Decision mailed: 11/13/09
Civil Service Commission
CB

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

BARON RODRIQUES,
Appellant

v.

DOCKET NO.: D-06-171

DEPARTMENT OF CORRECTIONS,
Respondent

Appellant's Attorney:

Valerie McCormack, Esq.
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Respondent's Attorney:

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Commissioner:

Daniel M. Henderson[1]

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Baron Rodriques (hereinafter "Rodriques" or "Appellant"), is appealing the decision of the Department of Correction (hereinafter "DOC" or "Respondent") to suspend him for three (3) days without pay for violation of DOC rules and regulations as well as G.L. c. 6 §178N.

The appeal was timely filed. A hearing was held on April 23, 2008 at the offices of the Civil Service Commission (hereinafter "Commission.") The witnesses were sequestered. The hearing

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

was declared private. Two (2) audiotapes were made of the Full Hearing. The parties submitted post-hearing proposed decisions.

FINDINGS OF FACT:

Eleven (11) exhibits were entered into evidence. Based upon the documents entered into evidence and the testimony[2] of the following witnesses:

For the Department of Correction:

- Antonio Rego
- Anna Coe
- Bonnie Jean Stanley
- Glenn LeBlanc
- John Cappello, Lieutenant, Department of Correction

For the Appellant:

1. Baron Rodriques, Appellant

I make the following findings of fact:

1. The Appellant, Baron Rodriques, is a tenured civil service employee in the position of Corrections Officer I and has been employed by the DOC since June 15, 1986. He is posted at the Old Colony Correctional Center facility. (Testimony of Appellant)
2. In the summer and fall of 2005, the Appellant resided in the area and frequented a 7-Eleven in Wareham, MA on his way to and from work and after work. The Appellant was a frequent customer other than commuting to and from work. He would go to the store almost on a daily basis. On some occasions, he would be dressed in his uniform. (Testimony of Coe, Stanley, Leblanc, and Appellant)
3. The Appellant has been married for seventeen (17) years and has three daughters. The Appellant believes that his oath of office as a Corrections Officer requires him to protect the

[2] The witnesses were ordered sequestered on the Appellant's motion.

public when he sees a situation requiring his action. He is especially concerned about the protection of children due to their vulnerability. He could not live with himself if something happened to a child because he failed to warn the child's parent. He never informed a customer of LeBlanc's status; only women employees who had their children in the store. He never told anyone that LeBlanc should be fired. The Appellant appears sincerely religious, moral and responsible. He has been the Pastor of the First Baptist Church of Bellingham since November of 2007. The Appellant is a tall, thin, neat, well dressed, professionally appearing Black or Hispanic male. He is polite, soft spoken and unassuming in demeanor. He answers directly any question for which he has a foundation and memory. I detected no attempt to deceive, mislead or avoid answering a question honestly. His answers rang true, forthright and heart-felt. I find his testimony to be very credible and reliable. (Testimony and demeanor of Appellant)

4. Glenn Leblanc (hereinafter "LeBlanc") is a Level 3 sex offender who was working at the Wareham 7-Eleven during this time. (Exhibit 11, Testimony Coe, Stanley, LeBlanc, and Appellant)
5. LeBlanc had fully complied with all the registration requirements for a Level 3 sex offender, including registering with both the Wareham and Mattapoisett Police Departments. (Testimony of LeBlanc)
6. The Appellant and LeBlanc live in the same neighborhood. The Appellant learned of LeBlanc's sex offender status through the Internet, media, and interactions with others in the community. (Testimony of Appellant)
7. When he was hired, LeBlanc informed Anthony Rego (hereinafter "Rego"), the owner of the 7-Eleven, of his Level 3 sex offender status. However, Rego did not inform the other

employees of LeBlanc's status at that time, because he did not think that it would be a problem. (Testimony of Rego)

