

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108

PATRICK TITTA,
Appellant

v.

D1-18-099

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Joseph Kittredge, Esq.
Lorena Galvez, Esq.
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Appearance for Respondent:

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Department of Correction
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Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

DECISION

On May 29, 2018, the Appellant, Patrick Titta (Mr. Titta), a Correction Officer I (CO I) at the Department of Correction (DOC), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of DOC to terminate his employment: I held a pre-hearing conference at the offices of the Commission on May 29, 2018 and a full hearing was held over two (2) days at the same location on October 18th and 19th,

2018.¹ The full hearing was digitally recorded and both parties were provided with a CD of the recording.²

FINDINGS OF FACT

Twenty-three (23) exhibits (Exhibits 1-23) were entered into evidence at the hearing and two (2) post-hearing exhibits (Exhibits PH1 and PH2) were submitted at my request. Based on the documents submitted and the testimony of the following witnesses:

Called by DOC:

- Shawn Jenkins, former Special Sheriff; Worcester County Sheriff's Office
- Evan Butler; CO I, DOC;
- Jacqueline Thibault, CO II, DOC;
- Ryan Ricchezza, COI, DOC;
- Thomas Perry; CO I; DOC;
- Eugene Jalette, Supervising Identification Agent, DOC;
- Thomas Taft, CO I, DOC
- Katie Appel, Internal Affairs Officer, DOC;

Called by Mr. Titta:

- Patrick Titta, Appellant;

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

1. On November 3, 2013, Mr. Titta was appointed as a CO I at DOC. (Stipulated Fact)
2. Prior to his 2013 appointment, Mr. Titta had been non-selected for appointment during two (2) prior hiring cycles. (Post-Hearing Exhibits; Testimony of Jalette)

¹ The Standard Adjudicatory rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

² 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. If such an appeal is filed, these CDs should be used to transcribe the hearing.

3. On April 20, 2018, DOC, after providing Mr. Titta with proper notice, held an appointing authority hearing (Commissioner's hearing) to determine whether Mr. Titta should be disciplined, up to and including termination, for charges proffered against him. (Stipulated Fact)
4. Mr. Titta did not testify at the appointing authority hearing. (Stipulated Fact)
5. On May 17, 2018, Mr. Titta was terminated for: 1) using his personal cell phone, while on duty, to notify his brother that an inmate was being transported to the hospital; 2) contacting his brother, while his brother was incarcerated at the Worcester County House of Correction, and discussing inappropriate topics with him and other inmates, and then failing to notify DOC of the conversations; 3) providing false information during the hiring process; 4) providing false information to DOC regarding an off-duty incident at Gillette Stadium in Foxboro; and 5) providing false information to investigators during the internal affairs investigation that is the subject of this appeal.

Using his personal cell phone, while on duty, to notify his brother that an inmate was being transported to the hospital

6. On January 29, 2018, Mr. Titta was working in Tower 1 at MCI Shirley during the 3:00 P.M. to 11:00 P.M. shift. (Testimony of Titta and Appel)
7. The Tower 1 Officer is responsible for opening the gate to let outside vehicles in and out of the facility. (Testimony of Titta)
8. Mr. Titta had his personal cell phone with him while working in Tower 1 on January 29th. (Testimony of Mr. Titta)
9. Mr. Titta engaged in phone conversations on his cell phone while on duty on January 29th, including a thirty (30)-minute phone conversation, beginning at 3:07 P.M., with an off-duty

correction officer; and a nineteen (19)-minute call, beginning at 3:43 P.M., with the same off-duty correction officer. (Testimony of Mr. Titta)

10. Mr. Titta also used the DOC phone in the tower to make multiple calls to chat with on-duty officer friends at MCI Shirley during his shift on January 29th including calls at 9:20 PM; 9:37 PM; 9:55 PM; 9:56 PM; 10:03 PM; and 10:20 PM. (Exhibit 11; Testimony of Mr. Titta)
11. Shortly before 9:38 P.M. on January 29th, Officer Evan Butler was alerted to the fact that an inmate in Alpha 1 Housing Unit in Cell Number 50 was “passed out in his cell with vomit everywhere.” He approached the cell and saw inmate A. Inmate A was not assigned to Cell Number 50. As Inmate A was unresponsive, Officer Butler immediately called a “Code 99”, requesting emergency medical assistance. The Code 99 was made at 9:38 P.M. Officer Butler did not identify Inmate A in the Code 99. Rather, he identified the Cell Number (50) where Inmate A was currently located, but not assigned to. (Testimony of Butler)
12. Officer Butler did not speak with Mr. Titta that night regarding the Code 99. (Testimony of Officer Butler)
13. Responders arrived at the unit at approximately 9:41 PM and Inmate A was ultimately taken out of the unit by EMTs at approximately 10:18 PM. (Testimony of Butler)
14. Mr. Titta got a call in Tower 1 from a Captain telling him that an ambulance was on the way. (Testimony of Titta)
15. As soon as the Code 99 was called, Mr. Butler’s partner started securing the unit by using a microphone telling inmates to lock into their cells. (Testimony of Butler)
16. It took all the inmates in the unit approximately “fifteen seconds” to lock in. (Testimony of Thibault)

