

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

LETTA SUTTON,
Appellant

v.

Docket No.: D-15-113

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro se

Appearance for Appointing Authority:

Jody A. Brenner, Esq.
Massachusetts Department of Correction
Division of Human Resources
One Industries Drive
P.O. Box 946
Norfolk, MA 02056

Commissioner:

Cynthia Ittleman¹

DECISION

Pursuant to G.L. c. 31, ss. 42 and 43, the Appellant, Lieutenant Letta Sutton (“Appellant” or “Lt. Sutton”) filed a timely appeal with the Civil Service Commission (“Commission”) from the decision of the Department of Correction (“Respondent” or “DOC”) to issue her a three (3)-day suspension. A pre-hearing conference was held on June 20, 2015 and a full hearing was held on September 15, 2015; both were held at the offices of the Commission.² At the hearing,

¹ The Commission acknowledges the assistance of Law Clerk Brendan Rimetz in the drafting of this decision.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

witnesses were sequestered, with the exception of the Appellant. The hearing was digitally recorded, with copies provided to the parties.³ For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

Based on Exhibits one (1) through nineteen (19)⁴, and the testimony of:

Called by DOC:

- John Signoretti, Correction Officer (“CO”) I, MCI-Cedar Junction, DOC
- Glen Laroche, CO I, MCI-Cedar Junction, DOC
- Ann Evans, LPN, MCI-Cedar Junction, DOC
- Harold Wilkes, Captain, MCI-Cedar Junction, DOC

Called by the Appellant:

- Letta Sutton, Lieutenant, MCI-Cedar Junction, DOC

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following findings of fact:

1. Lt. Sutton was appointed to DOC as a CO I on July 8, 2001. She was subsequently promoted to Sergeant (CO II) in 2005 and then to her current title of Lieutenant (CO III) on June 12, 2011. (Testimony of Sutton) In the Appellant’s 2012-2013 Employee Performance Rating

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this 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.

⁴ Exhibits 5 and 6 (CDs of Inmate A at pertinent times) were viewed at the Commission hearing and thereafter. They were admitted de bene at the hearing to be admitted in full upon receipt of the redacted versions thereof from DOC. I have received the redacted versions and they are hereby entered in full. Also in the record is a drawing marked “A” for identification, as well as documents produced post-hearing by the Appellant pursuant to statements at the hearing, including notes pertaining to the Appellant’s medical appointment on November 26, 2014, as referenced at the hearing and reports regarding the Appellant’s interaction with Inmate A on April 18, 2013 and October 24, 2014.

System (“EPRS”) annual evaluation, the Appellant was given the highest rating (“exceeds/excels”) in all eight (8) of her assigned duties. (Ex. 18⁵)

2. As both a Lieutenant and a Sergeant, she was regularly assigned to the Departmental Disciplinary Unit (“DDU”). (Testimony of Sutton)
3. Prior to this suspension, Lt. Sutton’s disciplinary record contained one letter of reprimand in 2010 for repeated tardiness, a 5-day suspension for provoking a conflict between two correction officers in May 2013, and a 10-day suspension for removing ammunition from her weapon and wearing an empty weapon while at an armed post in October 2013. (Exhibit 11)

Facts specific to the November 20, 2014 incident:

4. On November 20, 2014, Lt. Sutton was assigned as the Officer in Charge (“OIC”) of the DDU at MCI-Cedar Junction (“MCI-CJ”). (Exhibit 4)
5. The DDU is a unit within the DOC that houses prisoners who are being disciplined for their actions within the prison system. The unit has room for 125 prisoners and often is home to “the worst of the worst” prisoners within the DOC. (Testimony of Signoretti)
6. At approximately 8:15 a.m. on November 20, 2014, Lt. Sutton, CO Signoretti, and Nurse Evans went to Inmate A’s cell in the DDU to give him his medication as part of daily morning medication rounds. (Exhibit 5; Testimony of Signoretti)
7. At the time, Inmate A, a very aggressive and violent inmate, was on “wicket box status.”⁶ An inmate is placed on wicket box status if they have assaulted staff. (Testimony of Signoretti; Exhibits 12 – 15; Appellant’s Post-Hearing Submissions Regarding Interaction with Inmate A on April 18, 2013 and October 24, 2014)

⁵ The Appellant did not provide her EPRS evaluations after the 2013-2014 evaluation, generally or for the period involving the events that occurred here.

⁶ No reason was given for Inmate A’s wicket box status at the time. However, CO Signoretti stated that Inmate A had thrown fecal matter and unknown liquid substances at officers in the past.