8. Anna Coe (hereinafter "Coe") was also an employee at the same 7-Eleven. She testified that Rego never informed her of LeBlanc's sex offender status. (Testimony of Coe and Appellant)
9. On one occasion that the Appellant was shopping at the 7-Eleven, he observed Coe and LeBlanc working at the same time. The Appellant was concerned due to the presence of Coe's children, who were running around in the store including the store's backroom. (Testimony of Appellant)
10. The next time the Appellant was in the store, he asked Coe if she knew of LeBlanc's sex offender status. Coe said she was not aware of it. Coe became upset that she had not been informed of this. LeBlanc was not working that day. (Testimony of Coe and Appellant)
11. The Appellant was very concerned about LeBlanc's status and the presence of children in the store. He brought this issue up when he dropped in during the following two to three weeks. Coe believed that it was unprofessional on her part to talk about a fellow employee and she asked the Appellant not to bring up the subject when customers were in the store. She also told him that "her job could be in jeopardy if she kept talking about it." (Testimony of Coe)
12. The Appellant then informed the manager of the day shift, Bonnie Jean Stanley (hereinafter "Stanley"), of LeBlanc's Level 3 sex offender status. (Testimony of Stanley and Appellant)
13. Stanley was the mother of a ten year old who visited the store at times during the summer and fall of 2006. She informed the other employees about LeBlanc's status. (Testimony of Stanley and Appellant)
14. Rego testified that he was not concerned about the employee or other children's safety in LeBlanc's presence because there were cameras in the store. However, he admitted that

although he as the franchisee, had no problem with LeBlanc's status, the 7-11 franchiser might have a concern. (Testimony of Rego)

15. However, there were no cameras in the backroom, the same room where the Appellant had observed children at play. (Testimony of Stanley)
16. The Appellant has never discussed LeBlanc's status with any of the store customers. He did not mention the subject to LeBlanc or Rego. (Exhibit 7, Testimony of Coe, Rego, Stanley, and Appellant)
17. LeBlanc testified that many customers are aware of his status, that some have complained to the store about it. LeBlanc was aware that his picture with a notice of his status as being a sex offender had been posted at local police stations and in area locations with children, such as schools and day care centers. Le Blanc was required to register at both the Wareham and Mattapoisett Police Departments. (Testimony of LeBlanc)
18. LeBlanc served the Appellant as a customer many times and had no problem with him. He only had concern or apprehension about his job. (Testimony of LeBlanc)
19. LeBlanc worked at the store as an employee for about 3-4 years at the time of this hearing. He also had been promoted to a manager position. He has not lost his job at the 7-11. (Testimony of Rego)
20. Due to LeBlanc's concern about losing his job. Upon advice of his lawyer, he wrote a letter to the Secretary of Public Safety at the Sex Offender Registry Board on October 11, 2005, complaining about the Appellant. LeBlanc complained in the letter that due to the Appellant, he and his boss, Rego, were now forced to notify new employees of his sex offender status. He also admitted in the letter that the information that the Appellant was disseminating was "public information". However, it is also noted that Lt. Cappello did not sustain the charge

that the Appellant drove by the residence of LeBlanc with the intent of harassment. This alleged drive-by harassment was also contained in LeBlanc's letter. (Exhibits 7 & 8 Testimony of LeBlanc and Cappello)

21. This letter triggered a DOC investigation into the Appellant's actions. Lieutenant John Cappello (hereinafter "Lt. Cappello") of the DOC conducted the investigation of this matter. The Appellant was interviewed by Lt. Cappello on November 1, 2005. (Exhibits 3 and 8, Testimony of Cappello)

22. Lt. Cappello found and concluded in his investigative report that the Appellant had: 1.) Disseminated confidential information regarding a level three sex offender to the Public at large. 2.) Divulged confidential information regarding a former inmate to several civilians, while both in and out of uniform. 3.) Made reference to his badge during the discourse according to one eyewitness. 4.) Violation of the DOC rules and regulations by improper conduct affecting or reflecting upon any correctional institution or the DOC ...5.) Violation of MGL Chapter 6 sec. 178N whereas in part states: "Information contained in the sex offender registry shall not be used to commit a crime against a sex offender or to engage in illegal discrimination or harassment of an offender ..."by disseminating both confidential and CORI information regarding a former inmate. However, Lt. Cappello did not sustain the 6th charge that the Appellant drove by the residence of LeBlanc with the intent of harassment. Lt. Cappello found that the Appellant was in violation of the Rules and Regulations of Employees of the Massachusetts DOC[3] and M.G.L. c. 6, §178N. (Exhibits 6, 8, and 10, Testimony of Cappello)

[3] Rule 7(b) states in part that "Your uniform or official insignia shall be used discreetly and not for personal object or gain..."

