

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

LETTA SUTTON,
Appellant

v.

DEPARTMENT OF CORRECTION,
Respondent

D-14-123

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Cynthia Ittleman¹

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Lieutenant Sutton (“Appellant”) 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 five (5)-day suspension as well as a ten (10)-day suspension. A pre-hearing conference was held on July 8, 2014 and a full hearing was held on September 10, 2014; both were held at the offices of the Commission.² The

¹ The Commission acknowledges the assistance of Law Clerk Barbara Grzonka in the drafting of this decision.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudicatory hearings before the Commission with G.L. c. 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 fourteen (14)⁴, and the testimony of:

Called by DOC:

- Sergeant Scott Black, Superintendent's Investigator, MCI-Cedar Junction
- Lieutenant Chad Fiola, DOC Investigator, Internal Affairs Division
- Sergeant Nicholas Keating, Armorer, MCI-Cedar Junction

Called by the Appellant:

- Lieutenant Letta Sutton, Appellant

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, I make the following findings of fact:

1. Lt. Sutton was appointed to DOC as a Correction Officer I on July 8, 2001. She was subsequently promoted to Sergeant (CO II) in 2005 and then to her current title of Lieutenant (COIII) on June 12, 2011. (Testimony of Lt. Sutton)
2. Lt. Sutton is a "relief Lieutenant". As a relief Lieutenant, she is assigned to various posts throughout the correction facility as needed. (Testimony of Lt. Sutton)
3. Prior to these suspensions, Lt. Sutton's disciplinary record contained one letter of reprimand for excessive tardiness. (Exhibit 6)

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 substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

⁴ This includes documents I requested at the hearing and that the parties produced post-hearing. Exhibit 13, a DOC security policy, is confidential; however, the parties stipulated to a summary of the pertinent provision. (See Finding of Fact 14, *infra*) Exhibit 14, a disciplinary agreement between DOC and Officer A regarding his conduct on May 10, 2013, is confidential. Exhibit 6, p. 100, Officer A's limited disciplinary history, is confidential.

4. Redacted records of other Correction Officers disciplined for violations of similar policies for which Lt. Sutton was disciplined were entered into evidence. Regarding the five (5)-day suspension, the discipline issued to other Correction Officers for violating similar policies varied, depending on the circumstances, and Lt. Sutton's discipline was not the most severe discipline issued for such violations. While Lt. Sutton's ten (10)-day suspension was longer than the disciplinary actions taken against other Correction Officers for violating similar policies, her conduct was more egregious than the conduct of the other Correction Officers. (Exhibit 12)

Facts specific to the five (5)-day suspension:

5. On May 10, 2013, Lt. Sutton was assigned as the Officer in Charge ("OIC") of the Behavior Management Unit ("BMU") at MCI-Cedar Junction ("MCI-CJ"). (Testimony of Sgt. Black)
6. The BMU is a ten-inmate bed unit and is an alternative placement for segregated inmates who are mentally ill or clinically diagnosed to be assigned to the Unit. The Unit is staffed by approximately five (5) staff members at a time. There are two (2) trap doors that individuals must pass through before reaching the BMU and another trap door that the BMU staff controls. (Testimony of Sgt. Black)
7. As the OIC of the BMU on May 10, 2013, Lt. Sutton was the highest ranking officer and was responsible for all of the unit activities and the staff under her command. (Testimony of Lt. Fiola)
8. During the 3 p.m. to 11 p.m. shift on May 9, 2013 in the BMU, Officer B peeled an orange for an inmate in four-point restraints. (Testimony of Sgt. Black)
9. On the morning of May 10, 2013, staff assigned to the 7 a.m. to 3 p.m. shift in the BMU watched a video of Officer B peeling an orange for an inmate. The viewing took place in the

BMU Lieutenant's Office. Lt. Sutton and another officer, Officer A, were both present during the viewing of the video. (Testimony of Sgt. Black) Officer B was not present since he was on the 3p.m. to 11 p.m. shift. (Exhibit 6)

