THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & WILLIAM R. ROCH,
Complainants

v. DOCKET NO. 09-BEM-01945

MASSACHUSETTS DEPARTMENT
OF CORRECTION,
Respondent

Appearances:
Simone Liebman, Esq. Commission Counsel
Carol Colby, Esq. and James F. Cavanaugh, Esq. for the Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about July 30, 2009, Complainant William R. Roch, who is Black, filed a complaint with this Commission charging Respondent Massachusetts Department of Correction with discrimination on the basis of race and color in violation of M.G.L.c.151B. Specifically, Complainant alleges that he was disparately disciplined and demoted based on rules infractions, while similarly situated white correctional officers were not demoted for similar or worse infractions. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on October 28, 29, November 2 and 21, 2019. Based on all the relevant, credible evidence before me and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant William R. Roch, who is Black, has worked for Respondent Massachusetts Department of Correction since 1998. From 1998 to 2007, Complainant was a COI (Correctional Officer or CO) assigned to MCI Norfolk in Norfolk, Massachusetts. In February, 2007, Complainant was promoted to COII (Sergeant) and was assigned to work at MCI Cedar Junction in Walpole, MA where he primarily worked on "10 Block," which houses 60 inmates. (Testimony of Complainant)

2. During his tenure at Norfolk, which employed approximately 300 correctional staff, the facility had only two Black COIs, one Black sergeant and one Black lieutenant. Complainant testified credibly that while at Norfolk, he was subjected to a higher level of scrutiny than other CO's. He was disciplined on several occasions, primarily for minor infractions that were handled within the institution.[1] Complainant's attempts to have written reprimands removed from his record were not successful. From 2003 to 2008[2], Complainant was not disciplined for any infractions. (Testimony of Complainant)

3. Complainant was again promoted to Sergeant on August 12, 2018, long after the events that are the subject of this case. He has been posted to the Lemuel Shattuck Hospital since April 2013.

4. During his tenure with Respondent, Complainant earned a dual bachelor's degree from UMass Boston in Criminal Justice and Social Political Philosophy. As a single father, he raised his daughter, now an adult, from age 9. Complainant was a competent Sergeant with satisfactory performance, according to his employee evaluations. He took his job and the

[1] Complainant's discipline at Norfolk, early on in his career, where he was one of few Black officers in an institution with overwhelmingly white staff, leads me to draw the reasonable inference that his race and color may have been a factor in his discipline for relatively minor offences.
[2] In 2008, Complainant was reprimanded for instances of tardiness at MCI-Cedar Junction.

obligations of care and custody of inmates seriously. (Ex. C-2; C-3; C-9; Testimony of Complainant; Testimony of Hocking)

5. Respondent Department of Correction operates correctional facilities, including M.C.I. Cedar Junction, a maximum-security prison located in Walpole, Massachusetts. In each location, Respondent employs COIs (Correctional Officers), COIIs (Sergeants) COIIIs (Lieutenants) and COIVs (Captains). COIs, COIIs and COIIIs are members of the union known as MCOFU.

6. MCI-Cedar Junction is a maximum-security prison that houses some the most violent inmates in the state. Complainant's unit, 10 Block, is a Special Management Unit, which houses inmates who violate house rules. Working in the unit is difficult and officers can be subjected to terrible conditions, including being spat on and having urine and feces thrown at them by inmates. (Testimony of Bender; Testimony of Hocking)

7. Correctional Officers are responsible for the care and custody of inmates and are expected to comply with the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, known as the "Blue Book." (Ex. C-24)

8. Incidents of employee misconduct at a facility that warrant investigation are investigated by correctional staff assigned to the institution where the conduct occurred, usually after receipt of a written incident report that is forwarded to a prison superintendent or division head for review. Respondent conducts internal investigations into allegations of employee misconduct, pursuant to Respondent's Internal Affairs Unit (IAU) policy. More serious violations of policy--known as Category II violations--are referred to the Internal Affairs Unit by an institution's superintendent and are conducted by Respondent's Internal Affairs Unit, which is a separate unit not affiliated with any particular prison.

MCI Cedar Junction

9. In February 2007, Complainant was promoted to Sergeant and was assigned to MCI Cedar Junction. During the years 2007 to 2009, Peter St. Amand was the Superintendent at Cedar Junction.

10. Out of some 130 Sergeants employed at Cedar Junction between January 1, 2007 and January 1, 2012, approximately 16 were Black, including Complainant. (Exs.C-6; C-7; Testimony of Complainant, Day1)

11. James Bender (white) was employed by Respondent from 1977 until his retirement in 2011. Bender was Respondent's Deputy Commissioner from 2003 to April 2007. From April 2007 to November 2007, Bender was Respondent's Acting Commissioner.

12. In November 2007, Harold Clarke (Black) became Commissioner and Bender returned to the Deputy Commissioner Position. (Testimony of Bender, Day 3) Clarke remained as Commissioner in 2008 and 2009.

13. Stephen Hocking, who is white, has worked for Respondent since 1991. From 2007 to 2010, he worked at MCI Cedar Junction as a Sergeant, his second stint there. From 2016 to the present, he has worked at Old Colony Correctional Center, and currently holds the rank of Lieutenant. Hocking once received a reprimand for punching a Captain's time card for the day.

INCIDENT OF AUGUST 23, 2007

14. On August 23, 2007, Complainant was the Sergeant on duty supervising the upper tiers in 10 Block and was assigned to the 3:00 p.m. to 11:00 p.m. shift. At the time, Complainant had worked as a Sergeant for only six months. (Testimony of Complainant)

15. On August 23, 2007, Stephen Hocking was functioning as the acting lieutenant and was the officer in charge, as the senior Sergeant on the 3:00 p.m. to 11:00 p.m. shift. On that evening, several incidents occurred. In one, an inmate ripped a sink out and, in another, officers discovered homebrew that inmates had made. (Testimony of Hocking, Day 2)

16. At approximately 9:00 p.m., an LPN evaluated an inmate, "A," residing in 10 Block and determined that he needed further medical evaluation, requiring him to be escorted to the Health Services Unit (HSU), within MCI-Cedar Junction.

17. Hocking was responsible for overseeing the escort of inmate A to the HSU. Hocking directed COI WC and COI NK, both of whom are white, to assist in the escort. As 10 Block Sergeant, Complainant was also involved in preparing for the escort.