23. The above enumerated charges against the Appellant by the DOC are premised on the use of mistaken terms or definitions. LeBlanc is described generally as a "former inmate"; while he should be described more specifically as he is by the relevant statutes, as a registered "level 3 sex offender". The information divulged is referred to as "confidential information"; while it should be termed as "public information". The use of other terms, such as: "improper conduct" and "commit a crime against …illegal discrimination or harassment of" will be addressed later in this decision. (Exhibit 8, administrative notice)

24. Lt. Cappello and the DOC based one of its six charges against the Appellant almost entirely on the allegation of one alleged witness. That charge 3.) The Appellant made reference to his badge during the discourse according to one eyewitness. That one alleged eyewitness, Dan Crombleholme was supposedly an employee of the 7-11, during the relevant period but no longer employed there, at the time of the hearing. Lt. Cappello only spoke with Crombleholme by telephone and did not have any basis to sufficiently identify him. Crombleholme was not properly identified by any of the other 7-11 employee-witnesses. Witness, Anna Coe an employee who supposedly worked at the same time that Crombleholme worked at the 7-11, did not remember him. She identified two other Dan's who worked there but not Crombleholme, a name she claimed she would definitely have remembered. (Exhibit 8, Testimony of Cappello and Coe)

25. Lt. Cappello testified that he had mailed a subpoena to Dan Crombleholme to appear as a witness for this hearing but that he failed to appear or contact Cappello regarding the subpoena. The mailed subpoena was not returned to Cappello. Since Dan Crombleholme is the only potential witness on the critical issue of the Appellant's reference to his badge, his hearsay statements to Cappello, as contained in exhibits or testimony, are not admitted and

are stricken from the record. Crombleholme is a missing witness, whose absence has not been explained by the DOC. The DOC was given the opportunity to resurrect this issue and produce Crombleholme as a witness, if it were to later learn that a justifiable excuse existed for Crombleholme's non-appearance as a witness. The DOC was ordered to then file a motion to reopen the hearing supported by affidavit, and if an excuse was found to be sufficient, the hearing would be re-opened for Crombleholme's direct testimony and cross-examination. The DOC did not file a motion to re-open the hearing. (Administrative notice)

26. **General Law Chapter 6: Section 178** defines the criminal offense of improperly obtaining or seeking to obtain criminal offender information**. Violations; punishment** Section 178. "Any person who willfully requests, obtains or seeks to obtain criminal offender record information under false pretenses, or who willfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with the provisions of sections one hundred and sixty-eight to one hundred and seventy-five, inclusive, or any member, officer, employee or agency of the board or any participating agency, or any person connected with any authorized research program, who willfully falsifies criminal offender record information, or any records relating thereto, shall for each offense be fined not more than five thousand dollars, or imprisoned in a jail or house of correction for not more than one year, or both."(Administrative notice)

27. The following is the relevant portion of the statute pertaining to a Level 3 sex offender: **Chapter 6: Section 178D. Sex offender registry** Section 178D. "The sex offender registry board, known as the board, in cooperation with the criminal history systems board, shall establish and maintain a central computerized registry of all sex offenders required to register pursuant to sections 178C to 178P, inclusive, known as the sex offender registry. The sex

offender registry shall be updated based on information made available to the board, including information acquired pursuant to the registration provisions of said sections 178C to 178P, inclusive. The file on each sex offender required to register pursuant to said sections 178C to 178P, inclusive, shall include the following information, [Level 3 sex offender] hereinafter referred to as registration data:

(a) the sex offender's name, aliases used, date and place of birth, sex, race, height, weight, eye and hair color, social security number, home address, any secondary addresses and work address and, if the sex offender works at or attends an institution of higher learning, the name and address of the institution;

(b) a photograph and set of fingerprints;

(c) a description of the offense for which the sex offender was convicted or adjudicated, the city or town where the offense occurred, the date of conviction or adjudication and the sentence imposed;

(d) any other information which may be useful in assessing the risk of the sex offender to reoffend; and

(e) any other information which may be useful in identifying the sex offender.