8. A wicket is an opening in the cell door that allows staff to pass food or medication or to handcuff inmates before allowing them outside of the cell. There are two wicket openings on each cell door in the DDU. A wicket box is a box on wheels that was developed at MCI-CJ in which food or medication can be placed and rolled up to the wicket. The wicket box allows for the transfer of said food or medication to inmates while minimizing the risk of assault that can occur with direct contact. (Testimony of Wilkes)
9. DDU Wicket Box Procedures state that prior to the wicket being opened and the wicket box being put in place, the inmate is required to go to the back of the cell away from the wicket opening. (Exhibit 8)
10. On medication rounds, the light is turned on in the prisoner's cell and an officer makes sure the prisoner is clothed before the nurse approaches the cell. The nurse then checks the medication with the prisoner so that the prisoner can see what they are being given. After checking the medication, the inmate is required to go to the back of the cell. The box is positioned in front of the wicket, which is then opened by the lieutenant. The inmate is then allowed to retrieve the medication. After retrieving the medication, the inmate must move to the back of the cell while the box is removed and the wicket is secured. (Testimony of Signoretti)
11. Within the DDU's Wicket Box Procedures, there is no language specifying exactly where a prisoner must stand at the rear of the cell. When a prisoner does not comply with Wicket Box Procedures, it is considered a refusal of that which is being offered. (Testimony of Signoretti) Following such a refusal, a correction officer is required to enter an incident report in the Inmate Management System ("IMS"), the inmate's daily log and the DOC inner control unit activity log detailing the refusal. (Exhibit 8)

12. Inmate A had previously made threats against Lt. Sutton, which were severe enough for MCI-CJ administrators to not assign her to the DDU for a period of 17 months beginning in May 2013. (Testimony of Sutton; Exhibits 12 – 15; Appellant’s Post-Hearing Submissions Regarding Interaction with Inmate A on April 18, 2013 and October 24, 2014)
13. Prior to opening the wicket on November 20, 2014, Lt. Sutton ordered Inmate A to stand against the back wall of the cell, which he refused to do. Lt. Sutton then ordered Inmate A to stand against the back wall of the cell two more times but he did not comply. (Testimony of Signoretti)
14. After Inmate A did not comply with the third order that he stand against the back wall of the cell, Lt. Sutton considered it a refusal and Inmate A was not given his medication.
(Testimony of Signoretti)
15. Following the refusal, Lt. Sutton turned to walk away from the cell, at which point Inmate A began to assert that he was in “crisis.” The inmate made this statement in the presence of Lt. Sutton, CO Signoretti, and Nurse Evans. (Testimony of Signoretti)
16. CO Signoretti asked Lt. Sutton if he should “post up,” a required procedure when an inmate claims he is having a mental health “crisis”. Lt. Sutton neither instructed CO Signoretti to post up nor took any other appropriate action at or around that time and she walked away.
(Testimony of Signoretti; Exhibit 4)
17. MCI-CJ procedure for inmates claiming “crisis” requires “posting up”, wherein an officer remains outside the cell and maintains eye contact with the prisoner pending appropriate follow-up. (Testimony of Signoretti)
18. Sergeant DeMoura had been in the DDU on the morning of November 20, 2014 serving a disciplinary report to Inmate A when the inmate told him that he had claimed “crisis” earlier

and had not been seen. Sgt. DeMoura confirmed the allegation with CO Signoretti and then spoke to Capt. Wilkes about an hour after Inmate A had claimed “crisis”. Capt. Wilkes subsequently reviewed the video recording⁷ of Inmate A for the pertinent time and determined that Inmate A had complied with the Wicket Box Procedures. Capt. Wilkes informed Lt. Sutton that if Inmate A was in crisis, it should be handled appropriately. (Exhibit 4)

19. Later on November 20, 2014, Capt. Wilkes entered the wing of the DDU in which Inmate A is housed and was informed by the inmate what had transpired that morning. (Exhibit 4)
20. Inmate A told Capt. Wilkes that Lt. Sutton ordered him to stand against the wall at the back of his cell and that he argued that the Wicket Box Procedures had no such requirement, just that he needed to be at the rear of his cell. (Exhibit 4; Testimony of Wilkes)
21. Inmate A told Capt. Wilkes that because he did not stand against the back wall, Lt. Sutton considered it a refusal of medication and did not give him his morning medication. (Exhibit 4)
22. Capt. Wilkes then spoke to Nurse Evans to inquire about Inmate A’s statement. Nurse Evans was fairly certain that Inmate A had said “crisis”. (Exhibit 4)
23. Capt. Wilkes also spoke with CO Signoretti, who described the same events described by Nurse Evans involving Inmate A and stated that Lt. Sutton had ignored Inmate A’s claim of mental health crisis. CO Signoretti also told Capt. Wilkes that he had asked the Appellant if he should post up but that the Appellant did not order him to do so. (Exhibit 4)
24. Later that day, Capt. Wilkes interviewed Lt. Sutton regarding the incident. During the interview, Lt. Sutton stated that she ordered Inmate A to stand against the back wall. When asked why she did so, she stated that she was not comfortable with Inmate A where he was