18. While Hocking was inside inmate A's cell attempting to restrain him in preparation for the escort, Inmate A spit in Hocking's face. Hocking testified that he could taste the inmate's saliva in his mouth and the inmate told him that he had hepatitis. (Testimony of Hocking)

19. After the spitting incident, correctional staff placed inmate A in full restraints and proceeded to escort him to the HSU. During the escort, other inmates were loud and unruly. COI's NK and WC were positioned behind the inmate on either side of him. Hocking was positioned directly behind the inmate and Complainant was positioned several feet directly behind Hocking. (Testimony of Complainant; Testimony of Hocking)

20. Complainant testified that as the escort was exiting the tier, the inmates were yelling to Complainant that he would be next. Complainant stated that he then saw Inmate A drop to the ground and say words to the effect of, "Did you see that?" Inmate A later filed a complaint alleging that during the escort, Hocking struck him in the head.

21. Hocking drafted a disciplinary report against inmate A stating that A spit in his face. In his report, Hocking noted that A accused Hocking of striking him in the head but Hocking did not state if this was true. Hocking is 6'5" and weighed 350 pounds at the time. (Testimony of Hocking; Ex. R-18) The inmate was 5'6" and 140 pounds.

22. COs NK and WC also drafted incident reports dated August 23, 2007. The language in their reports was nearly identical. It appeared that NK may have copied WC's incident report. Photos of the escort showed that WC was on Inmate A's left and NK was on Inmate A's right, but each of their reports state that they trailed Inmate A on Inmate A's left side. They also both wrote that Inmate A fell to the ground and stated: "Hocking hit me on the back of the head. Did you see that?" Their reports did not state that Hocking hit inmate A. (Ex. R-18)

23. Complainant also drafted an incident report, dated August 23, 2007. Complainant reported that inmate A dropped himself to his knees, stating "Hocking hit me on the head. Did you see that?" Complainant did not report that Hocking struck the inmate. At the Hearing, he testified that he did not see Hocking hit inmate A and stated that, from his vantage point behind Hocking, he would have seen the hit if it had happened.

24. An LPN witnessed the escort and filed an incident report on August 23, 2007. She wrote that as the escort was proceeding toward her, she observed Hocking strike Inmate A on the back of the head and Inmate A fall to the ground. The LPN was reluctant to report the hit because of her fear of reprisal by correctional staff. Her report stated that she believed she was required by law to report the incident and she did not want to lose her license for failing to report the hit. (Ex. R-18)

25. Pictures of the incident do not show Hocking hitting the inmate, but do reveal that just before A went down, Hocking put his hands on the shoulders of the two COs, which Respondent interpreted as a signal to the COs that he was going to hit the inmate. (Ex. R-18)

26. Inmate A's allegation that Hocking hit him was referred to the Office of Internal Affairs (OIS) by Superintendent St. Amand on August 24, 2007, and later that day, OIS initiated a Category II investigation into his allegation.

27. IAU investigator Captain Edward McGonagle was assigned to investigate Inmate A's allegations. McGonagle reviewed video footage and written reports concerning the allegations, and interviewed the individuals who were involved in or had information concerning the incident. (Ex. R-18; Testimony of Bender)

28. McGonagle interviewed A on August 24, 2007. The inmate told McGonagle that Hocking hit him on the back of the head and that NK, WC, the LPN and Complainant observed the hit. (Ex. R-18)

29. On August 24, 2007, McGonagle interviewed NK and WC, as well as Complainant. All three denied seeing Hocking hit inmate A. (Ex R-18) Complainant stated that based on his location during the escort, he believed he would have seen Hocking strike the inmate.[3] (Ex. R-18; Testimony of Complainant)

30. On August 27, 2007, McGonagle interviewed Hocking, who denied striking inmate A. (Ex. R-18; Testimony of Hocking) On the same day he also interviewed the LPN, who stated that she saw Hocking strike Inmate A, who then fell to the floor. She told McGonagle that after she left 10 Block, Hocking approached her and asked, "Are we cool?" Hocking told her that he

[3] Complainant's testimony at the hearing that he did not see Hocking hit the inmate is consistent with the position he has maintained since the incident occurred. I credit his testimony.

was going to write a report and that she could read his report before writing her own. The LPN reported the incident to her supervisor, the director of nursing and to a supervisor and captain. She also told McGonagle that NK and WC talked to her in the parking lot and that NK told her that Hocking stepped on inmate A's leg chain as he struck him in the back of his head. (Ex. R-1 8)

31. On September 21, 2007, McGonagle again interviewed NK and WC. NK told McGonagle that he did not recall speaking with anyone about the matter, never discussed it with the LPN and that he had no new information. WC told McGonagle that he recalled having a brief conversation with the LPN in the parking lot and that she described the incident in 10 Block as "f-----d up." WC told McGonagle that he did not understand what the LPN was referring to and never talked to her about Hocking striking the inmate or stepping on his leg chain. There was no evidence that Complainant ever spoke to those involved about the incident. (Ex. R-18)

32. McGonagle issued a report dated November 26, 2007. (Ex. R-18) His report concluded that "there was no supportive evidence to substantiate the claim that the inmate was mistreated by escorting staff while being escorted down the Block 10 stairs from the unit." He determined that inmate A's allegations were "not sustained." McGonagle's findings were accepted by the OIS chief and forwarded to then Deputy Commissioner James Bender, who was charged with conducting a final review of every Category II investigation. (Ex. R-18; Testimony of Bender)

33. Bender testified that after reviewing the investigative documents and McGonagle's findings he concluded that the report raised questions about the incident, and on January 3, 2008, he referred the investigation back to the OIS chief for further review. McGonagle subsequently re-interviewed the two C.O.s who again denied seeing Hocking strike the inmate. He did not re-

interview Complainant. McGonagle added an addendum to his report but did not alter his earlier findings. (Ex. R-18; Testimony of Bender)

34. Following an Executive Review, if an allegation of misconduct against an employee was substantiated, but the Deputy Commissioner determined the conduct was not sufficiently severe to warrant more than a 3-day suspension, he could refer the matter to the Superintendent of the facility where the conduct arose for appropriate action. If he determined the conduct should result in a 5-day suspension or more, he would refer the matter for an internal Commissioner's Hearing under G.L. c. 31, sec. 41. (Testimony of Bender, Day 2)

35. On or about February 11, 2008, Bender drafted his Executive Review overturning McGonagle's ultimate finding. He concluded that Hocking did strike inmate A and used excessive force during the escort in violation of sec. 10(a) of the Blue Book. He also determined that Hocking violated sec. 19(c) of the Blue Book by not testifying truthfully during the investigation and by filing a false disciplinary report in stating that the inmate had taken a "dive" and made false accusations against him. (Testimony of Bender; Ex. R-18)

36. Bender also found that COs NK and WC both violated sec.19(c) of the Blue Book by not testifying truthfully during the investigation and filing a false report that the inmate took a "dive" and had not been assaulted by Hocking. (Exhibit R-18h; testimony of Bender, Day 3) He wrote that NK and WC also contradicted the video evidence that Hocking put his hand on their shoulders.

