

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

MAURA A. SCOTT,
Appellant

v.

Docket NO. D-08-277

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:

Valerie A. McCormack, Atty.
Louison, Costello, Condon & Pfaff, LLP
67 Batterymarch Street
Boston, MA 02110

Respondent's Attorney:

Amy Hughes, Atty.
Department of Corrections
Division of Human Resources
P.O. Box 946, Industries Drive
Norfolk, MA 02056

Commissioner:

Daniel M. Henderson

DECISION

The Appellant, Maura A. Scott (hereinafter "Scott" or "Appellant"), appeals the October 31, 2008 decision of the Department of Correction (hereinafter "DOC" or "Appointing Authority") to permanently reassign her to the DOC facility at MCI-Norfolk. The appeal was timely filed. The Civil Service Commission (hereinafter "Commission") held a full hearing on March 9, 2009. The hearing was recorded on two (2) audio cassettes. Both parties submitted Proposed Decisions.

FINDINGS OF FACT

Eighteen (18) exhibits were entered into evidence. On or about November 25, 2008 the DOC filed a Motion to Dismiss on the ground of lack of jurisdiction, followed by a supplemental Motion on or about December 5, 2008. DOC witness Jeffrey Bolger filed an affidavit post hearing as directed and the Appellant thereafter filed a corresponding affidavit; both affidavits are admitted in evidence. Based on the exhibits submitted and the testimony of the following witnesses:

For the Appointing Authority:

- Scott Demoranville, Sergeant, MCI-Cedar Junction;
- Donald Perry, Sergeant, Office of Investigative Services, Department of Correction;
- Jeffrey Bolger, Director of Employee Relations, Department of Correction;

For the Appellant:

- Maura A. Scott, Appellant;

I make the following findings of fact.

1. The Appellant, a tenured civil service employee, was a Correction Officer I at MCI – Cedar Junction working the seven a.m. to three p.m. shift under the supervision of Sergeant Scott Demoranville (hereinafter “Demoranville”). (Testimony of Demoranville and Scott)
2. She had been employed by the DOC for approximately nineteen (19) years, hired by the DOC on 8/18/91. (Exhibit 7)
3. The Appellant had a prior disciplinary history, including
 - a three (3) day suspension for neglect of duty on 5/9/2008;
 - a letter of reprimand for general conduct on 4/11/2008;
 - a one (1) day suspension for insubordination on 7/17/2007;
 - a letter of reprimand for failure to immediately secure unit door on 6/26/2007;
 - a letter of reprimand for using inappropriate language with another staff member on 2/24/2004;

- a letter of reprimand for using profanity and making inappropriate comments toward another officer on 1/24/2003;
- a three (3) day suspension for criminal charges on 6/22/2000; and
- A written warning for unauthorized leave without pay on 9/11/1994.

(Exhibit 7)

4. G.L. c. 31 § 43 states, “[e]xcept for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished. Before such action is taken, such employee shall be given a written notice by the appointing authority . . .”

5. DOC officers are members of the Massachusetts Correction Officers Federated Union (hereinafter “MCOFU”). Section 4 of the collective bargaining agreement governing the DOC and the MCOFU states:

(a) Involuntary transfers may be made in accordance with Departmental needs for the good of the Department. However, involuntary transfers will not be made for the purpose of harassing employees. No transfer or reassignment shall impose unreasonable hardship on the affected employee as determined by Civil Service Law.

(c) The employer shall, whenever practicable, give an employee who is being transferred or reassigned ten (10) working days written notice.

(Exhibit 10, Affidavit and Testimony of Bolger)

6. The 1998 Memorandum of Agreement amended Article 14, Section 4 by adding the following:

Employees transferred/reassigned under this section shall be assigned to whatever shift/days off is available at the new facility the employee transferred/reassigned to until such time he/she can bid to a shift/days off by seniority. Any exceptions to this clause must be approved by the Commissioner of Correction and the President of MCOFU. (Exhibit 10, Affidavit of Bolger)

7. The Appellant and Inmate B, who is incarcerated at MCI Concord at the Housing Unit where the Appellant is assigned, have had altercations while she has worked in that unit.