⁷ The recordings are strictly video, having no sound.

standing and felt it would be safer if he stood against the wall. (Exhibit 4; Testimony of Wilkes)

25. During her interview with Capt. Wilkes on November 20, 2014, Lt. Sutton first stated that she did not hear Inmate A claim “crisis” during the incident that day, but later, during the same interview, Lt. Sutton stated that she could not recall whether Inmate A claimed “crisis” or not. (Exhibit 4)

26. Based on what he saw in the video, Capt. Wilkes told Lt. Sutton that where Inmate A was standing was appropriate and in compliance with DDU Wicket Box procedures. (Testimony of Wilkes)

27. Following the incident, Lt. Sutton authored a report indicating that Inmate A did not receive his medication, but did not issue a disciplinary report stating that Inmate A did not go to the rear of his cell. (Testimony of Wilkes)

Facts specific to the November 26, 2014 incident:

28. On November 26, 2014, Lt. Sutton was again the Officer in Charge in the DDU. Capt. Wilkes was also working that day. (Testimony of Wilkes)

29. Lt. Sutton conducted medication rounds that morning with Nurse Evans and Officer Laroche. Prior to opening the wicket and dispensing medication to Inmate A, Lt. Sutton ordered the inmate to move to the back wall of his cell. (Exhibit 4)

30. Inmate A did not comply with Lt. Sutton’s orders and stated only that he was at the back of the cell while standing at the foot of his bed at the far end of the cell. (Testimony of Laroche; Exhibit 4)

31. Lt. Sutton then stated that Inmate A’s failure to follow her orders resulted in a refusal of his medication and the inmate was not given his medication. (Testimony of Laroche; Exhibit 4)

32. While he was conducting his rounds, Capt. Wilkes was informed by Lt. Sutton after the incident that Inmate A had refused his shower that morning and had refused his medication again that morning due to noncompliance with Wicket Box Procedure. (Testimony of Wilkes)
33. Capt. Wilkes then went to his office to review video⁸ of Inmate A's medication refusal that morning and determined that Inmate A complied with Wicket Box Procedure when he backed to the rear area of his cell, away from the wicket. (Testimony of Wilkes)
34. Capt. Wilkes then asked Lt. Sutton to come to his office to view the video with him, at which point Capt. Wilkes told Lt. Sutton that Inmate A had complied with the rules. (Exhibit 4; Testimony of Wilkes)
35. Lt. Sutton was then ordered by Capt. Wilkes to return to Inmate A's cell to give him his medication. Capt. Wilkes further told Lt. Sutton that if Inmate A moves back to where he was that morning, as seen in the video, then that would suffice and he should receive his medication. (Exhibit 4; Testimony of Wilkes)
36. Shortly thereafter, Capt. Wilkes received a call from Capt. Mulvey who said that Lt. Sutton had informed central control that she was going home sick. (Testimony of Wilkes) That day, the Appellant saw her primary care physician reporting headaches and elevated blood pressure off and on since October of that year when she sustained a head injury in a different DOC facility. (Appellant's Post-Hearing Submission as indicated at Full Hearing)
37. Capt. Wilkes then called Lt. Sutton and directed her to wait for a replacement lieutenant to arrive and, in the meantime, to give Inmate A his medication. (Exhibit 4; Testimony of Wilkes)

⁸ I viewed the video recordings, in part, at the Commission hearing and viewed them after the hearing. Inmate A is visible, in substantial part, in his cell.

38. Lt. Sutton made an attempt to find the nurse and an escort officer to go out on the DDU tier with her and medicate Inmate A but stated that she did not find them. (Exhibit 4; Testimony of Appellant)
39. When Lt. Sutton's relief lieutenant arrived, she punched out and went home. (Exhibit 4; Testimony of Appellant) Nearly one hour elapsed between the time that Capt. Wilkes ordered Lt. Sutton to medicate Inmate A and when a relief lieutenant arrived. (Ex. 4)
40. The replacement lieutenant was ordered to give Inmate A his medication and the lieutenant did so. (Testimony of Wilkes)
41. The Appellant did not log into the appropriate DOC systems to indicate that Inmate A had refused medication on November 20 and 26, 2014, nor did she write discipline reports for Inmate A alleging that he made false reports. (Testimony of Appellant and Wilkes)