10. Officer A appeared to be disturbed by the video and he said that he was going to speak to Officer B about peeling the orange for the inmate. (Testimony of Lt. Sutton).
11. At approximately 2:52 p.m. on May 10, 2013, several Corrections Officers were moving around the BMU common area and entering and exiting the BMU control room⁵ area to begin or end their shifts. (Exhibit 7A)
12. Video surveillance shows several officers, including Officer B, moving through the control room door without having to pause to unlock the door. (Exhibits 2, 7A and 7B)
13. Officer A reported during an investigative interview on September 3, 2013 that the BMU control room door was closed, but not locked, thereby allowing him to push it open. (Exhibit 2)
14. According to Post Order #044, control room doors must remain locked at all times. (Exhibit 1) MCI-Cedar Junction Institutional Security Procedure, 103 DOC 501, identifies four control rooms in that facility; it does not identify a control room in the BMU at MCI-Cedar Junction. (Stipulation) However, at all pertinent times, the location of relevant events on May 10, 2013 for which Lt. Sutton was disciplined functioned as a control room. (Exhibits 6 and 7A and 7B)
15. During the shift change, Lt. Sutton was standing nearby in the common area and asked Officer A, "are you going to say anything to him (Officer B) about it?", referencing Officer B's having peeled an orange for an inmate in restraints. (Testimony of Lt. Sutton)

⁵ Lt. Sutton submitted evidence that she avers indicates that the BMU does not have an official control room. However, she acknowledged in her testimony at the Commission that the BMU room in question functions as a control room. (Exhibit 13, Testimony of Lt. Sutton)

16. Officer A responded that he did not think it would make a difference. Lt. Sutton replied “you don’t have any” and gestured to her groin (but referring to Officer A’s groin). She also stated that she would bring in pistachios, colloquially implying that Officer A lacked the nerve to confront Officer B. (Testimony of Sgt. Black)
17. Lt. Sutton continued to speak with Officer A briefly and then walked out of view of the security camera in the area. (Exhibit 7A)
18. Next, while Officer A was standing in the common area, he began making derogatory statements about Officer B. (Exhibit 6)
19. Officer B was in the BMU control room, overheard Officer A’s statements, and said to Officer A “if you have something to say, say it to my face.” There was a verbal exchange between Officers A and B. Officer A entered the control room where Officer B was located. (Exhibit 6)
20. Officer B stood up and raised his hands when Officer A approached. (Exhibit 6)
21. The interaction between Officers A and B became physical when Officer B placed his hands on Officer A’s chest. (Exhibit 6)
22. Officer A then punched Officer B in the face. Officer B fell backwards and sustained injuries. (Exhibit 6).
23. Lt. Sutton was in the BMU Lieutenant’s Office when the altercation took place and, therefore, she did not see it. (Exhibit 6)
24. However, upon hearing the commotion, Lt. Sutton, as well as other officers in the immediate area, entered the control room to determine what happened. (Testimony of Lt. Sutton)
25. Later in the day, on May 10, 2013, Lt. Sutton filed an incident report regarding the incident in the BMU control room. In the incident report, she asserted that she had made a joke to

Officer A about bringing in pistachios for him. (Exhibit 6) Even if it was a joke, Lt. Sutton acknowledged that she should not have made such a joke. (Exhibit 7C)

26. On May 30, 2013, Lt. Sutton was interviewed by Lt. David Duarte of Internal Affairs regarding the May 10, 2013 incident. (Exhibit 7C)
27. During the interview, Lt. Sutton was asked if she would peel an orange for an inmate or allow her staff to peel an orange for an inmate. Rather than respond fully to the inquiry, Lt. Sutton would only say that she would not peel an orange for the inmate Officer B had peeled one for because she believes that that inmate can peel his own oranges and, therefore, there was no reason to answer. (Exhibit 7C)
28. At the Commission hearing, in response to questioning regarding Correction Officers peeling oranges for inmates, Lt. Sutton again failed to respond fully and stated that she could not provide a yes or no answer because there were too many variables involved in the question. (Testimony of Lt. Sutton)
29. Lt. Chad Fiola, of Internal Affairs, conducted an investigation of the incident and submitted a report to Chief Philip Silva, of the Department of Correction's Internal Affairs Unit. (Exhibit 6)
30. In his report, Lt. Fiola determined that Lt. Sutton "challenged Officer A to confront Officer B" and that her joking incited Officer A. As the OIC, Lt. Sutton had an obligation to de-escalate the situation. (Exhibit 6)⁶
31. Lt. Fiola also found that Lt. Sutton failed to ensure the BMU control room door was locked as required by Post Order #044. (Exhibit 6)

⁶ Lt. Fiola's report does not indicate whether Officer B putting his hands on Officer A's chest was an offensive or defensive maneuver.

