear and unequivocal. Moreover, each and every time that a DOC employee logs onto the computer system, he/she is required to check a box indicating that he/she has read and understood the Information Technology Policy including the regulations governing computer privacy and security. Thus, the Appellant should have been aware that the receipt and/or use of another employee’s password were strictly contrary to departmental policy.

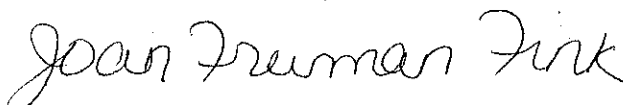
The Appellant’s explanation as to why he was less than truthful when questioned by Captain Hammond was likewise disingenuous. Captain Hammond did inquire as to whether the Appellant and Officer Rodrigues were in collusion as their reports were so similar. Captain Hammond did not ask the Appellant about his visit to Officer Rodrigues’s home or his use of Officer Rodrigues’s security password as Captain Hammond was unaware that these events had occurred. The failure of the Appellant to inform Captain Hammond that he visited Officer Rodrigues’s home and that he used Officer Rodrigues’s security password constituted a flagrant and deliberate violation of Rule 19(c) of the DOC Rules and Regulations requiring employees to respond fully to all questions relative to the conduct of an inmate, a visitor, another employee, or themselves.

In determining the appropriateness of the discipline to be imposed, I reviewed the Appellant’s prior disciplinary record which included several prior reprimands and suspensions including a five day suspension issued in January of 2009 for filing a false report. After due deliberation, I conclude that based on the facts and circumstances of this case, the Appointing Authority was fully justified in demoting the Appellant from his

position as a Correction Officer II/Sergeant to the position of Correction Officer I with the Department of Correction.

Accordingly, I recommend that the Civil Service Commission affirm the action of the Appointing Authority in this matter.

DIVISION OF ADMINISTRATIVE LAW APPEALS

A handwritten signature in cursive script that reads "Joan Freiman Fink".

Joan Freiman Fink
Administrative Magistrate

Dated:

11/3/09