December 5, 2014 Investigatory Hearings by Capt. Wilkes

42. On December 5, 2014, Capt. Wilkes conducted an Investigatory Hearing regarding Lt. Sutton's actions on November 20, 2014 and a second Investigatory Hearing regarding Lt. Sutton's actions on November 26, 2014.⁹ The Appellant was accompanied by a union representative at the two Investigatory Hearings. (Exhibit 4)
43. At the Investigatory Hearing regarding events on November 20, 2014, Lt. Sutton was asked if she was familiar with the Wicket Box Procedure as laid out in the DDU Operational Manual and she said she was. After reading the rule to her and asking her what happened on November 20, Lt. Sutton answered. Capt. Wilkes informed Lt. Sutton that this response was

⁹ Capt. Wilkes referred to his hearings regarding Lt. Sutton as an "investigatory hearings" but did not define what such hearings entail, although he indicated that any statements provided in response to his questions during these hearings were not provided under oath and were not recorded. Although it appears as if these were investigations, since Capt. Wilkes and DOC refer to them as investigatory hearings, they are referred to here as such. However, since an investigation is different from a hearing, referring to one action as both suggests some confusion in its function. See Analysis, *infra*.

different from the response she provided when she was asked about Wicket Box Procedure on November 20, 2014. (Exhibit 4)

44. In a report of his findings regarding the December 5, 2014 Investigatory Hearings, Capt.

Wilkes wrote that video footage supported his finding that Inmate A complied with Wicket Box Procedure on November 20, 2014. The report states, in part:

“Video footage along with corroborating staff testimony supports that the inmate complied by going to the back of the cell. Furthermore, witnessing staff support that Lt. Sutton ordered the inmate ‘up against the wall’ which is not part of DDU Wicket Box procedures.”

(Exhibit 4, p. 6)

45. At the Investigatory Hearing regarding the November 20, 2014 events, Lt. Sutton was also questioned regarding Inmate A’s claim of mental health crisis after he was denied medication. Capt. Wilkes stated that when asked about it on November 20, 2014, Lt. Sutton said she did not hear him claim crisis but later that day Lt. Sutton said she could not recall whether he claimed crisis. (Exhibit 4)

46. In Capt. Wilkes’ report regarding the November 20, 2014 events, Capt. Wilkes wrote that he interviewed Lt. Sutton, CO Signoretti and Nurse Evans and that both CO Signoretti and Nurse Evans heard the inmate claim crisis after being refused his medication on November 20, 2014. When interviewed as part of the Investigatory Hearing, Nurse Evans supported CO Signoretti’s statements regarding the November 20, 2014, incident. (Exhibit 4)

47. In regard to the November 26, 2014 events, Capt. Wilkes’ report indicated that Lt. Sutton said during her interview that she was unable to find the nurse and escort officer after returning to the DDU pursuant to Capt. Wilkes’ orders. During the Investigatory Hearing, Lt. Sutton admitted that she had not complied with the orders she received from Capt. Wilkes to

medicate Inmate A and that she had enough time on November 26, 2014 to complete the order before being relieved by another lieutenant. (Exhibit 4, p. 19)

48. Capt. Wilkes' report regarding the November 26, 2014 events also referenced video footage of where Inmate A was standing during his medication round and that Inmate A stood in the same place during his morning feeding round, which was conducted by Lt. Sutton, and Lt. Sutton did not deny him food. The report states:

“Video footage (V14-124) clearly supports that the inmate complied by going to the back of the cell. Furthermore, Lt. Sutton did feed the inmate during that same morning and the inmate did stand in the exact position as he did during the medication pass without incident which was in accordance to the DDU Wicket Box procedures.”

(Exhibit 4, p. 18)

49. Based on his December 5, 2014 Investigatory Hearing regarding events on November 20, 2014, Capt. Wilkes' December 8, 2014 report found that the Appellant 1) refused to provide inmate A with his medication, 2) failed to act appropriately when inmate A claimed mental health crisis and 3) was “less than truthful” during her interviews; and that her conduct violated: 1) DDU Wicket Box Procedure, Section 8; 2) DDU Lieutenant Post Orders #02; 3) MCI-CJ procedure for 103 DOC 650 Mental Health Services, Section VII; 4) DOC Rules and Regulations General Policy, Section I; 5) DOC Rules and Regulations, Section 8(a); and 6) DOC Rules and Regulations, Section 19(c). (Exhibit 4, pp. 6-7)
50. Based on his December 5, 2014 Investigatory Hearing regarding events on November 26, 2014, Capt. Wilkes' December 9, 2014 report found that the Appellant 1) refused to provide inmate A with his medication, 2) failed to comply with orders to medicate inmate A, and 3) was “less than truthful” during the Investigatory Hearing; and that her conduct violated: 1) DDU Wicket Box Procedure, Section 8; 2) DDU Lieutenant Post Orders #02; 3) DOC Rules and Regulations General Policy, Section I; 4) DOC Rules and Regulations, Section 8(a); 5)

DOC Rules and Regulations, Section 19(b); and 6) DOC Rules and Regulations, Section 19(c). (Exhibit 4, pp. 18-19)

51. DDU Wicket Box Procedure, Section 8 states, in relevant part:

“The inmate is required to go to the back of the cell before the wicket is opened and the wicket box is in place.”

