

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 727-2293

SARAH STOWE,

Appellant

D-19-022

v.

DEPARTMENT OF CORRECTION,

Respondent

Appearance for Appellant:

Gerard S. McAulliffe, Esq.

43 Quincy Ave.

Quincy, MA 02169

Appearance for Respondent:

Julie E. Daniele, Esq,

Division of Human Resources

Department of Correction

Industries Drive, P.O. Box 946

Norfolk, MA 02056

Commissioner:

Paul M. Stein

DECISION

The Appellant, Sarah Stowe, acting pursuant to G.L.c.31,§42 & §43, appealed to the Civil Service Commission (Commission) from the decision of the Respondent, the Massachusetts Department of Correction (DOC), to suspend her for a total of thirty (30) days from her tenured position as a DOC Sergeant/Correction Officer II (CO-II).¹ The Commission held a pre-hearing conference in Boston on February 12, 2019 and held a full hearing at that location on April 8, 2019 and May 15, 2019, which was digitally recorded.² The full hearing was declared private, with witnesses sequestered. Thirteen (13) Exhibits were received in evidence (*Exhs. 1 through 13*). The Commission received Proposed Decisions from each party. For the reasons stated below, Sergeant Stowe's appeal is denied.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² CDs of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the DOC:

- Erin Gaffney, DOC Assistant Deputy Commissioner (formerly Superintendent)
- Timothy Stott, DOC CO-I/Internal Affairs Unit Investigator
- Deborah Witherspoon, Treasurer, MCI-Framingham

Called by the Appellant:

- DOC CO-II, Sarah Stowe, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Sarah Stowe, is a tenured DOC employee, appointed as a CO-I in July 2009 and promoted to CO-II in 2014, She is assigned to the 3PM-11PM shift at the Old Colony Correction Center (OCCC). (*Stipulated Facts; Testimony of Appellant*)

2. Sergeant Stowe had one prior disciplinary action, a two-day suspension that is pending arbitration. (*Stipulated Facts; Exh. 8*)

3. On Wednesday, October 18, 2017, the DOC Office of Investigative Services received information that a motor vehicle owned by Sergeant Stowe and operated by a former DOC inmate (Ms. A) had been involved in a head-on collision in Watertown. Ms. A appeared to be overdosing on narcotics, was administered NARCAN and charged with OUI and other motor vehicle violations as well as multiple drug offenses. (*Exhs. 5 & 7; Testimony of Stott*)

4. Sergeant Stowe knew Ms. A “when they were growing up” but they had ended the relationship when Ms. A “had gotten into some trouble.” After being reconnected with Ms. A through a mutual friend around the end of 2013, they became close personal friends (almost “family”). Sergeant Stowe assisted her in attending programs to address ongoing substance abuse issues. For a while, Sergeant Stowe spent the night at Ms. A’s residence, initially, about once a week, and later, once or twice a month. (*Exhs. 5, 6, 8 & 9; Testimony of Appellant & Stott*)

5. Within a few hours of the accident, Sergeant Stowe received a telephone call while on duty from Ms. A informing her of the accident. (*Exhs. 5, 6, 8 & 9; Testimony of Appellant*)

6. On October 19, 2017, Ms. A was arraigned on three criminal charges (Operating Under the Influence of Drugs, Possession of a Class B Controlled Substance and Operating Negligently) and transported to MCI Framingham where she was held in temporary custody, awaiting disposition of the criminal charges. (*Exhs. 5, 8 & 13*)

7. Ms. A listed Sergeant Stowe as her emergency contact upon incarceration. (*Exhs. 5 & 8; Testimony of Stott*)

8. On Friday, October 20, 2017, Sergeant Stowe spoke to OCCC Superintendent Gaffney (now Assistant Deputy Commissioner) and verbally requested that she be allowed to remain in contact with Ms. A. during her incarceration at MCI Framingham. Superintendent Gaffney did not act on the verbal request and instructed Sergeant Stowe to put her request in writing. (*Exh. 5; Testimony of Appellant & Comm'r Gaffney*)

