

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

COREY SCAFIDI,

Appellant

v.

Case No.: D-12-33

**DEPARTMENT OF
CORRECTION,**

Respondent

DECISION

The Civil Service Commission (Commission) voted at an executive session on June 13, 2013 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated March 28, 2013. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on June 13 2013.

A true record. Attest.

Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:

Earl Wilson, Esq. (for Respondent)

Regina Ryan, Esq. (for Appellant)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Corey Scafidi,
Petitioner,

v.

Docket No. D-12-33
DALA No. CS-12-233
Date: March 28, 2013

Department of Correction,
Respondent.

Appearance for Petitioner:

Regina M. Ryan, Esq.
Louison, Costello, Condon & Pfaff, LLP
101 Summer St
Boston, MA 02110

Appearance for Respondent

Earl Wilson, Esq.
Director of Employee Relations
Department of Correction
P.O. Box 946
Norfolk, MA 02056

Administrative Magistrate:

James P. Rooney, Esq.

Summary of Decision

The Department of Correction has shown just cause to impose a one day suspension on a correction officer whose conduct towards a correction lieutenant violated the Massachusetts Department of Correction General Policy I, Rule 1, and Rule 6(a).

DECISION

Petitioner, Correction Officer Corey Scafidi, appealed a December 15, 2011 decision of the Department of Correction imposing a one day suspension for violating

the Department's General Policy I, Rule 1, and Rule 6(a) during a confrontation he had with Lieutenant Edwin Gonzalez on April 14, 2010. After a hearing, I conclude that the Department of Correction has shown reasonable justification for its conclusion that Officer Scafidi violated Department rules and that a one day suspension was warranted.

I held a hearing at the Division of Administrative Law Appeals on May 18, 2012. Officer Scafidi testified on his own behalf; Lieutenant Gonzales and Sergeant Rowdy Hough testified for the Department of Correction. I took twenty-six exhibits into evidence and I made a digital recording of the hearing. I now add Officer Scafidi's appeal letter as Exhibit 27.

Findings of Fact

Based on the testimony and exhibits presented at the hearing and reasonable inferences from them, I make the following findings of fact:

1. Officer Scafidi has been employed by the Department of Correction as a Correction Officer I since July 15, 2005. (Scafidi testimony; Ex. 2.)
2. On April 14, 2010, Officer Scafidi was working in the Health Services Unit at MCI Concord on the 3 p.m. -11 p.m. shift. Officer Scafidi received permission from his supervisor to go into the MCI Concord yard to speak with Correction Officer Richard Wetherell, which he did for 15-20 minutes. A "mass movement" of 40 - 50 inmates took place at this time. (Scafidi and Gonzalez testimony; Ex. 18.)
3. While out in the yard, Lieutenant Edwin Gonzales, a superior officer for whom Officer Scafidi had worked previously, approached Officer Scafidi and asked if he could speak with him. (Gonzales & Scafidi testimony; Ex. 18.)

4. Officer Scafidi went over to Lieutenant Gonzales, who began questioning him about his use of sick time the day before when he went home early. Officer Scafidi immediately challenged Lieutenant Gonzalez's authority to question him with respect to his sick leave usage. Captain Michael Edwards was Officer Scafidi's shift commander and the supervisor on the day he used sick leave. (Scafidi testimony; Ex. 18.)

5. Lieutenant Gonzalez was not asked or instructed by Captain Edwards, or any other supervisor, to approach Officer Scafidi regarding his use of sick leave and the Lieutenant was not Officer Scafidi's supervisor that day. (Gonzalez testimony.)

6. Lieutenant Gonzalez used a string of profanity towards Officer Scafidi, at which point Officer Scafidi stepped up to the Lieutenant and stated, "It's the middle of mass movement you idiot, I'm not talking to you about this right now." (Scafidi and Gonzalez testimony; Ex. 18.)

7. Lieutenant Gonzalez again used profane language towards Officer Scafidi and Officer Scafidi referred to the Lieutenant as a "moron." At this point, Officer Wetherell stepped in between Gonzalez and Scafidi to prevent an incident. (Scafidi testimony; Gonzalez testimony; Ex. 18.)