Notwithstanding sections 178C to 178P, inclusive, or any other general or special law to the contrary and in addition to any responsibility otherwise imposed upon the board, the board shall make the sex offender information contained in the sex offender registry, delineated below in subsections (i) to (viii), inclusive, *available for inspection by the general public in the form of a comprehensive database published on the internet, known as the "sex offender internet database"*. (Emphasis added, Administrative notice)

28. Misuse of information contained in the states sex offender registry is a crime. **General Law Chapter 6: Section 178N. Misuse of information; penalties** Section 178N. "Information contained in the sex offender registry shall not be used to commit a crime against a sex offender or to engage in illegal discrimination or harassment of an offender. Any person who uses information disclosed pursuant to the provisions of sections 178C to 178P, inclusive, for such purpose shall be punished by not more than two and one-half years in a house of

correction or by a fine of not more than $1,000 or by both such fine and imprisonment." (Administrative notice)

29. The word harassment is not defined in the relevant section of G.L. Chapter 6. **Chapter 6: Section 178C. Definitions.** (Administrative notice)

30. Criminal harassment is defined in **General Law Chapter 265: Section 43A. Criminal harassment; punishment** Section 43A. "(a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than two and one-half years or by a fine of not more than $1,000, or by both such fine and imprisonment. Such conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device including, but not limited to, electronic mail, internet communications or facsimile communications.

    (b) Whoever, after having been convicted of the crime of criminal harassment, commits a second or subsequent such crime, or whoever commits the crime of criminal harassment having previously been convicted of a violation of section 43, shall be punished by imprisonment in a house of correction for not more than two and one-half years or by imprisonment in the state prison for not more than ten years." (Administrative notice)

31. Notwithstanding the above statutory references, there is a statutory scheme under G.L. Chapter 6, allowing for lawful access to and use of criminal offender record information by certain individuals, entities, organizations and agencies and the public generally. See G.L. c 6 § 168, 171, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 173, 174, 175

and 178A. It is noted that some of these agencies or entities that have lawful access to criminal offender record information for the evaluation of employees, volunteers and care providers are: child care services, children's camps, children's programs and schools. (Administrative notice)

32. On June 13, 2006, there was a DOC disciplinary hearing to determine whether the Appellant had violated the DOC's regulations, and if so, to mete out the appropriate punishment. (Exhibit 4)

33. The Appellant was found at that DOC hearing to be in violation of DOC General Policy and DOC Rule 7(b) of the Blue Book as well as M.G.L. c. 6 § 178N. He was suspended for three (3) days. (Exhibit 2)

CONCLUSION

The role of the Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the Appointing Authority." Cambridge v. Civil Serv. Comm'n., 43 Mass. App. Ct. 300, 304 (1997). See Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003); Police Dep't of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); McIsaac v. Civil Serv. Comm'n., 38 Mass. App. Ct. 473, 477 (1995); Watertown v. Arria, 16 Mass. App. Ct. 311 (1983). An action is "justified" when it is done upon adequate reasons sufficiently supported by credible evidence, when weighted by an unprejudiced mind, guided by common sense and by correct rules of law. Commissioners of Civil Serv. v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971); Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the

efficiency of public service." School Comm. of Brockton v. Civil Serv. Comm'n., 43 Mass. App. Ct. 486, 488 (1997); Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983). The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.' " Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited.

The Appointing Authority's burden of proof is one of a preponderance of the evidence which is established "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-6 (1956). In reviewing an appeal under G.L. c. 31 § 43, if the Commission finds that there was just cause for an action taken against the Appellant by a preponderance of the evidence, the Commission shall affirm the action of the Appointing Authority. Falmouth v. Civil Serv. Comm'n., 61 Mass. App. Ct. 796, 800 (2004). The issue for the Commission is "not whether it would have acted as the Appointing Authority had acted, but whether, **on the facts found by the Commission**, there was reasonable justification for the action taken by the Appointing Authority in the circumstances found by the Commission to have existed when the Appointing Authority made its decision." (Emphasis added) Arria at 334. See also Stratton at 727-8; Commissioners of Civil Serv. v. Mun. Ct. of Boston at 86.