37. Bender found that Complainant also violated sec. 19(c) of the Blue Book by not testifying truthfully during the investigation and filing a false report indicating that the inmate took a "dive" and had not been assaulted by Hocking. He found the account of the LPN who witnessed the incident to be consistent and credible. He also noted that a physical examination

of inmate A showed that he had an abrasion on his ankle consistent with the LPN's testimony that the COs told her Hocking stepped on the inmate's leg chain.[4] Bender acknowledged that Complainant's report was not the same as NK's and WC's. (Ex. R-18; Testimony of Bender)

38. Bender ordered a Commissioner's Hearing for Hocking, NK, WC and Complainant. (Ex. R-18; Testimony of Hocking Day 2) Following a Commissioner's Hearing, if there is a finding of misconduct against an employee, the matter is referred to Respondent's Commissioner for a final decision. The Commissioner determines what level of discipline to impose for the infraction.

39. Around late September or early October of 2008, Hocking was told by "someone" at Respondent, whom he did not identify, that if he sought to avoid termination he should admit to hitting the inmate. He discussed the matter with Bender, who instructed him to re-write his incident report. When Hocking asked Bender if the punishment could be reduced to a suspension if he changed his report, Bender informed him that demotion was the pre-determined discipline. On October 2, 2008, 13 months after the incident, Hocking drafted a new Confidential Incident Report acknowledging that he did strike inmate A on the head during the August 23, 2007 escort. He wrote that he was directed by Bender to write the report. The revised report dwelt primarily on the actions of Hocking and the two COIs, who clearly colluded in the hit and the attempt to cover it up. (Ex. R-18; Testimony of Hocking, Day 2) Bender acknowledged that he instructed Hocking to amend his report. (Testimony of Bender) A Commissioner's Hearing was held on November 10, 2008. (Ex. R-1; Testimony of Bender, Day 3) No written report of the hearing was offered into evidence.

[4] Notably, the LPN did not reference Complainant in her report.

40. On January 22, 2009, Commissioner Harold Clarke issued a letter demoting Hocking from COII to COI for having hit inmate A and for being less than truthful in the investigation. Following his demotion, Hocking was elected to MCOFU's executive board which resulted in his pay being elevated above that of COI. The pay of MCOFU officials may be paid partially or wholly by Respondent or MCOFU, as determined by the Collective Bargaining Agreement between Respondent and MCOFU. (Testimony of Complainant, Day 1; Testimony of Hocking, Day 2) [5]

41. Commissioner Clarke imposed a 5-day suspension and final warning for COs NK and WC. (Exs. R-4; R-24)

42. On January 19, 2009, Commissioner Clarke found that Complainant filed a false report, lied when questioned by McGonagle and wrote that as a Sergeant he was required to ensure rules are obeyed by others. Clarke imposed a 5-day suspension and a final warning on Complainant. (Ex. R. 1; R-24)

43. CO's WC, NK and Complainant jointly appealed their 5-day suspensions and final warnings to the Civil Service Commission, which upheld the disciplines on September 4, 2009. With respect to Complainant, the Administrative Magistrate found that Complainant testified untruthfully that he did not see Hocking hit inmate A and that his incident report was untruthful in stating he did not observe the hit and saw Inmate A drop himself to the floor. The magistrate determined that his dissembling merited the 5-day suspension under Rule 19d based on his rank. She made mention of Complainant's disciplinary record consisting of discretionary infractions

[5] Hocking had previously taken the Lieutenant's exam and when Respondent refused to promote him from COI to Lieutenant, Hocking appealed to the Civil Service Commission, where the matter was settled before hearing by Hocking receiving a promotion to Lieutenant in 2012. (Testimony of Hocking, Day 2)

that occurred four years earlier before he was promoted and transferred to Cedar Junction. (Ex. R-4)

Incident of December 23, 2008

44. On December 23, 2008, Complainant was the Sergeant on duty when Correctional Officer TR, who is Black and Cape Verdean, was delivering a breakfast tray to an inmate, X. The inmate was on "solid door status," (meaning both the solid door and the barred door of his cell were closed) because he had been disruptive or had assaulted staff or inmates. When TR opened the solid door to deliver the tray to inmate X, the inmate threw a Styrofoam cup of urine onto TR's face and the upper part of his body. (Testimony of Complainant; Ex. R-14)

45. TR, who was very upset, took inmate X's tray, consisting of pancakes and syrup and slammed it against the bars of the inmate's cell. There was no evidence that the tray or its contents hit inmate X. TR left work after the incident and applied for workers' compensation. He remained out of work for several days. (Ex. R-14)

46. Complainant, who was the 10 Block Sergeant on duty, saw TR slam the tray against the bars and observed that the food from the tray did not hit X. He stated that although TR's conduct was not appropriate, it was in response to having been assaulted with the inmate's urine. At the time of this incident, Complainant had not yet received his 5-day suspension for the 2007 Hocking incident and he had received no discipline as a Sergeant. (Testimony of Complainant)

47. After the incident, Complainant reported the urine incident to his superior, Lieutenant Stratford, who is white. Complainant told Stratford that TR had attempted to deliver the inmate's tray, that the inmate had thrown urine on him and that he had secured the solid door. He did not initially tell Stratford that TR had slammed the tray against the bars because he was focusing on the assault by the inmate and he believed that the act would be seen on video

anyway. Video of the incident shows Stratford looking into X's cell after the incident. Stratford was not interviewed by Captain Edward Hammond, who was assigned to investigate the matter on December 23, 2008. (Testimony of Complainant; Testimony of Hammond; Ex. R-14)

48. After he went out of work, TR called Complainant, who lived nearby, and asked him to pick up a Workers' Compensation package for him. Complainant picked up the paperwork from TR and brought it to work the next day. TR called Complainant at work and asked Complainant to file TR's incident report by entering TR's name and password into Respondent's Inmate Management System on a work computer. Complainant typed the report into the Inmate Management System, using TR's password under TR's name. It is a violation of policy for anyone to share his password or to file a report on behalf of another person. (Testimony of Bender; testimony of Complainant)

49. Hammond testified that when he first interviewed Complainant, Complainant told him only that he observed TR throw the food tray against the bars. (Testimony of Hammond, Day 4) When Hammond interviewed Complainant a second time on February 3, 2009, Complainant acknowledged writing TR's incident report for him. Complainant told Hammond that although TR was wrong to throw the tray, Complainant did not initially report it because the contents of the tray, which he cleaned up, did not strike the inmate and he knew that TR's actions would be seen on the video anyway. (Ex. R-10; Testimony of Complainant)

50. When TR returned to work on December 23, 2008 he was informed of his removal from 10 Block, his reassignment to the DDU, and that there was a pending investigation regarding the tray-throwing incident. TR was not happy about his transfer to the DDU. On or about December 31, 2008, in the presence of others, he made disparaging remarks about certain employees, which included talk of killing Superintendent St. Amand or having him killed.