Specifically,

- On March 5, 2008, the Appellant filed a disciplinary report on Inmate B for his behavior towards her after throwing a handball out of the prisoners' yard;
- On April 16, 2008, the Appellant filed a disciplinary report after the inmates yelled "Open my door" and "You fat bitch" at her; and
- On April 30, 2008, Inmate B told the Appellant, "people who treat people like assholes should be shot, like [the Appellant], and that he could punch her in the mouth. The Appellant reported these threats to DOC. (Exhibit 11)

Demoranville knew about the incidents between the Appellant and Inmate B. (Testimony of Demoranville)

8. By April 2, 2010, the Appellant and Demoranville had been working the 7 a.m to 3 p.m. shift together for two months. They had a good relationship. (Testimony of Demoranville)
9. That day, Demoranville allowed Inmate B, who had missed breakfast, to leave his cell to get coffee at or near lunchtime. When Inmate B exited his cell, he was in close proximity to the Appellant. (Exhibit 8 and Testimony of Demoranville)
10. The Appellant believed Demoranville gave Inmate B special treatment to purposefully upset her. (Exhibit 8 and Testimony of Demoranville). Demoranville acknowledges he knew about the Appellant's history with Inmate B but denies giving Inmate B any special consideration. (Exhibit 8 and Testimony of Demoranville)
11. Just after Inmate B retrieved his coffee, the Appellant, Officer Cheever [hereinafter "Cheever"] and Demoranville gathered in the Orientation Unit Control Room. The Appellant, facing the computer with her back turned to Demoranville, reported stating "that f-ing con must be a rat or sucking big dick." (Exhibit 8). Demoranville reported that the Appellant had said "[Inmate B] must be sucking my dick at night." (Exhibits 5 and 8)

12. Demoranville reported the Appellant's statement at two that afternoon. He reported feeling uncomfortable with the Appellant's ability to ensure his and the inmates' safety because of this incident and because the Appellant had previously questioned his authority in the unit. (Exhibits 5 and 8). He also reported the Appellant had asked him three times to write him up so that she would be off the unit. (Exhibits 5 and 8, Testimony of Demoranville)
13. The Appellant and Demoranville worked together for the rest of that day. Demoranville did not feel threatened, and the incident did not cause either of them to stop or interrupt work. The two had no further contact the rest of the day. (Exhibit 8, Testimony of Demoranville)
14. Demoranville has seen a therapist about this incident, has called in sick five (5) days rather than work when the Appellant is working. (Exhibit 8)
15. The DOC began an investigation concerning this incident on May 7, 2008, particularly with regards to workplace violence as set forth in the DOC Prevention and Elimination of Workplace Violence [hereinafter "Prevention Guidelines"]. The Investigator, Sgt. Perry, recorded interviews of Cheever, Demoranville and the Appellant concerning the April 2 incident. (Exhibits 6 and 4)
16. During the investigation, the Appellant used profanity in describing the 'system,' stating her comment to Demoranville was "direct to what a lot of staff think of cons, that they're [sic] either sucking good dick or they're (sic) rats; that's the way they get over the system [and] that's just the common way they get around the way they do." The Appellant also stated she would tell supervisors to write her up if the supervisors have issues with her. (Exhibits 6 and 8)
17. In the May 30, 2008 investigator's report, Investigator Sgt. Perry concluded the Appellant's conduct (a) violated § 237.02 of the Prevention Guidelines which defines workplace violence

as “actions including, but not limited to, any behavior that causes a disruption of workplace productivity;” and (b) the following provisions of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction [hereinafter “Rules”]:

- 6(A) In your working relationships with coworkers you should treat each other with mutual respect, kindness and civility, as become correctional professionals”
- 6(B) Do not foster discontent or otherwise tend to lower the morale of any employee, and be particularly discreet in your interest of the personal matters of any co-worker, or when discussing personal matters of yourself or another.
- 6(D) You shall readily perform such duty as assigned, and must exhibit at all times the kind of respect toward your superior which is expected and required in correctional service.
- 8(A) For those employees having job responsibilities which require inmate contact, your attitude toward inmates should be friendly . . .”
- 10(A) Employees shall not use profane or abusive language toward any inmate, nor reply in such language to what is perceived to be impudent or insulting words or actions by an inmate.

The investigator also found that Demoranville’s allegation of the Appellant’s sexual harassment was unfounded. (Exhibit 8)

18. On August 18, 2008, Acting Deputy Commissioner Timothy Hall informed the Appellant of his findings and referred the matter to a Commissioner’s Hearing. (Exhibit 12)
19. Commissioner Clarke, in a letter dated September 11, 2008, notified the Appellant of her October 21, 2008 Commissioner’s Hearing to address the above-stated violations and the additional following violations:

General Policy 1 – Nothing in any part of these rules and regulations shall be construed to relieve an employee of his/her primary charge concerning the safe-keeping and custodial care of inmates or, from his/her constant obligation to render good judgment, full and prompt obedience to all provisions of law, and to all orders not repugnant to rules, regulations, and policy issued by the Commissioner, the respective Superintendents, or by their authority. All persons employed by the Department of Correction are subject to the provisions of these rules and regulations. Improper conduct affecting or reflecting upon any correctional institution or the Department of Corrections in any way will not be exculpated whether or not it is specifically mentioned and described in these rules and regulations. Your acceptance of appointment to the Massachusetts Department of Correction shall be acknowledged as your acceptance to abide by these rules and regulations.