32. Lt. Fiola also found that Lt. Sutton exhibited further misconduct during her May 30, 2013 interview when she did not provide a yes or no answer to whether she would allow a staff member to peel an orange for an inmate. (Exhibit 6)
33. Lt. Fiola's report was reviewed by Paul DiPaolo, Deputy Commissioner of the Department of Correction's Administrative Services Division, who determined that Lt. Sutton's actions were in violation of the Massachusetts Department of Correction Rules and regulation, General Policy I, Rule 1, 6(a), 6(b), 6(d), 7(c), 19(c) and 19(d), the Prevention and Elimination of Workplace Violence Policy (103 DOC 237), and Post Order #044, BMU Sergeant/Correction Officer/OIC. (Exhibit 6)
34. The pertinent parts of the applicable rules, policies and procedures are as follows:

General Policy I: "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 and full and prompt obedience to all provisions of law and to all orders not repugnant to rules, regulations, and policies 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 Correction 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..." (Exhibit 1)

Rule 1: which provides, in part, "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..." (Exhibit 1)

Rule 6(a): which provides in part, "Correctional goals and objectives can best be achieved through the united and loyal efforts of all employees. In your working relationships with coworkers you should treat each other with mutual respect, kindness, and civility as become correctional professionals. You should control your temper, exercise the utmost patience and discretion, and avoid all collusions, jealousy and controversies in your relationships with coworkers." (Exhibit 1)

Rule 6(b): which states, in part, “Do not foster discontent or otherwise tend to lower the morale of any employee...” (Exhibit 1)

Rule 6(d): which states, in part, “Relations between supervising and subordinate employees should be friendly in aim yet impersonal and impartial to such a degree that no subordinate employee may justly fee themselves favored or discriminated against...” (Exhibit 1)

Rule 7(c): which provides, “Any Department of Correction or institution employee who is found sleeping at his/her post during the course of their official duties, or otherwise flagrantly, wantonly or willfully neglecting the duties and responsibilities of his/her office shall be subject to immediate discipline up to and including discharge.” (Exhibit 1)

Rule 19(c): which states in part, “Since the sphere of activity within an institution of the Department of Correction may on occasion encompass incidents that require through 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.” (Exhibit 1)

Rule 19(d): which provides, in part, “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. This duty and responsibility is augmented for supervising employees, an increasingly so, according to rank.” (Exhibit 1)

Prevention and Elimination of Workplace Violence Policy 103 DOC 237: which states in part, “It is the Department’s policy to have zero tolerance for workplace violence in any form.” 103 DOC 237.01. Further, workplace violence includes but is not limited to, “(1) Bullying, intimidation, harassment, stalking, concealment of or brandishing a weapon, or physical assault and/or battery; (2) Any behavior that communicates by any means (e.g. oral, written, electronic, gestures or expressions) a direct or indirect threat of physical harm, violence, harassment, or intimidation;...[or] (6) Any behavior that causes disruption of workplace productivity, as determined by the Commissioner, the applicable Superintendent, Division Head, or their designees.” 103 DOC 237.02. (Exhibit 1)

MCI-Cedar Junction Post Order #044: which provides, in part, “The door to the control room shall remained locked when not in use.” (Exhibit 1)

35. On February 7, 2014, Lt. Sutton was provided with written notification that, pursuant to G.L. c.31, § 41, a hearing would be held to determine if she violated the cited DOC Rules, regulations or policies and to determine the appropriate level of discipline if applicable. (Exhibit 1)

36. On March 12, 2014, the hearing was held by DOC. Lt. Sutton chose not to testify at this hearing. (Exhibit 2)
37. Lt. Sutton did not testify at the DOC hearing, believing that the Commission would be the better forum for her testimony. (Testimony of Lt. Sutton)
38. On March 18, 2014, the hearing officer at Lt. Sutton's DOC hearing reported her findings to the Commissioner of DOC by memorandum. The DOC hearing officer found that the allegations were proven more likely than not. The officer determined that Lt. Sutton violated the General Policy and Rules 1, 6(a), 6(b), 6(d), 7(c), 19(c) and 19(d) as well as the Department's Prevention and Elimination of Workplace Violence policy, 103 DOC 237 and Post Order # 044-BMU Sergeant/Correction Officer/OIC. (Exhibit 2)
39. On or about May 19, 2014, Lt. Sutton was informed by letter that DOC decided to issue her a five (5)-day suspension. The Commissioner of DOC signed this letter. (Exhibit 3)
40. Officer A received discipline that has more serious ramifications than the one issued to Lt. Sutton for violating DOC Rules and regulations during the events on May 10, 2013. (Exhibit 6)
41. Officer A's prior discipline record was limited. (Exhibit 6)
42. Officer B received a verbal warning for his actions on May 10, 2013. Officer B had no record of prior discipline. (Exhibit 6; Stipulation)⁷