(Testimony of Bender: Ex. R-14) These remarks were reported to OIS and charges of violation of Respondent's workplace violence policy were incorporated into the investigation. On June 22, 2009, Commissioner Clarke terminated TR's employment. (Ex. R-14)

51. Captain Hammond's findings, dated March 18, 2009, stated that Complainant filed a false report by omitting that TR threw a food tray toward inmate X. Further, Complainant's actions of drafting and entering an incident report under TR's name and using TR's account violated Respondent's policy. Hammond's findings were accepted by the OIS chief and forwarded to Deputy Commissioner Bender for Executive Review. (Ex. R-14; Testimony of Hammond)

52. On March 18, 2009, Bender upheld Hammond's findings and found that Complainant violated the General Policy Sections 1 and 6(d) of the Blue Book by filing a false report and violated Security and Information Technology policies 103 Doc 753 and 103 DOC 756 by entering the computer system and writing a report under TR's password and name. Hammond referred the matter for a Commissioner's Hearing. (Testimony of Hammond; Ex. R-14)

53. On June 29, 2009, Commissioner Clarke informed Complainant by letter that he would be demoted to a COI for his conduct on December 22, 2008. Clarke found that Complainant had submitted a false report of the incident, failed to initially disclose that he traveled to TR's home to retrieve worker's compensation documents relative to the incident and that he used TR' s password and submitted a false report of the December 22, 2008 incident under TR' s name. (Ex. R-10)

54. Complainant appealed his demotion to the Civil Service Commission, which upheld the demotion. (Ex. R-6)

Comparators

Hocking

55. As discussed above, Stephen Hocking was given a demotion for having struck an inmate on the head, filing a false incident report and answering dishonestly when questioned about the incident during Respondent's internal investigation. Hocking was permitted to amend his false incident report a year after the incident, just prior to the Commissioner's hearing. He was told by Deputy Commissioner Bender that if he refused to admit hitting the inmate he would be terminated, but if he acknowledged doing so, he would be demoted. When Hocking requested a suspension instead of a demotion he was told it the decision to demote was a "done deal."

Schnurpfeil

56. Sgt. Charles Schnurpfeil, who is white, has worked at Respondent since July 2001 and became a Sergeant in February 2007. He worked at MCI-Cedar Junction from February 2007 to 2012. (Testimony of Schnurpfeil, Day 3) Schnurpfeil had previously received a 3-day suspension while stationed at another institution after an altercation with a female inmate who attacked him. After speaking with his supervisor about that altercation, his suspension was reduced to a letter of reprimand. Schnurpfeil testified that in that previous incident, he was charged with not appropriately using the emergency response system and was not charged with using excessive force. (Ex. C-12; Testimony of Schnurpfeil, Day 3)

57. On March 3, 2008, Sergeant Schnurpfeil was the officer in charge of an escort of an inmate, which involved several staff members, including six CO's, two sergeants and a Lieutenant. The inmate was combative and was placed in full restraints. When the escort reached their destination, and Schnurpfeil's team was about to be relieved, the inmate, who remained in full restraints and in a stair chair, became more disruptive, trying to tip the chair and

spit in the face of a CO. After the inmate spit at him, the CO punched the inmate in the face six times. Schnurpfeil grabbed the CO and relieved him of his duties and another officer took his place. After the incident, his team handed the inmate over to another escort team. (Testimony of Schnurpfeil)

58. The CO who struck the inmate was over six feet tall and weighed over 250 pounds. His punches to the inmate's face caused serious injury, including severe trauma to his cheeks, eye sockets, a broken nose and bleeding. (Testimony of Schnurpfeil) The inmate's injuries were so severe that he was removed from the facility by ambulance.

59. Schnurpfeil testified that after the beating, he and the other officers involved the escort went into a room off the Captain's office, discussed the incident and all submitted written incident reports into the computer system stating that the inmate caused his own injuries by banging his face on the stair railing. The inmate filed a complaint that he had been beaten by a CO. (Testimony of Schnurpfeil; Ex. R-10)

60. The matter was referred to Sgt. Donald Perry at OUI for investigation. Schnurpfeil testified that within two days after the incident Perry, whom he had worked with previously, contacted him to ask if he could provide any details of the altercation. Schnurpfeil arranged to meet with and be interviewed by Perry at Respondent's headquarters on March 4, 2008. Schnurpfeil told Perry he had been reluctant to report the assault out of fear of retaliation from other staff. Schnurpfeil acknowledged to Perry that the CO punched the inmate in the face after the inmate spit at him. On March 5, 2008, Schnurpfeil went to Respondent's headquarters in Milford where he submitted an amended incident report acknowledging that the CO struck the inmate in the face six times. He testified that the report had been typed out for him in advance

and that Investigator Perry, the Chief of ISU and Bender were all present at the time of his signing. (Ex. R-36); Testimony of Schnurpfeil)

61. James Bender reviewed all of the reports by the officers and was involved in the investigation of the matter. He testified that it was not credible that the inmate smashed his own face against the rail given the seriousness of the injuries. (Testimony of Bender)

62. Several COs who were part of the escort or witnessed the incident were also advised repeatedly to change their reports. (Testimony of Bender) It was common for Respondent's supervisory staff to give Correction Officers the opportunity to "come clean" by re-writing a false report. (Testimony of Hocking)

63. On April 18, 2008, Perry issued a report finding that the CO who had punched the inmate engaged in use of excessive force. The other employees involved in the escort and Schnurpfeil who amended their false reports to tell the truth about the incident were given 5-day suspensions. On August 4, 2009, the staff members who filed false reports and would not amend them, were suspended for 20 days. The discipline was determined solely by whether the employee told the truth or continued to lie about the incident. (Ex. C-14; Ex R-36)