9. By letter dated October 21, 2017, which was logged in as received by Superintendent Gaffney's office on October 24, 2017, Sergeant Stowe wrote: "I am writing to inform you that my close friend [Ms. A] was sentence (sic) to MCI Framingham on October 21, 2017 and that I would like to remain in contact with her (via mail, phone and possibly visits)." (*Exh. 5*)

10. On October 21, 2017, Sergeant Stowe purchased a \$100 money order and sent it to Ms. A. She wrote a letter to Ms. A informing her that "I set up the per-paid (sic) on my phone so you should be able to call me collect" and described other steps she took to get bills paid and bring toys for Ms. A's cat [Khloe], "trying to get over . . . every other day and hang out with her for a while so far so good I have all my fingers." She also offered to come to an upcoming court date in Norfolk Superior Court on November 6, 2017. (*Exhs 5, 6 & 10; Testimony of Appellant*)

11. On October 23, 2017, DOC Chief of the Office of Investigative Services, Internal Affairs Unit (IAU), opened an investigation into the Watertown accident and arrest of Ms. A while operating a vehicle owned by a DOC employee, i.e., Sergeant Stowe. (*Exh. 5; Testimony of Stott*)

12. By letter dated October 26, 2017, due in part to the pending IAU investigation, Superintendent Gaffney denied Sergeant Stowe's request and ordered that she was "not authorized to correspond, phone or visit with [Ms. A]." (*Exh. 5; Testimony of Comm'r Gaffney*)

13. Immediately upon receipt of Superintendent Gaffney's letter, Sergeant Stowe went to see the Superintendent. Sergeant Stowe said she thought that, since Ms. A was incarcerated in a different institution, it was a "given" that she would be approved to have contact with Ms. A. Superintendent Gaffney ordered Sergeant Stowe to write a CIR (Confidential Incident Report) explaining her actions, which she did on October 26, 2017, stating, in part: "On Friday October 20, 2017, I Sgt. Stowe did . . . notify [Superintendent Gaffney] that one of my close friends [Ms. A] was incarcerated to M.C.I. Framingham on Thursday October 19, 2017 For (sic) the term of ninety days. . . . I thought from the meeting on Friday with the superintendent that I was approve (sic) to keep in contact with [Ms. A]. I did mail two letters address (sic) to [Ms. A] on Saturday October 21 and on Thursday October 26 prior to receiving the denial letter." (*Exhs. 5 & 6*)

14. Phone logs of sixteen calls placed by or to Ms. A and monitored by the DOC during her incarceration at MCI Framingham from November 1, 2017 through November 25, 2017, include numerous references to Sergeant Stowe and describe her continued activity on behalf of Ms. A, including facilitating money orders and other financial transactions and checking on Ms. A's residence. These records do not reflect any direct phone contact between Ms. A and Sergeant Stowe, save for one call placed by Ms. A to Sergeant Stowe's personal cell phone on November 1, 2017, which was blocked by the DOC. (*Exhs. 5 & 7A-7C; Testimony of Stott*)

15. Logs maintained by the Treasury at MCI Framingham show a total of four money orders received by Ms. A during her incarceration there, including the \$100 money order dated October 21, 2017 which Sergeant Stowe acknowledges she sent, as well as three other money orders dated November 4, 2017 (\$100), November 13, 2017 (\$180) and November 30, 2017, which, unlike the October 21, 2017 money order, were received by mail with no return address. (*Exh. 10; Testimony of Witherspoon*)

16. Sergeant Stowe did not believe, and the evidence is inconclusive, as to whether she did attend the November 6, 2017 court date, at which time Ms. A. was found guilty in Norfolk Superior Court stemming from an unrelated earlier arrest in December 2016 involving possession and distribution of cocaine and various multiple prescription drugs. At that point, Ms. A's inmate ID at MCI Framingham was changed from an "A" number (temporary custody) to a "T" number (inmate serving a sentence). (*Exhs. 5, 6, 8 & 13; Testimony of Appellant, Witherspoon & Stott*)