17. CO II Jacqueline Thibault was working in Outer Control at the time of the Code 99. Her role was to prepare officers for the hospital trip and to watch a video monitor to make sure nothing was going on in the A-1 housing unit. (Testimony of Thibault)
18. At approximately 10:20 PM, Ms. Thibault received an outside telephone call from E, who identified herself as the fiancé of Inmate A. (Testimony of Thibault)
19. E told Ms. Thibault that she was just notified that Inmate A was taken out of the institution in critical condition and she wanted more information. (Testimony of Thibault)
20. Ms. Thibault put the caller on hold to verify her information. E was listed as a contact for Inmate A. Ms. Thibault noted that E kept changing her story about how she learned about Inmate A's status. First, E said she received a text message, then reported it was a Facebook message, then repeated that it was a text message. (Testimony of Thibault)
21. Ms. Thibault knew that Inmate A left MCI Shirley around the same time that E called to ask about him because she got a call from the vehicle trap notifying her that Inmate A was leaving. The vehicle trap officer (not the Appellant) has to verify the name of the inmate who is leaving. (Testimony of Thibault)
22. Families are never notified when an inmate is transported to an outside hospital because it is a security breach. A family member could unexpectedly meet the inmate at the hospital and/or attempt to help the inmate escape. (Testimony of Thibault and Ricchezza) Families are only notified about an inmate's status after the inmate arrives at the hospital if the situation is "life threatening." (Testimony of Thibault)
23. Ms. Thibault filed a report stating in part: "Let it be known that the unit had been locked for a substantial amount of time when she said she had received this information and it seems

possible that someone may have a so [sic] kind of unauthorized communication device within the unit.” (Exhibit 11)

24. At 11:20 PM on January 29th, Officer Ryan Ricchezza, while working in the Control Room at MCI Shirley, received an outside call phone call from Inmate A’s mother, D. D told Ricchezza she received a phone call from her “frantic” daughter who was notified that Inmate A had been sent to the hospital. (Testimony of Ricchezza)
25. Mr. Ricchezza was “taken aback” by the call and it triggered red flags. He found the call to be significant and of concern because, to his knowledge, inmate phones had been turned off earlier in the evening and “the fact that an inmate family is receiving notifications from within the facility during that time is a serious breach of security.” (Testimony of Ricchezza)
26. An investigation ensued regarding how family members of inmate A had received information about him leaving the facility for the hospital that night. (Testimony of Perry)
27. On Monday, February 5, 2018, several days after the Code 99, Inmate A, who was back at MCI Shirley in the segregation unit, had a conversation with Officer Thomas Perry at MCI Shirley. Perry was a member of the Inner Perimeter Security (“IPS”) team. (Testimony of Perry)
28. Inmate A asked Mr. Perry why he was pending investigation and why he was denied a visit with his fiancé. Mr. Perry explained that IPS was still trying to figure out how his family learned about his outside hospital trip. (Testimony of Perry)
29. Later that same day, on February 5, 2018, Inmate A was given permission to call his fiancé, E. In the recorded phone call, Inmate A called E and told her he was “in the hole” and that he needed to find out who told his family he was sent to the hospital in order to get out of the hole. E added Inmate A’s mother, D, into the conversation. (Exhibit 13 – CD of Inmate A

phone call to family on February 5, 2018) The recorded conversation then includes the following exchange [“B” refers to Mr. Titta’s brother]:

D (Inmate A’s Mother): There’s “only one person up there who knows our family”.

Inmate A: “Whose that?”

D (Inmate A’s Mother): “[B]’s brother”

....

D (Inmate A’s Mother): “I guess when he heard it come across he called [B] and [B] called [F] [Inmate A’s Brother] and he [F] called me.” (Exhibit 13)

30. That same day, Inmate A’s fiancé, E, called Mr. Perry. E told Mr. Perry that she talked to Inmate A and D. E told Mr. Perry that the mother found out about the hospital trip from F, Inmate A’s brother, who learned about it from Mr. Titta’s brother, B. (Testimony of Perry)
31. Mr. Titta did not make or receive any telephone calls with his personal cell phone on January 29th from the time the Code 99 was called and until the end of the shift. (Exhibit 19)
32. Mr. Titta has multiple apps on his phone including: iPhone Messenger; Snap Chat; and Facebook Messenger. (Testimony of Mr. Titta)
33. Mr. Titta refused to provide DOC investigators with his cell phone records prior to his termination. (Testimony of Appel)
34. Mr. Perry made some initial Facebook queries and determined that F is the brother of Inmate A. F and Inmate A are believed to have the same mother, D. (Testimony of Titta, Perry and Appel)
35. Mr. Titta is Facebook friends with Inmate A’s brother, F. Mr. Titta is Facebook friends with his own brother, B. B is Facebook friends with F and Inmate A’s mother, D. (Exhibit 11; Testimony of Perry and Appel)