Rule 1, Standards of Correctional Service – Employees should give dignity to their position and be circumspect in personal relationships ...
(Exhibits 3 and 13)

20. On October 21, 2008, DOC held a Commissioner's hearing which the Appellant, Demoranville, MCOFU's representative, vice-president, and president, members of DOC's Employee Services, DOC Administrative Prosecution Unit, and DOC Office of Investigative Services Unit were present. Six days later, on October 27, 2008 Hearing Officer James Morrone concluded in his report that the Appellant had violated the provisions above because she made an inappropriate statement that was of a sexual nature and included profanity to Demoranville, made statements indicating Demoranville lacked control of the unit, had told Demoranville to write her up because she didn't want to work in the Orientation Unit, and that she made unprofessional remarks concerning inmates during her investigation. (Exhibit 14)
21. On October 31, 2008 DOC sent a letter to the Appellant stating she was "permanently reassigned." The letter stated that her new schedule would remain 7 a.m. -3 p.m, but that her new days off would be Tuesday and Wednesday. (Exhibit 1)
22. The Appellant filed her appeal with the Commission on Nov. 10, 2008. (Exhibit 2)
23. DOC Commissioner Harold Clark notified the Appellant on November 18, 2008 that she had violated General Policy 1, 6(a), 6(b), 6(d), 8(a), 10(a) of the Rules and provision 103 DOC 237.02 of the Prevention Guidelines. Additionally, he found "just cause to transfer [the Appellant] to MCI-Norfolk." (Exhibit 15)
24. On November 25, 2008, DOC informed the Appellant that the letter of October 31, 2008, was rescinded but that she was being "permanently transferred" as stated in the Nov. 18, 2008 letter. (Exhibit 16)

25. In his testimony before the Commission, Jeffrey Bolger, Director of Employee Relations, (hereinafter "Bolger") testified that moving the Appellant was a reassignment not a transfer. He testified that when she was reassigned, she did not lose her seniority, her position title, or pay. (Testimony of Bolger)
26. Bolger testified that he checked the commuter distance from the Appellant's home in Milford to her new assignment at MCI Norfolk and that distance is actually two (2) miles closer than her previous assignment. (Testimony of Bolger)
27. The Appellant did not experience a hardship due to her new assignment. The DOC did not make the reassignment for purposes of: discipline, harassment, retaliation or any other impermissible motivation. (Exhibits, testimony, testimony of Bolger)
27. Appellant testified that she experienced a change in her days off which is a contractual or collective bargaining issue attributable to seniority bidding at her new assignment. (Testimony of Appellant and Bolger)
28. When the Appellant wrote a confidential incident report regarding administrative transfer following the Commissioner's Hearing, that report was circulated among officers with whom she worked. (Exhibit 17).
29. Demoranville testified at the Commission that he did not remember the exact dates or circumstances surrounding the Appellant's three requests for him to write her up. Additionally, he testified that vulgar language and profanity are regularly used in the unit but that he had never written anyone up for it in the past. (Testimony of Demoranville)
30. The Appellant became very upset or "furious" at what she perceived as Demoranville's favorable treatment given to an inmate for the sole purpose of "screwing with" her. She became loud and vociferous in her protests to her fellow employees of her perceived

ignominy. She used tough, profane, abusive and unprofessional language to describe her displeasure, even to DOC Investigator Sgt. Perry. (Testimony of Perry, Exhibits 5 & 8)

31. Demoranville testified that the Appellant demanded three times that he write her up, if he didn't like her repeated complaints. He felt her behavior was a challenge to his authority and he had never had a problem with any other staff person before. He had never written a staff person up before. The Appellant's behavior had occurred in the presence of other staff was affecting his relationship with other staff. Other staff and inmates were also aware of her statements and behavior. Finally, he requested that either he or the Appellant be reassigned for the sake of maintaining a proper authoritative relationship. (Testimony of Demoranville)

CONCLUSION

The Commission's purpose is "to guard against political considerations, favoritism, and bias in governmental employment decisions When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission."

Town of Falmouth v. Civil Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (200) (quoting *Cambridge v. Civil Serv. Comm'n*, 43 Mass.App.Ct. 300, 304 (1997)).

Under G.L. c. 31, § 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 823 (2006). 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, 303, *rev. den.*, 426 Mass. 1102 (1997). See *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003); *Police Dep't of Boston v. Collins*, 48 Mass. App. Ct. 408, 411, *rev. den.*, 726

N.E. 2d 413 (2000); *McIsaac v. Civil Serv. Comm'n*, 38 Mass. App. Ct. 473, 476 (1995); *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

An action is justified if it is done “upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” *Commissioners of Civil Service v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971); *Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 303, *rev. den.*, 426 Mass. 1102 (1997). If the Commission finds the employee has engaged in substantial misconduct that would impair the efficiency of public service and thus adversely affect the public interest, it may find justification for discipline. *School Comm. of Brockton v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997). Ultimately, in reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission shall affirm the action of the Appointing Authority. *Falmouth v. Civil Serv. Comm'n.*, 61 Mass. App. Ct. 796, 800 (2004).