17. On November 27, 2017, Ms. A pled guilty in Waltham District Court to the October 16, 2017 charges of Possession of Class B Controlled substance and Operating Negligently and ordered to serve a one year probation; the OUI was continued without a finding. (*Exh. 13*)

18. Ms. A. remained incarcerated at MCI Framingham until December 29, 2017. (*Exh. 8*)

19. During the IAU investigation into the October 18, 2017 incident, the DOC obtained a copy of Ms. A's CJIS record which disclosed the December 2016 offenses as well as an August 2016 arrest and incarceration at MCI Framingham, and an additional "temporary custody" incarceration at MCI Framingham from April 25, 2017 to May 5, 2017, all when Sergeant Stowe acknowledged she and Ms. A were close friends. (*Exhs. 5, 6, 8, 9 & 13; Testimony of Appellant and Stott*)

20. The August 2016 arrest also involved alleged possession, distribution and trafficking of drugs. Ms. A was incarcerated at MCI Framingham from August 6, 2017 through August 9, 2017. This incident involved Ms. A's use of another vehicle borrowed from Sergeant Stowe and a search of Ms. A's residence, in both of which evidence of drugs and drug paraphernalia were found. Those charges were eventually dismissed (*nolle prosequi*). (*Exhs. 8 & 13*)

21. On January 23, 2018, IAU Investigator Stott conducted an investigatory interview with Sergeant Stowe, who waived the right to have a union representative present. She acknowledged that she had been friends with Ms. A for the past four years and had provided Ms. A with the vehicle involved in the October 18, 2017 accident. She had been in Europe in August 2016 and only learned of that prior incident after she returned and Ms. A had been released from custody. She did know about the April 2017 "temporary" incarceration. She admitted to sending Ms. A the October 21, 2017 money order but denied responsibility for the other three money orders sent in November 2017. (*Exhs. 5 & 6; Testimony of Appellant*)

22. By letter dated March 27, 2018. Sergeant Stowe was informed that the internal investigation into allegations of staff misconduct against her had been completed and that the matter had been referred for a Commissioner's Hearing. (*Exh. 5*)

23. By letter dated May 15, 2018, mailed to her home of record with a copy to her union representative, Sergeant Stowe was informed that a Commissioner's Hearing would be held on May 23, 2018, on charges involving eight particulars concerning her contacts with Ms. A after being prohibited from such contacts, her association with Ms. A despite knowledge of her incarcerations, the failure to report such contacts, and being less than truthful during the investigation, citing DOC Rules and Regulations (General Policy I and Rules 1,8(c),12(a),19(b), 19(c).19(d); and DOC Professional Boundaries Policy, 103 DOC 225). (*Exhs. 1 & 11*)

24. By letter dated May 21, 2017, Sergeant Stowe, through her attorney, requested that the scheduled Commissioner's hearing be postponed to afford him time to prepare. (*Exh. 12*)

25. In preparation for the deferred Commissioner's Hearing, new information surfaced regarding Ms. A's August 2016 arrest (which had also involved a motor vehicle provided by Sergeant Stowe to Ms. A) and her subsequent incarceration. This information suggested that, contrary to what Sergeant Stowe had stated, she was not in Europe at the time of this incident but, in fact, was on duty at the DOC. Accordingly, a new investigation into staff misconduct by Sergeant Stowe was initiated at the request of the IAU Chief to focus on the August 2016 incident. (*Exh. 8; Testimony of Stott*)