(Exhibit 8, p. 16)

52. DDU Lieutenant Post Orders #02 states, in part:

“Post orders cannot cover every incident or eventuality, which may occur; however employees assigned to a post shall use good judgment, tact and pay careful attention to detail in the discharge of his/her duties...It is the responsibility of each officer on duty to comply with all regulations and orders of MCI-Cedar Junction and the Department of Corrections. Procedures of general good security and custody are to be followed in all cases.”

(Exhibit 9, p. 1)

53. 103 DOC 650 Mental Health Services, Section VII states, in part:

“When a staff member observes that an inmate is exhibiting behavior that is believed to be in imminent danger of harming himself, or stating that he may hurt himself, the inmate must immediately be placed on a constant observation by that staff member.”

(Exhibit 4, p. 6)¹⁰

54. DOC Rules and Regulations General Policy, Section I, states in part:

“The rules and regulations are general directions and do not attempt to cover each and every contingency which may arise during the performance of your duties or while employed by the Department of Correction. 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.”

(Exhibit 7)

¹⁰ The constant observation constitutes “posting up”.

55. DOC Rules and Regulations, Section 8(a) states, in full:

“Relations with inmates may be twofold, that of counselor and disciplinarian simultaneously, which will require your utmost tact and diplomacy. For those employees having job responsibilities which require inmate contact, your attitude toward inmates should be friendly not familiar, firm not harsh, vigilant not unduly suspicious, strict not unjust. Your leadership ability may be enhanced by the professional image you project.”

(Exhibit 7)

56. DOC Rules and Regulations, Section 19(b) states, in full:

“Efforts 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.”

(Exhibit 7)

57. DOC Rules and Regulations, Section 19(c) states, in full:

“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 on an inmate, a visitor, another employee or yourself. Pending investigation into the circumstances and your possible involvement therein, you may be detached from active duty forthwith, however, without prejudice and without loss of pay.”

(Exhibit 7)

Hearing Conducted by DOC Hearing Officer

58. A two-day DOC hearing was held before Hearing Officer Susan Herz (“Herz”) on March 19, 2015 and April 2, 2015, at which the Appellant had union representation. (Exhibit 2)

59. In her decision, Herz confirmed the findings of Capt. Wilkes’ Investigatory Reports. Herz further found that Lt. Sutton, in her testimony, did not deny that Capt. Wilkes’ summaries of the events on November 20, 2014 and November 26, 2014 were accurate. (Exhibit 2)

60. Herz's decision states that it was significant that Capt. Wilkes was a witness to some of the events that he investigated and that Lt. Sutton does not dispute his observations.¹¹ Herz's decision states that she found Capt. Wilkes to be very credible. (Exhibit 2)
61. At the DOC hearing conducted by Herz, Lt. Sutton admitted to five of the six charges against her, denying that she had been less than truthful to Capt. Wilkes in the Investigatory Hearing. Herz stated in her decision that substantial evidence shows Lt. Sutton was less than truthful as Capt. Wilkes had found. (Exhibit 2)
62. Herz confirmed that Lt. Sutton had violated the rules cited in Capt. Wilkes' report. (Exhibit 2)
63. As a result of Herz's decision, Lt. Sutton was suspended for three (3) days without pay beginning on June 24, 2015. (Exhibit 3).
64. The Appellant subsequently filed the instant appeal at the Commission. (Administrative Notice)

DISCUSSION

Applicable Law

G.L. c. 31, § 1 provides that "basic merit principles":

"... shall mean (a) recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; (b) providing of equitable and adequate compensation for all employees; (c) providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees; (d) retaining of employees on the basis of adequacy of their performance, **correcting inadequate performance**, and separating employees whose inadequate performance cannot be corrected; (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national

¹¹ During the DOC hearing conducted by Hearing Officer Herz, the union representative present, Lt. James Redd, questioned whether Capt. Wilkes was a "fair and impartial fact-finder" because, in addition to being the person assigned to conduct the Investigatory Hearing, he was also a witness, as well as Lt. Sutton's supervisor. Herz apparently did not find this to be a concern and found that Capt. Wilkes' demeanor was "highly credible and driven by integrity." (Exhibit 2)

origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions. ...”