64. On September 5, 2008, Schnurpfeil attended a Commissioner's hearing conducted by a hearing officer. The sole issue before the hearing officer was whether Schnurpfeil had filed a false report. The hearing officer found that Schnurpfeil had done so. Her findings were forwarded to the Commissioner who imposed a 5-day suspension against Schnurpfeil, which was held in abeyance, for falsifying a report and covering up a correction officer's assault of an inmate in restraints. Schnurpfeil testified that the suspension was not immediately implemented because he told the truth in a matter of days after the incident occurred. (Testimony of Schnurpfeil) In March 2009, the following year, the 5-day suspension was ultimately

implemented when Schnurpfeil was found to have violated policy by failing to perform rounds and being evasive when answering questions about his failure to perform rounds. (Ex.C-14; C-15; C-17)

65. Hocking testified that as grievance coordinator for MCOFU from 2010 to 2016, he had participated in hundreds of grievances and he was familiar with the type of discipline issued by Respondent during this time period. He was familiar with the incident involving Schnurpfeil as he had read the entire investigative package and participated in the grievance of two of the officers involved and the arbitration of another of the COs. (Testimony of Hocking) I credit his testimony.

66. Hocking testified that based on his knowledge of the Schnurpfeil incident and the incident resulting in Complainant's demotion, in his view, Schnurpfeil received less harsh discipline than Complainant and Complainant was treated unfairly. Hocking testified that Schnurpfeil was given an opportunity to change his report and given 5-day suspension held in abeyance, in lieu of demotion, while Complainant was demoted for failing to fully an incident and submitting another CO's report. I credit his testimony. While Complainant's conduct did not involve the health and safety of an inmate and did not cause any injury, he was not afforded the opportunity to change his report.

COII Comparator Three[6]

67. Another Sgt., who is white, worked in 10 Block and repeatedly engaged in misconduct. He was promoted to the position of Sergeant on September 25, 2005. Before his promotion to COII, he had engaged in repeated conduct that violated Respondent's rules, including being the subject of three abuse prevention orders and failing to report involvement with law enforcement

[6] Comparators Three and Four are so-termed in this decision in order to protect their identities.

in 2000. After his promotion to Sergeant, he engaged in numerous acts of misconduct as detailed below, all of which occurred within a period of less than 14 months. In June 2006, he was suspended for three days with one day in abeyance for failing to conduct security rounds and ensure that his staff conducted security rounds on December 3, 2005 and for not accurately representing the incidents to Respondent investigators. (Ex.C-29) On July 26, 2006, he was arrested for domestic assault and was the subject of a 209A abuse prevention order. He failed to report this to the Superintendent. (Testimony of Bender; Ex. C-30) On August 20, 2006, he was arrested for DUI, a second offense, leaving the scene of a property damage accident, and failing to report it to Respondent; (Ex. C-30; Testimony of Bender) After the incidents of domestic assault and DUI, he was suspended for 15 days. When these incidents were investigated by internal affairs, the previously mentioned abuse restraining orders and failure to report involvement with law enforcement were discovered. (Testimony of Bender)

68. On July 12, 2006, while assigned to 10 Block, this same COII told an inmate, to "stop snitching," and referred to him as a "rat," in the presence of other inmates. During the investigation of this incident, the COII was found to have been less than truthful. The misconduct was serious because calling an inmate a rat places the inmate in potential grave danger and constitutes conduct unbecoming an officer. (Testimony of Bender) For this incident, the COII was suspended for sixteen days. This suspension was upheld by the Civil Services Commission (Ex. C-31)

69. On January 19, 2007, this COII failed to appear in district court and was arrested as a result. (Ex. C-33; Testimony of Bender) He did not report the court hearing or the arrest to Respondent. (Ex. C-33) He also had court hearings on January 26, 2007 and February 7, 2007 that he failed to report to Respondent. For this offense, he was suspended for 30 days. (Ex. C-

33) The 15-day and 30-day suspensions were imposed by then Acting Commissioner Ronald Duval (Exs. C-30; C-33)[7]

COII Comparator Four

70. On July 28, 2007, another Sergeant who is white, was the officer in charge at 10 Block on the 3:00 pm to 11:00 pm shift. An inmate who was a federal detainee housed at MCI Cedar Junction since October 2006, was transferred to 10 Block after starting a fight with another inmate. Because the inmate had been combative and disruptive earlier, the COII closed the solid door to his cell out of concern that he would act up again. The COII neglected to notify any supervising staff that he had placed the inmate on closed-door status which was a violation of Respondent's policy. The Shift Commander on both the 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m. shifts later told an investigator that the COII never told him the inmate was disruptive. The shift commander was not told about and he did not approve the closure of the solid door which was required under policy. Although the inmate was checked at 11:00 p.m. by staff on the next shift, at 1:00 a.m. the next morning, the inmate was found hanging in his cell. The COII involved immediately acknowledged that he did not follow protocol and was unaware that he was required to complete a Closed Door Restrictive Awaiting Action Status form and notify superiors of the inmate's status. The incident was investigated by Robert McGuiness. The OIC chief adopted the investigator McGuinness' findings and Bender sustained the findings on March 31, 2008. The COII was suspended for 20 days as the result of the incident. (Ex. R-40; Testimony of Bender)

[7] This COII was ultimately terminated by Commissioner Clarke on November 26, 2008 immediately after he made offensive and frightening remarks to women in the workplace.

Demotions at Respondent from January 1, 2008 to December 31, 2009

71. Complainant sought information from Respondent about similarly situated employees throughout Respondent facilities who had received demotions or similar discipline to Complainant and who were demoted between January 2008 through December 31, 2009. (Ex. C-5)

72. Respondent provided information identifying five individuals, including Complainant, two of whom were COIIs, and who are referenced herein as officers A through D. (Ex. C-5)

73. Officer A, a CPO-D (Correction Program Officer) at the Pre-Release Center at Pondville, was demoted to the position of CPO-C and transferred to South Middlesex Correctional Center for speaking in a derogatory and threatening manner to a CPO in front of other staff and lack of proper supervision. CPOs are responsible for inmates' records and the classification of inmates, generally do not have responsibilities related to care and custody of inmates and are not in the same union as COs. (Testimony of Complainant, Day 1; Ex.C-5)

74. Officer B, a Captain at OIS, authored an "anonymous" note and placed it on the car of a CO stating that the car had been damaged. When his connection to the note was questioned, B at first failed to respond truthfully. He was demoted to Lieutenant by Commissioner Clarke in February 2008. His demotion was later reduced to a 5-day suspension by an arbitrator's award and he was returned to the position of Captain on October 25, 2009. (Ex. R-11; C-5) I find that A and B are of little value as comparators as they are not Sergeants.