26. On June 15, 2018, IAU Investigator Stott conducted another investigatory interview with Sergeant Stowe, again, without union representation. Sergeant Stowe acknowledged that she had let Ms. A use her personal vehicles on multiple occasions and that, prior to going to Europe she did "swap" out a Ford Focus used by Ms. A since 2014 for a Nissan Rogue SUV, as she understood Ms. A was moving furniture at the time and Sergeant Stowe didn't want to leave her SUV at the airport for the week while she was on vacation in Europe. Sergeant Stowe knew that Ms. A had a "drug problem" and was trying to "get clean". Sergeant Stowe admitted that she had attended "two or three" court appearances concerning Ms. A, but denied ever seeing narcotics or illegal drugs in Ms. A's residence and denied having any knowledge that Ms. A was selling drugs from inside or outside her residence or that Ms. A was conducting drug transaction using one of Sergeant Stowe's vehicles. Sergeant Stowe learned of the August 2016 arrest and incarceration only when Ms. A told her about it several days after Sergeant Stowe returned from vacation. (*Exhs. 8 & 9; Testimony of Appellant*)

27. Further research confirmed that, although Sergeant Stowe's attendance calendar indicated that she was on duty from August 4, 2016 through August 6, 2016, the DOC shift rosters showed that she was "off on a swap" with another officer. (*Exh. 8*)

28. IAU Investigator Stott completed the second investigation on June 28, 2018. He concluded that the allegation that Sergeant Stowe was untruthful about her being off duty from July 31, 2016 through August 5, 2016 was unfounded, but also concluded that she continued to be less than truthful about her knowledge of Ms. A's incarcerations and illicit activities. (*Exh. 8; Testimony of Stott*)

29. By letter dated August 22, 2018, Sergeant Stowe was advised that the second investigation into her misconduct had been completed and that the matter was being referred for a Commissioner's Hearing. (*Exh. 8*)

30. By letter dated September 28, 2018, mailed to her home address of record, with a copy to her union representative, Sergeant Stowe was notified that a Commissioner's Hearing would be held before a hearing officer designated by the DOC Commissioner, scheduled for October 10, 2018, on the eight prior particular charges of misconduct contained in the May 15, 2018 notice and the same violations of DOC Rules and Regulations. (*Exh. 4*)

31. The Commissioner's hearing was held, as scheduled, on October 10, 2018.³ Sergeant Stowe was represented by counsel who cross-examined the DOC's witness, IAU Investigator Stott. Sergeant Stowe did not testify. The hearing officer filed her findings and conclusions on November 10, 2018, sustaining all alleged charges of misconduct. (*Exhs. 3 & 4*)

³ At the Commission hearing, Sergeant Stowe asserted that she did not receive the September 28, 2018 letter until October 5, 2018, when her union representative provided her a copy. She further asserted that, due to this late notice, she was unable to contact her private attorney until two days before the hearing. (*Testimony of Appellant*) I am not persuaded by the evidence she presented that the DOC's letter was not delivered to her in due course but, even if that had been the case, it would not change any of my conclusions about the merits of the Appellant's claims, procedural or substantive, addressed in this Decision.

32. By letter dated January 17, 2019, hand delivered, DOC Commissioner Thomas Turco informed Sergeant Stowe that he concurred in the hearing officer's report and sustained all of the charges of misconduct as stated in the September 28, 2018 notice, finding that her conduct violated the following DOC Rules and Regulations, which provide, in relevant part:

General Policy I: "Nothing in any part of these rules and regulations shall be construed to relieve an employee . . . from his/her constant obligation to render good judgment and full and prompt obedience to all provisions of law, and to all orders . . . issued by the Commissioner, the respective Superintendents, or by their authority."

Rule 1: "You must remember that you are employed in a disciplined service which requires an oath of office. Each employee contributes to the success of the policies and procedures established for the administration of the Department of Correction and each respective institution. Employees should give dignity to their position and be circumspect in personal relationships regarding the company they keep and the places they frequent."