(Id.)(emphasis added)

Under G.L. c. 31, s. 41, a civil service employee may be suspended for just cause five (5) days or less, as follows, in part,

“ ... without a hearing prior to such suspension. Such suspension may be imposed only by the appointing authority or by a subordinate to whom the appointing authority has delegated authority to impose such suspensions, or by a chief of police or officer performing similar duties regardless of title, or by a subordinate to whom such chief or officer has delegated such authority. Within twenty-four hours after imposing a suspension under this paragraph, the person authorized to impose the suspension shall provide the person suspended with a copy of sections forty-one through forty-five and with a written notice stating the specific reason or reasons for the suspension and informing him that he may, within forty-eight hours after the receipt of such notice, file a written request for a hearing before the appointing authority on the question of whether there was just cause for the suspension. If such request is filed, he shall be given a hearing before the appointing authority or a hearing officer designated by the appointing authority within five days after receipt by the appointing authority of such request. Whenever such hearing is given, the appointing authority shall give the person suspended a written notice of his decision within seven days after the hearing. A person whose suspension under this paragraph is decided, after hearing, to have been without just cause shall be deemed not to have been suspended, and he shall be entitled to compensation for the period for which he was suspended. A person suspended under this paragraph shall automatically be reinstated at the end of such suspension.”

(Id.)

An employee aggrieved by a disciplinary decision by an appointing authority may appeal to the Commission under G.L. c. 31, § 43, which provides, in part,

“If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority’s procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his

position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.”

(Id.)

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "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, 35-36 (1956).

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 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). 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).

For the Commission to uphold an appointing authority’s decision, it must find, based on the facts, that “there was reasonable justification for the actions taken by the appointing authority in the circumstances found by the Commission to have existed when the appointing authority made its decision.” Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1984); *see* Commissioners of Civil Service v. Municipal Court of Boston, 369 Mass. 84, 86 (1975); Leominster v. Stratton, 58

Mass.App.Ct. 726, 727-728 (2003); *see* McCarthy v. Brookline School Department, 21 MCSR 13, 16 (2008).

Analysis

The DOC has established by a preponderance of the evidence that it had just cause to discipline Lt. Sutton for her conduct on November 20, 2014 and November 26, 2014 and for her conduct during Capt. Wilkes' December 5, 2014 Investigatory Hearings. Specifically, a preponderance of the evidence establishes that the Appellant refused to follow the cited policies, rules and procedures regarding medication for inmates, she refused to follow orders from a supervisor and she did not "respond fully and promptly to any questions or interrogatories"¹².

At the hearing before the Commission, Lt. Sutton stated that she is frequently assigned to the DDU and that she is familiar with the rules and regulations governing that unit. Lt. Sutton's duties are laid forth in Post Order #02, which states "it is the responsibility of the officer on duty to comply with all the regulations and orders of MCI-Cedar Junction and the Department of Correction." (Exhibit 9) As stated above, DDU Wicket Box Procedure only states that the inmate is required to go to the back of the cell before the wicket is opened and the wicket box is in place. (Exhibit 8) There is no language in the Wicket Box Procedure that specifically states that an inmate must stand against the back wall of the cell as Lt. Sutton ordered Inmate A to do. The procedures only state that the inmate must be in the "rear" of the cell.

Post Order #02 also states that "procedures of general good security and custody are to be followed in all cases." (Exhibit 9) On both November 20 and November 26, 2014, the Appellant repeatedly ordered Inmate A to stand up against the back wall of his cell for the Wicket Basket

¹² DOC asserts that the Appellant was "less than truthful". However, DOC Rules and Regulations, Section 19(c), on which it relies, refers to the requirement that employees "respond fully and promptly to any questions or interrogatories relative to the conduct of ... another employee or yourself. ..." *Id.* I understand that DOC avers that the Appellant's varying responses to questions at different times were not forthcoming and that, therefore, she violated Rule 19(c).

Procedure. Inmate A stepped to the back of his cell but when he refused to stand up against the back wall, she deemed his actions a refusal of medication. Later in the morning of November 20, 2014, Capt. Wilkes was informed that the Appellant determined that Inmate A had refused medication, that Inmate A stated he was in crisis and that the Appellant had taken no action in that regard. Capt. Wilkes reviewed the matter and he informed the Appellant that Inmate A's location in the cell was appropriate. On November 26, 2014, the Appellant again deemed Inmate's response to her orders to stand up against the wall a refusal of medication. Again Captain Wilkes reviewed the matter and informed the Appellant that Inmate A's location in the cell was appropriate.

There is a history between Inmate A, a highly aggressive and violent inmate, and Lt. Sutton in which the inmate has freely and vociferously asserted his dislike for Lt. Sutton and has made threats against her. In fact, DOC administrators did not assign Lt. Sutton any shifts on the DDU for a 17-month period beginning in May 2013. Therefore, it is understandable that Lt. Sutton would want to exercise added caution when dealing with Inmate A. However, Inmate A is also known to be very aggressive with other Corrections Officers and individuals as well. These circumstances do not give the Appellant the authority to interpret rules and regulations beyond what is written therein. As found by DOC Hearing Officer Herz, the Appellant's actions in these regards violate the cited policies, regulations and procedures.