75. Officer C refers to Hocking, whose incident is described above.

76. Officer D, a COII at MCI-Concord, was demoted to COI by Commissioner Clarke on January 22, 2010 for either witnessing a CO using excessive force against an inmate or

committing an act of excessive force on March 30, 2009, writing a false incident report about it and being less than truthful about the incident when interviewed by a Department investigator. D's demotion was later rescinded by an arbitrator's decision on December 31, 2010. (Ex. C-5)[8]

77. Complainant was demoted from COII to COI on or about July 5, 2009. In 2015, Complainant took the Sergeant's exam. He ranked 3rd highest out of the 850 people who passed the exam. (Testimony of Complainant) He was promoted to Sergeant on or about August 12, 2018. The income he lost during the time period from his demotion in 2009 to the time he attained the rank of Sgt. again in 2018 was $67,761.00. (Jt. Ex. 1)

78. Complainant testified that when he received a letter in June 2009 informing him of his demotion he was "absolutely blind-sided." (Testimony of Complainant, Day 1) I credit his testimony.

79. Complainant was not transferred from 10 Block after his demotion and he testified that inmates ridiculed and taunted him because of his demotion and reminded him that other officers who had committed far worse offenses had not lost their rank. Complainant testified that the treatment by inmates made his job at the maximum-security prison, which was really tough before, nearly intolerable. I credit his testimony.

80. According to Complainant, his demotion also resulted in the abrupt end of a relationship with a woman whom he had been dating for several years. It also impacted his relationship with his daughter who he withdrew from. He stated that he was generally withdrawn and angry after his termination. I credit his testimony.

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[8] The letter of demotion states that "D" witnessed an assault by a CO I. The attached discipline history lists the violation as "Used excessive force/false incident report/less than truthful." These two pages of documents are the only evidence of record regarding D. They appear contradictory and lacked detail and thus they were of little probative value in this matter.

81. Complainant testified that he stopped engaging in all the activities he had enjoyed previously, including regular visits to the gym, practicing martial arts, riding his motorcycle and taking trips with friends. I credit his testimony that his physical and social activities diminished significantly as a result of his termination.

82. Complainant testified that he had worked very hard to become a sergeant by obtaining a college degree while working and being a single parent. He stated that his demotion struck at the core of his belief in himself as a competent professional. He observed white correction officers commit more serious offenses and retain their COII status and he believed that the difference in their treatment was related to race. Complainant continued to feel upset about his demotion up to the time of the public hearing. I credit Complainant's testimony that his termination caused him emotional distress.

III. CONCLUSIONS OF LAW

Complainant alleges that Respondent administered discipline in a selective manner that resulted in his being subjected to disparate treatment that was discrimination based on his race and color. General Laws c.151B s. 4(1) prohibits discrimination in the terms and conditions of employment on account of race and color. In order to establish a prima facie case of race and color discrimination, Complainant must show that he is a member of a protected class, that he was subjected to adverse treatment and that similarly situated persons not of his protected class were treated differently. Abramian v. President & Fellows of Harvard College, 432 Mass 107, 116 (2000); Wheelock College v. MCAD, 371 Mass 130 (1976). Once a prima facie case is established, Respondent must articulate a legitimate non-discriminatory reason for its actions. Abramian, at 116. If Complainant can demonstrate that the articulated reason or reasons are a

pretext for discrimination and that Respondent acted with discriminatory intent, motive or state of mind, then he will prevail. Lipschitz v. Raytheon Co., 434 Mass. 493 (2001).

5-day Suspension

As a Black man, Complainant is a member of a protected class. As of 2007, he was adequately performing his job as a COII and was promoted to Sergeant in that year. Complainant was issued a 5-day suspension for an incident that occurred in August of 2007, where he was charged with filing what Respondent believed was a false report stating that he did not observe Sgt. Hocking hit an inmate. [9] Complainant was subject to the same discipline as the two white COs involved in the matter, and there was no evidence that he was treated differently with regard to that incident. Therefore, he has not established a prima facie case of discrimination with respect to the discipline he received for filing a purportedly false report regarding the 2007 assault of an inmate by Sgt. Hocking.

Demotion

Complainant has established a prima facie case of discrimination on the basis of race and color in connection with his demotion, arising out of an incident in 2008 where he failed to report that a CO under his supervision threw a tray against the cell of an inmate, and subsequently filed a false report on behalf of the CO, using the CO's password. As stated above, Complainant is a member of a protected class who was successfully performing his job. He alleges that four white Sergeants at MCI-Cedar Junction engaged in similar or even more serious conduct during the same time period and were disciplined more leniently. Complainant provided evidence that white correction officers involved in serious infractions were permitted and even pressured to amend false incident reports in exchange for lighter discipline, while he

[9] It is of note that Complainant has never recanted the statements in his report, continued to assert they were true, and testified at the public hearing that he did not observe Hocking hitting the inmate. I credit this testimony.

was not offered the opportunity to do so. I find that the four white sergeants in question are similarly situated to Complainant in that they are officers of the same rank, who worked at the same institution during the same time period, were found to have violated Respondent's rules and were subjected to disparate discipline as follows: [10]

Sgt. Schnurpfeil was in charge of a large escort of a difficult inmate that included COs and Sergeants. Schnurpfeil witnessed an instance of severe excessive force by a CO under his command, who punched an inmate in the face six times, severely injuring him. Immediately after the beating, Schnurpfeil and the other staff colluded to file reports against the inmate for spitting on a CO, omitting the fact that the CO had beaten the inmate. Shortly thereafter, Schnurpfeil told the investigator, with whom he was acquainted, the truth about the incident. Thereafter, investigators repeatedly interviewed the other members of the escort and witnesses. All were pressured by investigators to amend their false reports in exchange for lighter discipline. Those who did amend their reports received 5-day suspensions and those who did not, received 20-day suspensions. Schnurpfeil was allowed to amend his report and was given a 5-day suspension held in abeyance. Although he had a previous reprimand on his record, there was no evidence that the disciplinary records or the rank of any of the staff involved were taken into account in determining discipline. The determining factor in the discipline imposed was the staff member's willingness to amend his report and provide a truthful account of the events.