Rule 8(c): "You must not associate with, accompany, correspond or consort with any inmate or former inmate except for a chance meeting without specific approval of your Superintendent All other outside inmate contact must be reported to your Superintendent Treat all inmates impartially, do not grant special privileges to any inmate. Your relations with inmates, their relatives or friends shall be such that you should willingly have them known to employees authorized to make such inquiries. Conversation with inmates visitors shall be limited only to that which is necessary to fulfill your official duties."

Rule 12(a): "Employees shall exercise constant vigilance and caution in the performance of their duties. You shall not divest yourself of responsibilities through presumption and, must familiarize yourself with assigned tasks and responsibilities including institution and Department of Correction policies and orders."

Rule 19(b): "Effort will be taken to ensure that orders are reasonable and considerate, however, if you disagree with the intent or wording of an order, time permitting, you may be heard and the order withdrawn, amended, or it may stand. Without such prompt action on your part, no excuse will be tolerated that you did not comply with the order because it was faulty, unworkable, or for any other cause."

Rule 19(c): "Since the sphere of activity within an Institution or the Department of Correction may on occasion encompass incidents that require thorough investigation and inquiry, you must respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee or yourself."

Rule 19(d): "It is the duty and responsibility of all Institution and Department of Correction employees to obey these rules and official orders and to ensure they are obeyed by others."

Commissioner Turco imposed a suspension of 30 working days without pay. (Exhs. 1 & 2)

33. This appeal duly ensued. (*Claim of Appeal*)

APPLICABLE LEGAL STANDARD

G.L.c.31,§41-45 requires that discipline of a tenured civil servant may be imposed only for “just cause” after due notice, hearing (which must occur prior to discipline other than a suspension from the payroll for five days or less) and a written notice of decision that states “fully and specifically the reasons therefore.” G.L.c.31,§41. An employee aggrieved by such disciplinary action may appeal to the Commission, pursuant to G.L.c.31,§42 and/or §43, for de novo review by the Commission “for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited.

The Commission’s role 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." City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997). See also Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n, 38 Mass.App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, rev.den., 390 Mass. 1102 (1983).

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence⁴, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) See also Mass. Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001).

⁴ It is within the hearing officer’s purview to determine the credibility of live testimony. E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003). See Embers of Salisbury, Inc. v. 37 Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Ret. Bd. of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003) (where witnesses gave conflicting testimony, assessment of their relative credibility cannot be made by someone not present at the hearing).

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. v. Civil Service Comm'n, 43 Mass.App.Ct. 486, 488, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 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. It is also a basic tenet of "merit principles" which govern civil service law that discipline must be remedial, not punitive, designed to "correct inadequate performance" and "separating employees whose inadequate performance cannot be corrected." G.L. c.31,§1.

G.L.c.31, Section 43 vests the Commission with "considerable discretion" to affirm, vacate or modify discipline but that discretion is "not without bounds" and requires sound explanation for doing so. See, e.g., Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594, 600 (1996) ("The power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio . . . accorded the appointing authority") Id., (*emphasis added*). See also Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006), quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

ANALYSIS

The DOC has met its burden to establish just cause for the discipline imposed on Sergeant Stowe for her violation of DOC's Rules and Regulations by her inappropriate contact with Ms. A. while she was incarcerated at MCI-Framingham without DOC approval, as well as her lack of

candor and good judgment in continuing her outside contacts with Ms. A over a period of years without full disclosure or DOC approval. I find that DOC did not violate Sergeant Stowe's procedural rights and, in particular, that she is not aggrieved by the alleged short notice of the Commissioner's hearing that led to the discipline imposed by Commissioner Turco.

Procedural Issue

The Appellant argues that she did not receive the required three day's prior notice of the Commissioner's Hearing required by G.L.c.31, §41, ¶1, and that violation of her procedural rights requires that the discipline imposed must be overturned. I do not agree.