Facts specific to the ten (10)-day suspension:

43. On October 24, 2013, Lt. Sutton was assigned as the OIC of the Administration Control Room at MCI-Cedar Junction ("MCI-CJ").⁸ Officers assigned to this room control the trap

⁷ Correction Officers C, D, E and F were also disciplined for their limited actions relating to the events on May 10, 2013. (Stipulation)

⁸ The Administration Control Room is the main control room at the entrance to MCI-CJ, not the control room of the BMU at MCI-CJ.

doors where all pedestrians enter and exit and they are responsible for issuing keys and equipment to staff. The control room contains an armory. (Testimony of Sgt. Keating)

44. The OIC of the Administration Control Room is an armed post. The OIC is required to carry a loaded handgun on his or her waist per Post Order #012. (Exhibit 10)

45. The Administration Control Room is one of a number of armed posts at MCI-CJ.
(Testimony of Sgt. Keating)

46. On October 24, 2013, there was a policy and procedure compliance audit taking place at MCI-CJ. An auditor, accompanied by Sgt. Keating, entered the Administration Control Room to gain access to the main armory. (Testimony of Sgt. Keating)

47. After conducting an inventory of the main armory on October 24, 2013, the auditor wanted to check the inventory in the armory at MCI-CJ. (Testimony of Sgt. Keating)

48. The auditor found that a specific number of rounds of ammunition were missing. Sgt. Keating suspected that Lt. Sutton had the missing ammunition because she was at an armed post. (Testimony of Sgt. Keating)

49. Sgt. Keating asked Lt. Sutton to show him the rounds of ammunition that she had with her.
(Testimony of Sgt. Keating)

50. Lt. Sutton pulled an empty magazine out of her weapon. The missing rounds were on her belt. (Testimony of Sgt. Keating)

51. Lt. Sutton was aware that she was required to have her weapon loaded when she is the OIC of the Administration Control Room. She did not forget to load it. (Testimony of Lt. Sutton)

52. On December 13, 2013, Lt. Sutton was questioned by Captain Steven Fairley regarding her unloaded weapon on October 24, 2013. She told Captain Fairley that she “had begun a

practice of inserting an empty magazine into her sidearm whenever she was the OIC in Ad Control (Administration Control Room).” (Exhibit 10)

53. On or about February 14, 2014, Lt. Sutton was provided with written notification that, pursuant to G.L. c. 31, § 41, a DOC hearing would be held to determine if she violated DOC’s Rules, regulations, or policies regarding her unloaded weapon and, if so, what discipline should be issued. The Rules and policies Lt. Sutton may have violated according to the DOC were: General Policy I, Rule 12(a), Rule 14(d), Rule 19(d) and MCI-Cedar Junction Post Order # 012. (Exhibit 8)

54. The pertinent parts of the rules are as follows:

General Policy I: “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 and full and prompt obedience to all provisions of law and to all orders not repugnant to rules, regulations, and policies 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 Correction 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...” (Exhibit 8)

Rule 12(a): which provides, “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.” (Exhibit 8)

Rule 14(d): which states, “Your primary duty is to hold in safe custody any inmate or others duly committed to an institution, placed in a hospital, or assigned to your custody. It is also your duty to protect yourself and others from loss of life or severe bodily harm. Consequently, weapons may be issued to you for official performance of your duty. Your issued firearm is a deadly weapon, and may only be used as deadly force in compliance with 103 CMR 505, Use of Force. Any inappropriate use of a weapon may result in immediate discipline up to and including discharge.” (Exhibit 8)

Rule 19(d): which provides, in part, “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. This duty and responsibility is augmented for supervising employees, and increasingly so, according to rank.” (Exhibit 8)

MCI-Cedar Junction Post Order #012: which provides in part, “The Ad Control OIC, if qualified in the use of firearms or the senior ranking officer in Ad Control(if the OIC is not qualified) shall be armed with a loaded [] weapon at all times while on duty in Ad Control.” (Exhibit 8)