Lt. Stephen Hocking, then a sergeant, who hit a shackled inmate who had spit on him and colluded with two COs under his direction to cover up the incident was allowed to amend his false incident report more than a year after the incident to admit that he had hit the inmate. He

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[10] I reject Respondent's assertion that consideration of Complainant's disciplinary record relative to the comparators makes him not "similarly situated." As discussed below, Respondent's reliance on disciplinary records to determine the level of discipline in a given situation is uneven at best.

did so under instructions from Deputy Commissioner Bender who advised him that he would not be terminated if he told the truth. For admitting the falsehood, he was demoted to the position of COI. Assaulting an inmate and falsifying the report of such assault whereby the inmate was seriously injured is objectively a far more serious infraction than the infraction for which Complainant was demoted. Complainant did not commit an assault on an inmate, but committed infractions related to falsifying records. More importantly, Complainant was not offered the opportunity to amend his report in exchange for lighter discipline.

COII Comparator Three had numerous suspensions imposed for engaging in repeated violations of policy, including arrests for DUI, leaving the scene of an accident, being the subject of multiple restraining orders for purported domestic abuse, and for failure to report contact with law enforcement, failure to report court appearances and referring to an inmate as a rat in the presence of other inmates.

COII Comparator Four was given a 20-day suspension for failing to notify superiors that he placed an inmate on closed-door status, following which that inmate committed suicide on the next shift.

The infractions committed by these COIIs involved potential criminal matters and risk to the physical safety and security of inmates and fellow officers. Based on the nature of the infractions committed, the opportunities offered white officers to amend their reports and admit to the infractions and the harsher discipline that Complainant received, I conclude that he has established a prima facie case of discrimination based on his race and color.

Once the Complainant has established a prima facie case of discrimination, the burden of production shifts to Respondent to offer legitimate, non-discriminatory reasons for its conduct. Abramian, supra; Wheelock College, supra.; Blare v. Husky Injection Molding Systems Boston,

Inc., 419 Mass 437 (1995). Respondent must "produce credible evidence to show that the reason or reasons advanced were the real reasons." Lewis v. Area II Homecare, 397 Mass 761, 766-67 (1986). If Respondent presents evidence of legitimate, non-discriminatory reasons for its actions, the Complainant must show that Respondent's reasons were a pretext for unlawful discrimination. Complainant need not disprove all of the non-discriminatory reasons proffered by the employer, but need only prove that "discriminatory animus was a material and important ingredient in the decision-making calculus." Chief Justice for Administration and Management of the Trial Court v. Massachusetts Commission Against Discrimination, 439 Mass. 729, 735 (2003). He must prove that Respondent acted with discriminatory intent, motive or state of mind. Lipchitz at 504.

Respondent advances several legitimate, non-discriminatory reasons for its decision to demote Complainant rather than suspending him as it did similarly situated white COIIs

With respect to Schnurpfeil, Respondent asserts the 5-day suspension, as compared to Complainant's demotion, was justified because Schnurpfeil quickly revised his report to admit the truth and because he had only one previous disciplinary matter while Complainant had several. Respondent suggested that Schnurpfeil's actions were considered admirable because he was the first to come forward with the truth, facilitating Respondent's further investigation of the matter. The favorable treatment afforded Schnurpfeil was in part due to his acquaintance with the investigator and Schnurpfeil's level of comfort in dealing with administrators. I find Respondent's claim that the disparate discipline was based on Complainant's disciplinary record was pre-textual. The evidence showed that the correctional staff who amended their reports to reflect the truth were given 5-day suspensions and those who did not amend their reports received 20-day suspensions. Based on the record before me, there was no consideration of the

rank or disciplinary history of the employees in determining the length of the suspensions. Those who received 5-day suspensions included COs, a Lieutenant and a Sergeant. Those who were given 20-day suspensions included COs and a Sergeant. The comparatively light discipline imposed for the cover up of this very serious assault on an inmate, as opposed to Complainant's demotion for an infraction in which there was no injury and no threat to the health and safety of individuals, cast further doubt on Respondent's assertion that Complainant's disciplinary record justified his demotion. Rather, it suggests that his disciplinary record was an after-the-fact justification for his demotion. [11] While Respondent purports to have legitimately considered disciplinary history in meting out discipline it is quite clear from the evidence that Respondent exercised significant discretion in determining when such history would be considered.

One COII comparator was issued five different suspensions for serious violations of Respondent's policies after being promoted to Sgt., including: failing to conduct security rounds and to ensure that his staff conducted security rounds; not accurately representing incidents to Respondent investigators; failing to report to Respondent his arrest for domestic assault charges and the issuance of 209A abuse prevention orders against him; arrest for OUI; and leaving the scene of a property damage accident. These were in addition to referring to an inmate as a rat, in the present of other inmates, placing the inmate in potential danger from reprisal by other inmates, and failing to be truthful in a subsequent investigation. All of these incidents occurred within less than a 14-month period and resulted in suspensions, not demotions. Respondent stated that this COII's conduct occurred primarily off-duty and thus was not connected to his

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[11] The Civil Service Commission upheld Complainant's demotion. While the MCAD is obligated to accept into evidence and consider the administrative decisions of other agencies, it is not bound by them. City of Boston v. MCAD, 39 Mass. App. Ct. 234, 240-41(1995) While the Civil Service Hearing Officer in the appeal of this case considered Complainant's disciplinary history, including his previous 5-day suspension, there is no evidence that it was a factor in Respondent's decision to impose discipline. In fact, the 5-day suspension for the 2007 incident was not imposed until after the December 2008 incident.

ability to perform his job duties whereas Complainant's violations were related to his job performance. The seriousness of the off-duty offenses does not merit such a distinction and I do not accept that these types of infractions involving potential criminal activity do not impact the ability to perform the job of CO. Moreover, Bender acknowledged that these incidents, an arrest for domestic abuse, arrest for OUI, a second offense leaving the scene of a property damage accident and a marked lane violation, were all serious violations of Respondent's rules. In addition, this CO failed to appear in district court and did not report his arrest or failure to appear and other missed court dates to Respondent. Finally, the incident in which he referred to an inmate as a rat was very serious, placed an inmate at risk of danger, and constituted conduct unbecoming an officer. During the investigation of this incident, the CO was less than truthful in the interview. Despite these infractions, Respondent's rational for his lighter discipline was that the discipline was imposed by Commissioners who were less inclined than Clarke to strictly follow progressive discipline. That Commissioner Clark imposed harsher discipline on Complainant can be viewed as yet another manifestation of selective enforcement in meting out discipline that can result in disparate treatment and discrimination.

Respondent also argues that decisions regarding discipline should focus on the severity of the underlying conduct, and that the conduct of the COII discussed above was less severe than Complainant's because it primarily occurred outside of the work place. I do not find this assertion to be credible and I conclude that it is an after-the-fact justification for Respondent's more lenient treatment of a white COII and a pretext for discrimination. In any event, the disparate discipline actually imposed by Respondent's administrators, regardless of the Commissioner and views on leniency, cannot be explained away by discretionary standards that implicate the race of the officers disciplined.