8. Immediately following the exchange, Lieutenant Gonzalez, Officer Scafidi, and Officer Wetherell went to the captain's office and filed incident reports. (Scafidi testimony; Gonzalez testimony; Ex. 18.)

9. The incident was investigated by Sergeant Rowdy Hough. Sgt. Hough concluded that Officer Scafidi made disrespectful statements while engaged in heated discussion with Lieutenant Gonzalez. (Hough Testimony; Ex. 18.)

10. On September 27, 2011, Superintendent Bruce-Gelb informed Officer Scafidi that he would be suspended for two days for violation of General Policy I, Rule 1, and Rule 6. (Ex. 12.) Lt. Gonzalez was also suspended for two days. (Gonzalez testimony.)

11. Officer Scafidi appealed and a hearing was held before Labor Relations Advisor Joseph Santoro on November 18, 2011. On November 30, 2011, Mr. Santoro concluded that there was just cause to discipline Officer Scafidi, but that the level of discipline should be reconsidered. (Ex. 4.)

12. Commissioner Luis Spencer reduced Officer Scafidi's discipline from a two day to a one day suspension. (Ex. 2.)

13. On January 31, 2012, Officer Scafidi timely appealed the decision to the Civil Service Commission. (Ex. 27.)

Discussion

The decision of the Department of Correction to suspend Correction Officer Cory Scafidi for one day should be affirmed because the Department has shown sound reasons for its decision.

The role of the Civil Service 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 authority." *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304, 682 N.E.2d 923, 926 (1997). Reasonable justification means that the appointing authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense

and correct rules of law. *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 211, 214, 268 N.E.2d 346, 348 (1971).

It is not disputed that Lieutenant Gonzalez and Officer Scafidi engaged in a heated interchange during which Officer Scafidi questioned Lieutenant Gonzalez's authority and called the Lieutenant a moron and an idiot. Inmates and another Officer, Officer Wetherell, were able to witness the exchange. The exchange became so heated that Officer Wetherell felt compelled to step in in order to prevent further incident between Officer Scafidi and Lieutenant Gonzalez.

The Rules and Regulations Governing All Employees of the Massachusetts Department of Correction govern Officer Scafidi's conduct at MCI Concord. General Policy I provides that:

Improper conduct affecting or reflecting upon any correctional institution or the Department of correction in any way will not be exculpated whether or not it is specifically mentioned and described in these rules and regulations.

Rule 1 provides that:

Employees should give dignity to their position.

Rule 6(a) provides that:

Correctional goals and objectives can best be achieved through the united and loyal efforts of all employees. In your working relationships with coworkers you should treat each other with mutual respect, kindness, and civility, as become correctional professionals. You should control your temper, exercise the utmost patience and discretion, and avoid all collusion, jealousy, and controversies in your relationships with coworkers.

Officer Scafidi's decision to confront Lieutenant Gonzalez about his authority to question him and to call the Lieutenant a moron and an idiot was improper conduct affecting the Department of Correction. Correctional facilities are run on a manner that relies heavily on respect for superior officers. Although Lieutenant Gonzalez was not Officer Scafidi's direct superior on the day of the incident, he was the superior officer in the yard on that day. I conclude that Officer Scafidi's disrespectful behavior toward Lieutenant Gonzalez violated General Policy I.

Additionally, Lieutenant Gonzalez's undignified conduct towards Officer Scafidi did not excuse Officer's Scafidi's heated response and the names he called the Lieutenant. Officer Scafidi thereby violated Rule 1 and 6(a). Officer Scafidi did not give dignity to his position when arguing with the Lieutenant in the yard with inmates and at least one other officer around. Furthermore, Officer Scafidi did not treat Lieutenant Gonzalez with respect and he did he act with the utmost patience and discretion when he stepped up to Lieutenant Gonzalez in the yard and called him an idiot and a moron.

I therefore recommend that the Civil Service Commission affirm the Department of Correction's decision to suspend Officer Scafidi for one day.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney
First Administrative Magistrate

Dated: March 28, 2013