55. On March 5, 2014, DOC conducted its hearing regarding the charges against Lt. Sutton pertaining to her unloaded weapon. She chose not to testify at this DOC hearing. Lt. Sutton testified at the Commission hearing. (Exhibit 9, Testimony of Lt. Sutton)
56. On or about March 5, 2014, the DOC hearing officer reported her findings to the Commissioner of DOC by memorandum. The hearing officer found that Lt. Sutton engaged in the charged conduct. Specifically, Lt. Sutton was at an armed post with no ammunition in her firearm and she knowingly inserted an empty magazine into her side arm in violation of Post Order #012. (Exhibit 9)
57. On or about May 19, 2014, Lt. Sutton was informed by letter, signed by the DOC Commissioner, that DOC was issuing her a ten (10)-day suspension. (Exhibit 11)
58. At the Commission hearing, Lt. Sutton acknowledged that her weapon had an empty magazine clip and the ammunition was in a “mag pouch” on her belt on October 24, 2013. (Exhibit 10, Testimony of Lt. Sutton)

DISCUSSION

Legal Standards

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 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.)

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

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).

The Commission may take into account the fact that a party did not testify on his own behalf at a prior civil proceeding. If an opposing party establishes, by a preponderance of evidence, adverse to the interest of the party who did not testify at the prior proceeding, a negative inference can be drawn against the person who did not so testify. Noble v. Massachusetts Bay Transportation Authority Police Department, 25MCSR 391 (2012)(citing Scanlon v. Massachusetts Dep't of Correction, 22 MCSR 431 (2009) citing Commonwealth v. Figueroa, 413 Mass. 193, 199 (1992)); and Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 826-27 (2006)(negative inference may be drawn against the appellant when he claimed 5th Amendment privilege against self-incrimination and refused to testify at a disciplinary hearing before the Appointing Authority).

Analysis

Five (5)-day suspension

DOC has established by a preponderance of the evidence that it had just cause to issue the five (5)-day suspension against Lt. Sutton for her conduct on May 10, 2013. Included in this determination is the finding that Lt. Sutton did not testify at the DOC hearing, from which I draw an adverse influence.

Although Lt. Sutton suggested that her comments to Officer A were a joke and that she should not have made the joke, having worked at DOC since 2001 and been a Sergeant since 2005 and a Lieutenant since 2011, she was well aware of how such comments are received in a correctional facility and made them anyway, resulting in an altercation and injury and jeopardizing security.

Pursuant to Rule 19(d) of the Rules and Regulations Governing all Employees of the Massachusetts Department of Correction (“DOC Rules”), Lt. Sutton is held to a higher standard of conduct than lower ranking officers. (Exhibit 5) In addition, under the cited DOC Rules, employees of the DOC have a “constant obligation to render good judgment” under General Policy I. Further, DOC Rule 1 provides that “employees should give dignity to their position ...” Lt. Sutton’s comments to Officer A effectively encouraged Officer A to confront Officer B clearly violated these DOC Rules by undermining the dignity of Officers A and B, as well as her own dignity and the comments show Lt. Sutton’s poor judgment in provoking the altercation between Officers under her charge. That Lt. Sutton was the highest ranking officer involved in this matter makes her comments more egregious. In the difficult work environment of correctional facilities, such statements not only lower’s an officer’s dignity but they also

undermine security, which is DOC's essential function. For violations of these DOC Rules, Lt. Sutton's conduct warrants discipline.

Additionally, Rule 6(d) indicates that "relationships between supervising and subordinate employees should be friendly in aim yet impersonal..." and Rule 6(b) states, "[d]o not foster discontent or otherwise tend to lower the morale of any employee." Lt. Sutton comments to Officer A clearly violated both rules. Her initial comment to Officer A about whether he was going to confront Officer B was provocative, not friendly, and it clearly engendered or promoted discontent. Her second comment, which was deeply personal, questioned whether Officer A was "man enough" to confront Officer B, thereby encouraging Officer A to directly confront Officer B. These comments resulted in workplace violence in violation of the DOC Prevention and Elimination of Workplace Violence Policy, at 103 DOC 237. The commotion that occurred after Office A confronted Officer B, including the violence that ensued, caused a significant disruption of the workplace whose central function is to ensure the security and safety of all at the correctional facility and the public at large. Having fomented these events with her comments, Lt. Sutton's conduct constitutes substantial misconduct which adversely affects the public interest by impairing the efficiency of public service warranting discipline.