The Commission must take account of all credible evidence in the administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256,

264-65 (2001) It is the function of the hearing officer to determine the credibility of evidence presented through witnesses who appear before the Commission. See Covell v. Department of Social Svcs, 439 Mass 766, 787 (2003); Doherty v. Retirement Bd., 425 Mass. 130, 141 (1997); Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988)

"The commission's task, however, is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision'". Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006). See Town of Watertown v. Arria, 16 Mass.App.Ct. 331, 334 rev.den., 390 Mass. 1102 (1983) and cases cited.

If the Commission decides to modify a penalty, it must provide an explanation of its reasons for doing so, because a decision to modify shall be reversible if unsupported by the facts or based upon an incorrect conclusion of law. Police Comm'r of Boston v. Civil Serv. Comm'n., 39 Mass. App. Ct. 594, 602 (1996); Faria v. Third Bristol Division of the Dist. Ct. Dep., 14 Mass. App. Ct. 985, 987 (1982). When the Commission modifies an action taken by the Appointing Authority, it must remember that the power to modify penalties is granted to ensure that employees are treated in a uniform and equitable manner, in accordance with the need to protect employees from partisan political control. Falmouth v. Civil Serv. Comm'n. at 801; Police Comm'r of Boston v. Civil Serv. Comm'n. at 600.

The Appellant appeals the finding that he violated General Policy and Rule 7(b) of the Blue Book as well as G.L. c. 6 § 178N as follows:

Blue Book Rule 7(b): General Conduct - Employees

States in part that "Your uniform or official insignia shall be used discreetly and not for personal object or gain…"

M.G.L. c. 6 § 178N:

States in part that "Information contained in the sex offender registry shall not be used to commit a crime against a sex offender or to engage in illegal discrimination or harassment of an offender…"

The first charge is associated with the Appellant wearing of his uniform while informing employees about LeBlanc's sex offender status, and allegedly pointing to his badge and saying that it meant that he had to protect people. Although the Appellant admits to wearing his uniform on some occasions while discussing LeBlanc's status, he asserts that he never mentioned his employment with the DOC and never referenced his badge or uniform. It is routine practice for uniformed public safety or law enforcement officers to travel to and from work in uniform. It is also common practice for those commuting officers to stop-off on errands while in uniform. The Appellant was off-duty and acting within his rights as a private citizen during the time he is accused by these charges.

The investigation report contains an interview of an alleged witness named Daniel Crombleholme (hereinafter "Crombleholme"), a former employee of the 7-Eleven. That alleged witness was never sufficiently identified and he also failed to appear as a witness for this Commission hearing after being subpoenaed by the DOC. No excuse was presented for his absence, despite having the opportunity to present such excuse and then call him later as a witness. The investigative report claims that the Appellant had informed "Crombleholme" that there was a sex offender named "Glenn something" working at the 7-Eleven store and that he pointed to his badge and said "this badge means I have to protect people". "Crombleholme" is the only witness to allegedly claim that the Appellant ever made a reference to his badge or uniform when discussing the sex offender status of LeBlanc. This is a hearsay statement on a

critical issue, by an insufficiently identified witness, not corroborated by other evidence and untested by cross-examination. I do not credit this statement and any testimonial or documentary evidence referring to it, is stricken from the evidence.