Lt. Sutton averred that her actions were motivated by a concern for safety, especially when dealing with a volatile person such as Inmate A. However, the Appellant could create a potentially more unpredictable and dangerous situation by not following the cited rules, regulations and procedures. The Wicket Box Procedure also states that if an inmate fails to comply with any portion of the procedures, that such noncompliance is interpreted as a refusal of

what is being offered. (Exhibit 8) The Appellant did not properly document Inmate A's refusals. In addition, on November 20, 2014 the Appellant did not report Inmate A's refusal to anyone before she was asked about the matter. Inmate A's lack of medication could have proven to be a significant safety concern. I concur with the finding of the Hearing Officer Herz that "concern for the safety of all would have included either provision of medication to Inmate A or arrangement for another person to do so." (Exhibit 2) On November 20, 2014, the Appellant did not arrange for someone else to provide the medication to Inmate A or take any other action in this regard. On November 26, 2014, she did not provide Inmate A with the medication as ordered by Capt. Wilkes. Since the Appellant's failure to administer medication to Inmate A on both November 20 and November 26, 2014 could have created a dangerous situation, Lt. Sutton violated Post Order #02. In addition, the Appellant failed to exercise good judgment in this regard.

By refusing the inmate medication, Lt. Sutton also created a potentially hazardous situation for Inmate A. While the nature of, or the reason for, Inmate A's medication is confidential and unknown here, Inmate A would not be taking such medication unless it had a therapeutic or healing effect on him. The fact that he was prescribed medication means that it was important to his daily functioning and could potentially lead to harmful effects should he not take it. Lt. Sutton's disregard for the potential welfare of Inmate A goes against the language of DOC Rules and Regulations General Policy I, which provides in part, "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...." Lt. Sutton did not properly maintain custodial care of Inmate A when she refused him medication because he failed to

comply with her alternative interpretation of the DDU Wicket Box Procedure and, therefore, she violated DOC Rules and Regulations General Policy I.

Another issue of concern here is the Appellant's conduct after Inmate A refused to comply with her orders to back up to the wall of his cell for the Wicket Basket Procedure on both November 20 and 26, 2014. On November 20, 2014, the Appellant failed to order a post-up or to take any other appropriate action when Inmate A asserted that he was in crisis. CO Signoretti testified at the Commission that he clearly heard Inmate A claim "crisis" on November 20 and Nurse Evans supported this testimony; both were standing beside Lt. Sutton. CO Signoretti even went so far as to ask Lt. Sutton whether he should post-up outside of Inmate A's cell because Inmate A said "crisis" and to maintain eye contact with him until the appropriate follow-up steps were taken. Posting-up is required as part of the DOC's Mental Health Services protocol when an inmate claims he is in crisis. However, the Appellant neither required the post-up nor made any other efforts to address the claimed crisis. In view of this evidence, it is more probable than not that Inmate A claimed he was in crisis on November 20, 2014 and, therefore, the Appellant violated 103 DOC 650, the DOC Mental Health Services policy. Lt. Sutton undermines her credibility regarding this matter due by making inconsistent statements in this regard. When she was first interviewed about the matter by Capt. Wilkes on November 20, 2014, Lt. Sutton said she could not remember whether Inmate A had claimed that he was in crisis. However, in the DOC hearing Lt. Sutton said she did not hear Inmate A claim he was in crisis.¹³ Those statements contradict the statements of CO Signoretti and Nurse Evans. Since Inmate A claimed he was in crisis, Lt. Sutton's refusal to place the inmate under observation is a violation 103 DOC 650. The Appellant's inconsistent statements on this matter also constitute a violation of

¹³ At the Commission hearing, the Appellant stated that she did not hear inmate A assert that he was in crisis. (Testimony of Appellant)

Rule 19(c), which requires that questions asked relative to an investigation be answered “fully and promptly.”

The Commission takes into account when deciding how much weight to give her or his testimony. During Capt. Wilkes’ Investigatory Hearing, Lt. Sutton provided two different versions of what happened on November 20, 2014 about whether Inmate A had claimed that he was in crisis. Furthermore, during her testimony before the Commission, Lt. Sutton denied telling Inmate A to get against the back wall. Essentially, Lt. Sutton gave three different explanations as to what happened during that incident. Lt. Sutton’s explanations do not match the testimony of others who testified, filed reports and were witnesses to the incidents. During the hearing before DOC Hearing Officer Herz, Lt. Sutton’s union representative questioned the credibility of Capt. Wilkes as an investigator since he is also Lt. Sutton’s supervisor and a witness to some events. While this investigative arrangement could suggest a conflict of interest, I find no reason to discredit the testimony of Capt. Wilkes in this case since his testimony was well-considered, direct and clear and it is supported by the testimony of Officer Signoretti and Nurse Evans. Such determinations are made on a case by case basis.