With respect to the lighter discipline of another COII comparator who was suspended for 20 days in lieu of demotion for failing to notify supervisors that an inmate who later committed suicide had been placed on solid door status, Respondent's reasoning was that this CO immediately acknowledged his error and had no previous discipline. While acknowledging that his actions might not have merited a demotion, neither did Complainant's. There were no lasting repercussions or consequences from Complainant's infractions, as opposed to the consequences of conduct by COIIs who perpetrated or covered up acts of negligence or violence that impacted the life, health and safety of inmates or staff.

In addition to formal disciplinary process, there existed at Respondent an informal back channel based on relationships between correctional staff and administrators which allowed Schnurpfeil and Hocking to informally negotiate their discipline with Respondent's administrators and investigators. Even within other institutions, others fared better than Complainant on other matters. Schnurpfeil was able to approach an administrator within a previous facility where he was stationed to reduce a 3-day suspension to a written reprimand. On the other hand, Complainant's attempts to have written reprimands for minor infractions removed from his files at Norfolk where the staff was overwhelmingly white were unsuccessful. I conclude that Complainant was foreclosed from the opportunity to engage in such bargaining in large part due to his race. I draw the inference that discriminatory animus prevented his access to certain privileges and relationships available to white officers which allowed them to bargain for lighter discipline. It is also worth noting that there existed at Respondent an unspoken code of silence and a culture of complicity among correctional officers which discouraged officers from informing administrators or reporting infractions by other officers, particularly acts of aggression or violence directed at inmates. The collaboration on submitting false reports

apparent in this case, suggests unwritten rules of conduct based on acknowledgment that officers depend on their fellow officers to "have each other's back" in circumstances that are frequently dangerous and threatening. This unfortunate reality seems to underly much of the conduct of officers who attempted to cover up violence by fellow officers. The tension between complying with formal rules and regulations and supporting fellow officers, even when they misbehave, is ever present for officers. I draw the reasonable inference that such pressures create greater difficulty for officers of color, who may be in the minority and attempting to fit in and be accepted by their peers.

Finally, while there is scant evidence in the record that Respondent's agents acted out of blatant or conscious bias against Complainant based on his race, the evidence of disparate treatment and outcomes is unmistakable. In light of these outcomes, the fact that the decision-maker may not have been aware of the motivation at the time, but acted with unconscious bias, neither alters the fact of its existence nor excuses it. "Unwitting or ingrained bias is no less injurious or worthy of eradication than blatant or calculated discrimination." See, Thomas v. Eastman Kodak Company, 183 F.3d 38 (1st Cir. 1999); citing Hopkins v. Price Waterhouse, 825 F2d 458, 469 (D.C. 1987) At the time of his demotion, Complainant had worked for years as a correction officer with a good record and no recent discipline except for minor instances of tardiness following his promotion to Sergeant in 2007. Based on all of the above, I conclude that Complainant has demonstrated that the articulated reasons for demoting were essentially a pretext for discrimination, and that "discriminatory animus was a material and important ingredient in the decision-making calculus." Chief Justice for Administration and Management of the Trial Court v. Massachusetts Commission Against Discrimination, 439 Mass. 729, 735 (2003).

Notwithstanding the above conclusions, I acknowledge that discipline for Complainant's infractions was merited, provided that such discipline was commensurate with the discipline imposed on white correctional officers for comparable violations. Since the discipline imposed on Complainant was harsher than the discipline meted out to similarly-situated comparators not of his protected class, I conclude that Complainant's demotion constituted unlawful discrimination based on his race, in violation of M.G.L.c.151B.

IV. REMEDY

Pursuant to M.G.L. c.151B §5, the Commission is authorized to grant remedies in order to make the Complainant whole. This includes an award of damages to Complainant for lost wages and emotional distress suffered as a direct and probable consequence of his unlawful treatment by Respondent. Bowen v. Colonnade Hotel, 4 MDLR 1007 (1982), citing Bournewood Hospital v. MCAD, 371 Mass. 303, 316-317 (1976); See Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997).

A. Emotional Distress

An award of emotional distress "must rest on substantial evidence and its factual basis must be made clear on the record. Some factors that should be considered include: (1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; and (4) whether the complainant has attempted to mitigate the harm (e.g., by counseling or by taking medication)." Stonehill College v. Massachusetts Commission Against Discrimination, et al., 441 Mass. 549, 576 (2004). In addition, complainant must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress. "Emotional distress existing from

circumstances other than the actions of the respondent, or from a condition existing prior to the unlawful act, is not compensable." Id. at 576.

Complainant testified that when he received a letter in June 2009 informing him of his demotion he was "absolutely blind-sided." Since he was not transferred from 10 Block after his demotion, he was subjected to embarrassment and humiliation when inmates ridiculed him harshly about the demotion, noting that other officers who had done far worse had not lost their rank. Complainant testified that the ridicule and taunting from inmates caused his work at the maximum-security prison to go from being a really tough job to nearly intolerable. He stated that he was withdrawn and angry. The distress from his demotion also impacted his relationships including, causing the abrupt end of a romantic relationship of several years and causing him to withdraw from his relationship with his daughter. Complainant testified that he stopped doing activities he had previously participated in, including frequent visits to the gym, practicing martial arts, riding his motorcycle and going on trips with friends. Since he had worked very hard to become a sergeant, earning a college degree while working and being a single father, his demotion struck at his core belief in himself as a competent professional. He observed other correction officers engaged in improper conduct of a more serious nature who retained COII status, believing that the difference in their treatment was because of his race, which was very upsetting to him. Complainant testified that he continued to feel upset about his demotion at the time of the public hearing. I conclude that Complainant suffered from emotional distress as a direct result of Respondent's discriminatory acts and I conclude that an award in the amount of $75,000.00 is appropriate compensation for the emotional distress he suffered.

B. Lost Wages

I also conclude that Complainant is also entitled to be compensated for the wages he lost from the time of his demotion until he was promoted again to Sergeant, as stipulated by the parties, amounts to $67,761.00.

V. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, section 5, it is hereby ordered that:

1. Respondent immediately cease and desist from engaging in discriminatory practices on the basis of race and color.

2. Respondent pay to Complainant the sum of $75,000.00 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

3. Respondent pay to Complainant the sum of $67,761.00 in damages for back pay with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

This constitutes the final order of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this 17th day of June, 2020.

Judith E. Kaplan

JUDITH E. KAPLAN,
Hearing Officer