The issue before the Commission is whether the Appellant’s move from MCI – Cedar Junction to MCI – Norfolk was a reassignment or a transfer. For the protections of GL c. 33 § 35 to apply, the Appellant is required to establish that [she] was “transferred” within the meaning of Civil Service law.” *McQueen v. Boston Public Schools*, 21 MCSR 548 (2008). A transfer is “a change of employment under the same Appointing Authority from a position in one class to a similar position in the same or another class or a change of employ in the same position, under the same Appointing Authority, from one geographical location to a different geographical location which is both more than a commuting distance from the employee’s residence than his prior location and more distant from the employee’s residence than his prior location here” *Id.* at 549; *Paterson and Christianson v. Billerica Public Schools*, 20 MCSR 515, 516 (2007); *Sullivan*

v. Department of Transitional Assistance, 11 MCSR 80 (1998). When an employee remains an employee of an Appointing Authority and the new position does not impose a new travel burden, the job change is a reassignment. *Sands v. Salem*, 21 MCSR 502 (2008); *McQueen*, 21 MCSR at 528; *Grinuk v. Chicopee Mun. Lighting Plant*, 7 MCSR 118 (1994).

I find the Appellant's job change was a reassignment. In moving from MCI-Cedar Junction to MCI- Norfolk, the Appellant retained her same job position as Correction Officer I, the same job duties, and the same salary. Her commuting distance to MCI-Norfolk actually decreased. The bargaining agreement governing the Appellant's employment states that when employees transfer, their shifts and days off are assigned at the discretion of the DOC. Thus under Civil Service laws, the Appellant's move to MCI-Norfolk was a reassignment and is not under the jurisdiction of the Civil Service Commission.¹

The Appellant's repeated statements were provocative, profane and disruptive. She intended her repeated statement to be provocative and challenging to Demoranville. Other staff was aware of her statements and behavior. She repeatedly requested to be written up or be reassigned. Finally, Demoranville felt that either he or she should be reassigned for the sake of maintaining a proper authoritative relationship. Demoranville had never had an authority problem with a staff person before. The Appellant's argument that she was transferred was part of DOC's disciplinary response to her remarks to her supervisor previous to and on April 2 is not supported by the record. The Commissioner's statement that he had "just cause to transfer" the Appellant in his November 18th, 2008 letter might have lead the Appellant to believe she was being moved for disciplinary reasons. However, the DOC's formal correspondence concerning the Appellant's job change was rescinded as it related to being disciplinary. Under the totality of the

¹ The record does not support the Appointing Authority's assertion the Appellant's transfer to MCI-Norfolk was voluntary, only that she had in the past requested a change. Accordingly, we examined only at the issue of transfer or reassignment.

facts and circumstances of this matter, it appears that the DOC purpose in the move was administrative, for the purpose of separating the Appellant and Demoranville, due to the Appellant's challenging and disruptive statements and behavior. This move is characterized as a reassignment under Civil Service law. Although the DOC had just cause to discipline the Appellant under the circumstances of this matter, the reassignment to MCI-Norfolk was a reasonable administrative action, not one motivated by a desire to discipline.

Demoranville testified that the Appellant demanded three times that he write her up, if he didn't like her repeated complaints, since she wanted a reassignment. He felt it was a challenge to his authority and he had never had a problem with any other staff person before. He had never written a staff person up before. The Appellant's behavior was affecting his relationship with other staff. Finally, he requested that either he or the Appellant be reassigned for the sake of maintaining a proper authoritative relationship with staff.

Additionally, the Appellant voiced her strong statement that Demoranville had provided Inmate B with special treatment in the control room, in the presence of other staff. It was also foreseeable that her critical and insubordinate statements would be circulated among the other shift staff and inmates at MCI-Cedar Junction, further undermining the authority of the command structure. These factors alone are a sufficient basis for the DOC to administratively reassign the Appellant to another institution; it does not support a finding that the incident on April 2, 2008 and the Appellant's remarks to her supervisor resulted in a disciplinary transfer. Because no transfer occurred, the Appellant's appeal "must fail for lack of jurisdiction." *McQueen*, 21 MCSR at 549.

The Appellant's appeal under Docket No. D-05-332 is hereby *dismissed*.



Daniel M. Henderson
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell, Stein and Marquis, Commissioners) on January 27, 2011.

A true record. Attest:



Commissioner

**Commissioner Marquis was
absent on January 27, 2011**

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 to:

Valerie McCormack, Atty.

Amy Hughes, Atty.