DOC Rule and Regulation Rule 7(b) states that the uniform and insignia should not be used for personal gain. This Rule generally refers to an employee trying to get special treatment due to his status as a DOC employee, which the Appellant was not trying to do. The Appellant, acting as a private citizen, while off-duty, had nothing to personally gain, from informing employees with children at the 7-Eleven that there is a sex offender working there. It is clear from the sex offender registry statutes that the purpose of the registry is to notify the public so that it might protect itself, especially children, from this potential danger. The Appellant, as a citizen and member of the public had a right to use or disseminate this "public information" for its intended purpose. The Appellant acquired this "public information" from the internet among other public sources and specifically not through his employment as a corrections officer. He violated no rule, regulation or statute in acquiring this information or in disseminating it. He was discreet and informed only women employees who had their own children in the store during working hours. He did not inform customers, LeBlanc or the store owner. All of the witnesses' testimony confirmed that the Appellant did not inform other customers and his intent was not to embarrass LeBlanc or get him fired or in trouble at work, but just to ensure the children who visited the store were protected; the very purpose of the sex offender registry law. Compare another case addressing the issue of off-duty conduct and its nexus to employment and/or its reasonable relationship to the fitness of the employee to perform in his position. *See* Baldasaro v. Cambridge, 10MCSR 134, (1997) In *Baldasaro*, the Appeals court upheld the Civil Service Commission decision reversing the suspension of heavy motor equipment operator, who used

lewd, gross and threatening language while off-duty to a meter maid. City of Cambridge v. Baldasaro, 50 Mass. App. Ct. 1, (2000)

The second charge is harassment of a sex offender by disseminating information of his sex offender status. However, telling other employees of public information about his offense does not constitute harassment. M.G.L. c. 6 § 178N does not clearly define what constitutes harassment, so I turn to M.G.L. c. 265 § 43A, which states,

> "Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment ..."

I find that the Appellant's conduct does not even begin to approach this level of behavior to be termed harassment. The Appellant's behavior seems to be in full conformity with the law. LeBlanc seems to accept that his sex offender information was in the public domain. However, his concern for his employment caused him to focus only on the Appellant and not other customers who made similar complaints to the store. Le Blanc made a formal written complaint in his letter to the Secretary of Public Safety, that the Appellant drove by his residence to harass him. However, this accusation was not sustained at the DOC disciplinary hearing, and no evidence was presented of it at this Commission hearing. The Appellant did not disseminate LeBlanc's status to 7-Eleven employees with a malicious intent to alarm him or cause him substantial emotional distress; his goal was merely to protect the children that he saw visiting the store when he was present.

Additionally, the Appellant's actions would not cause substantial emotional distress given the other circumstances of this case. Any emotional distress caused to LeBlanc was due to his public status as a registered Level 3 sex offender at the registry. Stanley, after the Appellant first informed her, had told almost all of the other employees of LeBlanc's status and LeBlanc

informed the owner when he was hired. Since almost everyone else, including customers already knew; the Appellant's information had merely a marginal effect on the security of LeBlanc's employment at 7-Eleven. LeBlanc's employer was aware of his status and, despite that, he hired, promoted and retained him .LeBlanc testified that his concern about his job was based on his belief that the Appellant was talking about his status to customers and that this would cause business to drop and Rego to fire him. However, the Appellant did not inform any customers of LeBlanc's status. Therefore, the Appellant's actions did not impact the customers or the amount of business the store received, which was something Rego also attested to. However, in his letter to the Secretary of Public Safety, LeBlanc stated that the Appellant had been "trying to get him fired for several months", which assertion is unfounded on the credible evidence in the record. LeBlanc's other stated concern; that he or Rego were forced to disclose his status to all new employees, should have been Rego's policy from the beginning. Based on all of the above, including the Appellant's lack of intent, I find that the Appellant's actions do not reach the level of behavior to be termed harassment as stated in M.G.L. c. 6 § 178N nor does his actions constitute the use or wearing of his uniform or badge for personal object or gain, in violation of DOC Rule and Regulation Rule 7(b). It is noted that LeBlanc had the option of pursuing any perceived civil and/or criminal violation against the Appellant in the proper venue and forum but he chose not to do so.

For all of the above reasons, the Appellant's appeal under Docket No. D-06-171 is hereby ***allowed***. The three day suspension is vacated and the Appellant shall be returned to his position without any loss of pay or other benefits.

Civil Service Commission,

Daniel M. Henderson,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis and Stein, Commissioners on November 12, 2009)

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:
Valerie McCormack, Atty.
Jeffrey S. Bolger-DOC