I am skeptical that Sergeant Stowe did not receive notice of the DOC's notice of hearing dated September 28, 2018 prior to October 5, 2018 as she claimed. Except for her personal assertion to that effect, no evidence to support that contention was offered to corroborate it. Moreover, even if her assertion were true, that means she still received three day's notice of the hearing (Friday Oct. 5 to Wed. Oct 10). Moreover, the specific charges against her remained substantially the same as those alleged charges about which she was fully apprised in May 2018. Sergeant Stowe was ably represented by counsel at the Commissioner's Hearing and at the hearing before this Commission, with an opportunity to present evidence and cross-examine witnesses on both occasions. Accordingly, I find that Sergeant Stowe was not prejudiced or aggrieved by a lack of notice, if any, of the Commissioner's Hearing on October 10, 2018.

Just Cause for Discipline.

The preponderance of the evidence established that Sergeant Stowe maintained a close personal relationship with Ms. A over a period of four years. That relationship continued while and after Sergeant Stowe knew that Ms. A had been incarcerated on multiple occasions and had a "drug problem". Sergeant Stowe was a frequent overnight visitor to Ms. A's residence,

frequently provided several motor vehicles to Ms. A for her personal use, and attended “two or three” court hearings involving criminal proceedings against Ms. A. These contacts were not merely “chance meetings” with Ms. A, but expressly fell within the type of contacts that DOC Rules and Regulations required her to disclose and to obtain DOC approval to continue. Yet she did not do so. Sergeant Stowe’s poor judgment, undignified and indiscrete behavior in carrying on such a relationship and the failure to inform the DOC about it, alone, represents the type of misconduct that warranted the discipline imposed.

Second, even after Sergeant Stowe was ordered in October 2018 to disclose that she had a close relationship with Ms. A, she was less than forthcoming about the extent and scope of that relationship. Her initial request to remain in contact by “mail, phone and possibly visits” made no mention of her extensive prior contacts and failed to disclose that she had already sent Ms. A money, set up a pre-paid phone account for her to call Sergeant Stowe collect, was providing house-sitting services, and appeared to be engaged in (and intended to and would continue to engage in) substantial activities with mutual friends to take care of Ms. A’s legal, personal and financial affairs.

I do not credit Sergeant Stowe’s claim that she did not send all of the money orders to Ms. A that DOC records appear to show had been originated, or at least, facilitated by her. She acknowledged that she did send at least two money orders to Ms. A at MCI Framingham (October 21 and Oct 26) before getting approval to have contact (of any kind) with her while she was incarcerated. The preponderance of the evidence established that she sent or, at least facilitated, the other money orders as well, which were provided AFTER her request to maintain contact with Ms. A was denied.

Third, I agree with DOC that the requirements of the DOC Rules and Regulations that restrict contact with DOC inmates or former inmates, require discretion in associating with their relatives and friends, and mandate disclosure and prior approval to “associate with, accompany, correspond or consort” with an inmate or former inmate (save for a “chance meeting”) does not distinguish between persons incarcerated in “temporary” custody and those held after sentencing. The letter and spirit of the rules and regulations plainly apply to both types of incarceration. Nor do I accept the Appellant’s contention that she was entitled to assume that her request for contact with Ms. A would be approved; in fact, DOC Rule 12(a) expressly mandates that an employee may not “divest yourself of responsibility through presumption”.

Finally, I have considered whether the Commission should exercise its discretion to modify the discipline imposed. I find no evidence that the DOC acted here out of unlawful bias or disparate treatment of similarly situated employees. My findings do not vary substantially from the findings of the DOC Commissioner. Accordingly, the Commission is not warranted to modify the discipline imposed and the 30 day suspension is sustained.

For these reasons, Appellant’s appeal, in Case Nos. D-19-022 is hereby *denied*.

Civil Service Commission

 /s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 26, 2020.

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)(1), 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice:

Gerard S. McAuliffe, Esq. (for Appellant)

Julie E. Daniele, Esq. (for Respondent)