Lt. Sutton also violated DOC Post Order #044, which requires the OIC to keep the control room door in the BMU locked. Video surveillance shows several officers moving quickly through the control room door during the time of shift change. This indicates that the door was unlocked at that time. Officer A confirmed that the BMU control room door was unlocked when he entered the room. Although Lt. Sutton defended that the control room in the BMU was not a control room governed by Post Order #044, it is clear that the room where the altercation took place functions as a control room and, therefore, its use is governed by Post

Order # 044. The movement of personnel at the beginning and end of their shifts warrants extra precaution at control room doors addressed by Post Order #044. Having failed to ensure that the control room door in the BMU was locked during these events, Lt. Sutton violated this Post Order; such conduct constitutes substantial misconduct that adversely affects the public interest by impairing the efficiency of public service and warrants discipline.

Having determined that discipline of Lt. Sutton was warranted in this regard, the Commission assesses whether the discipline issued by DOC is subject to modification. The only previous discipline of Lt. Sutton is one letter of reprimand for tardiness. While a five (5)-day suspension given to an officer whose only prior discipline was a letter of reprimand for tardiness might raise a question, that is not the case here. Lt. Sutton, who has been employed at DOC since 2001, is fully aware of the Rules and Policies of the DOC, as well as the impact an officer's comments can have on his or her colleagues. Despite her knowledge and experience, Lt. Sutton made comments that provoked and or promoted the altercation between Officers A and B, which resulted in injury to Officer B and disrupted the essential DOC functions at a shift change, when extra precautions are needed in a correctional facility to ensure safety and security. Other DOC employees have been disciplined for similar conduct on other occasions, although there is no indication in the record if the other employees so disciplined had been disciplined previously. Given the similar discipline given to other DOC employees for similar conduct on other occasions, there is no evidence that Lt. Sutton was treated in a disparate manner for the established violations of DOC Rules and Policy, nor is there any evidence of bias or other improper motive in this regard. In addition, the Commission's findings here are substantially the same as those found by DOC. Therefore, there is no reason to modify the five-day discipline issued by DOC here. In addition, it is important to note that Officers A and B were disciplined

for their conduct during these events, indicating that Officers A and B were also held accountable for their conduct. Finally, the discipline here is warranted, notwithstanding the fact that Lt. Sutton's sole prior discipline involved only a letter of reprimand. As a superior officer and longtime DOC employee, it was incumbent upon Lt. Sutton to de-escalate the situation involving Officers A and B, not escalate it. Under these circumstances, the five-day suspension issued by DOC in regard to this incident was not excessive.

Ten (10)-day suspension

DOC has established by a preponderance of the evidence that it had just cause to discipline Lt. Sutton for failing to carry a loaded weapon on October 24, 2013 as required. Included in this determination is the finding that Lt. Sutton did not testify at the DOC hearing, from which I draw an adverse influence.

Institutional procedures dictate that the OIC in the Administrative Control Room carry a loaded weapon since it is an armed post. Lt. Sutton acknowledged being in violation of the procedure on October 24, 2013 and offered no acceptable explanation of her conduct in this regard. She admitted, in hindsight, that she should have had a loaded weapon. Not having a loaded firearm constitutes substantial misconduct that adversely affects the public interest by impairing the efficiency of public service. If an emergency had arisen, which can happen at any moment in a correctional facility, Lt. Sutton would have been incapable of responding as required in a timely manner. In the environment of a correctional facility, such conduct can have grave consequences.

Lt. Sutton acknowledged that her weapon was supposed to be loaded as part of her assignment on October 24, 2013. Disciplinary records for firearm security breaches by other Correction Officers at MCI-CJ do not show suspensions as long as the one given to Lt. Sutton.

However, her violation was especially egregious since she was in one of the limited number of armed posts in the facility and, in defiance of a Post Order to carry a loaded weapon while on duty, she had developed a practice of not doing so. Thus, all the employees depend on and expect the OIC to ensure the safety and security of the entrance to MCI-CJ. The firearm security breaches that resulted in suspensions of other Correction Officers were for mishandling weapons and none rose to the level of Lt. Sutton's failure, as an OIC, to arm herself as required. In view of the egregious nature of Lt. Sutton's violation of the pertinent firearm security breaches, I find that the ten (10)-day suspension is not subject to modification. Moreover, there is no indication of bias or other improper motive on the part of the Appointing Authority in issuing the ten-day suspension.

Conclusion

For all of the above reasons, the discipline appeal of Ms. Letta Sutton, under Docket No. D-14-123, is hereby *denied*.

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

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell & Stein, Commissioners) on July 23, 2015.

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:

Allison N. Beckwith, Esq. (for Appellant)

Amy Hughes, Esq. (for Respondent)