Following Inmate A’s refusal of medication on November 26, 2014, Lt. Sutton was given a direct order by Capt. Wilkes to administer medication to Inmate A. After receiving those orders, Lt. Sutton testified that she was not feeling well and decided to go home. Capt. Wilkes ordered the Appellant to stay until her relief arrived. She did not do so. Rule 19(b) indicates that “efforts will be taken to ensure that orders are reasonable and considerate, however, if you disagree with the intent or working of an order, time permitting, you may be heard and the order may be withdrawn, amended, or it may stand.” The orders provided by Capt. Wilkes were reasonable, especially since video recordings showed that the prisoner was in the proper place in

his cell for the purposes of the Wicket Basket Procedure. Further, it was a task that could have been completed in a short amount of time. Therefore, the Appellant's failure to follow the orders violates Rule 19(b).

Based on these violations, discipline of Lt. Sutton is warranted. The Commission now considers whether the discipline issued by the DOC may be subject to modification. While Lt. Sutton's actions in the incidents in question may appear to be minor, they reflect a disregard for rules and regulations that have been put in place for security, an essential DOC function, especially when dealing with volatile inmates. This is not the first time that Lt. Sutton has failed or refused to follow DOC rules, regulations or policies. She was previously suspended for a total of fifteen days for two different incidents, one involving her role in a confrontation between officers and another for her failure to follow proper armed post guidelines. The incident regarding the armed post was a conscious refusal to follow rules that could have put her fellow correction officers in serious danger. She had one of the few armed post positions in the facility and yet she did not carry a loaded weapon as required. The incident involving her role in a confrontation between two correction officers also violated applicable DOC policies. In the instant case, Lt. Sutton stated in her testimony at the Commission that she is very familiar with the rules and procedures that govern the DDU. Therefore, she should have known that Inmate A was the proper distance from the wicket and that she should have dispensed his medication to him. Inmate A's lack of medication could have created an unstable environment within the DDU, which could have required more resources and created heightened risks on the tier.

I note that DOC Hearing Officer Herz placed much emphasis on the report produced by Capt. Wilkes as the result of his investigations of the November 20 and 26 incidents. At the DOC hearing, Lt. Sutton's union representative questioned Capt. Wilkes as to whether he

considered himself fair and impartial, despite the fact that he was also a witness to at least some of the events here. Despite the union representative's concerns, Herz found Capt. Wilkes to be credible and fair. The Appellant's procedural claim, pursuant to G.L. c. 31, s. 42, that the DOC did not comply with the procedural requirements therein rests on the fact that it was Capt. Wilkes who conducted the Investigatory Hearing even though he was also a witness to some of the investigated events and her direct supervisor. This is a flaw, though it is not fatal. To avoid the appearance of a conflict, someone who is detached from the events should be assigned to conduct an investigatory hearing under these circumstances, not someone who was involved in the events. The Appellant has since had a hearing at DOC and a hearing at the Commission. As a result of the Commission's hearing, it has been established that the corroborative witness statements, documentation and the video reviewed by Capt. Wilkes adequately support the DOC's findings.

Having worked for the DOC for over a decade, Lt. Sutton should be fully aware of the importance of adhering to the applicable DOC rules, policies, and orders and their significance for ensuring safety at DOC facilities, especially when addressing volatile inmates. She should also apply the rules and regulations of the DOC that require employees to respond fully and in a prompt manner to investigations and other inquiries. Her violations of the cited rules, regulations and procedures, as established by a preponderance of the evidence, constitute substantial misconduct that adversely affects the public's interest by impairing the efficiency of public service at the DOC. The Commission's findings do not substantively diverge from those of the DOC Hearing Officer. In addition, there does not appear to be any evidence of bias or improper motive in this matter. Further, there is no evidence that the discipline issued

constitutes disparate treatment. Thus, there is no reason to modify the three-day suspension issued by the DOC.

Conclusion

For all of the above stated reasons, the discipline appeal of Lt. Letta Sutton, under Docket No. D-15-113 is *denied*.

Civil Service Commission

/s/ Cynthia A. Ittleman
Cynthia A. Ittleman
Commissioner

By 3-2 vote of the Civil Service Commission (Bowman, Chairman [AYE]; Ittleman [AYE], Camuso [NO], Stein [AYE], and Tivnan [NO¹⁴] on March 31, 2016.

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. 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 to:

Lt. Letta Sutton, *Pro Se*
Jody A. Brenner, Esq. (for DOC)

¹⁴ Commissioners Camuso and Tivnan vote “no” because they would modify the discipline to a two (2)-day suspension.