Contacting his brother, while his brother was incarcerated at the Worcester County House of Correction, and discussing inappropriate topics with him and other inmates, and then failing to notify DOC of the conversations

36. As part of the investigation into whether Mr. Titta used his personal cell phone, while on duty, to notify his brother that Inmate A was being transported to the hospital, DOC reviewed calls between Mr. Titta and his brother while his brother was incarcerated at the Worcester County House of Correction. (WCHOC).
37. On August 29, 2016, Mr. Titta submitted a Confidential Incident Report informing the DOC that “my brother [B] was arrested by Worcester Police. He is being housed at Worcester County Sheriffs office and expected to be there for roughly 6 months. I may be contacted via phone by him.” (Exhibit 11)
38. Mr. Titta communicated with B in twenty five (25) recorded telephone calls while B was incarcerated at WCHOC. The calls took place in approximately September and October 2016, while Mr. Titta was employed by the DOC. (Exhibit 14 and Exhibit 11)
39. Mr. Titta did not report to DOC after he spoke with B while B was incarcerated. (Testimony of Appel)
40. In the WCHOC telephone calls between Mr. Titta and B, Mr. Titta discussed topics including, but not limited to: the layout of housing units at MCI Shirley and WCHOC, the crimes of at least one inmate, staff members at MCI Shirley and WCHOC, fights in prison and inmates housed at MCI Shirley and WCHOC. (Exhibit 14)
41. For example, when B said that he would be in a particular housing unit, and asked his brother “I’m not locked in ever, right?” Mr. Titta replied, “Nah, never, they don’t even have locks, they are dorms.” (Exhibit 14)

42. Mr. Titta asked B, “[Inmate I] or any of those kids need anything?” B responded, “Need anything?” Mr. Titta replied, “Yeah, I can tell [Inmate G] and all them. [Inmate G] is about to be up there too.” (Exhibit 14)
43. In another conversation with B about which housing unit he was in, Mr. Titta told B, “I can call some dude and see if he can help you get over there. He’s kind of a faggot.” (Exhibit 14)
44. Mr. Titta offered to help get money on the accounts of inmates at WCSO. (Exhibit 14)
45. Mr. Titta and B discussed the fact that G was facing charges for assault and battery on a police officer. (Exhibit 14)
46. Mr. Titta told B that MCI Shirley is separated into separate buildings and that the housing units look the same as the Mod units at WCHOC. He also told B that the inmates are only locked in during the major counts. (Exhibit 14)
47. In one telephone conversation between Mr. Titta and B, Mr. Titta told B “Shoulda had those dudes beat up H, that kid’s a faggot.” B responds, “Oh yeah, they’re gonna fuck him up. I won’t say it over the phone, but those dudes are straight fuckin’ lifers dude.” (Exhibit 14)
48. On or about October 14, 2016, while Mr. Titta was talking to B at WCHOC, B passed the phone to Inmate J. Mr. Titta and Inmate J engaged in a conversation in which Mr. Titta offered to assist J to get a job upon his release. In their telephone conversation, Mr. Titta also thanked J for watching out for his brother in WCHOC. (Exhibit 14)
49. Mr. Titta did not report his communication with Inmate J to DOC. (Testimony of Appel)
50. Mr. Titta placed a three-way call between B and former Inmate C. C, a gang member, was formerly incarcerated at the Middlesex County House of Correction. (Exhibit 14; Testimony

of Appel) Mr. Titta did not report his association with C to DOC and did not have permission to associate with C. (Testimony of Appel)

51. On January 24, 2014, Mr. Titta filed a Confidential Incident report, stating that while covering chow that day, he recognized Inmate G. He stated, "I know inmate G from being a friend of my brothers. I played recreational sports with inmate G. We were former friends before inmate G was incarcerated. Ever since I became a correctional officer I have not had any contact with this inmate." (Exhibit 11)

52. During a phone call between Mr. Titta and B in 2016, Mr. Titta tells B, "Yeah I can tell G and all them. G is about to be up there too." Mr. Titta and B talk about a "68 gram necklace" owned by G, and when B asks Mr. Titta if he's seen it, Mr. Titta replies, "Yeah, he's been out too." Mr. Titta also told his brother "I'll tell G and all those kids to put money on those kids' books." (Exhibit 14)

Providing false information during the hiring process

53. In approximately October 2011, Mr. Titta applied to be a Correction Officer with the DOC. In his application, he listed the reason for leaving WCSO as "probationary period." (Post Hearing Exhibits)

54. Later in the same application, on the Employment History Addendum, page 8, he checked a box stating he had been formally disciplined by an employer. On the same page, he said the reason for leaving WCSO was "unknown, probation era," and the sanction was "termination." (Post Hearing Exhibits)

55. In his 2011 application, Mr. Titta disclosed that misdemeanor charges were pending against him in NH District Court. (Post Hearing Exhibits)

56. Mr. Titta was notified that he was not considered for appointment to the January 2012 Academy due to an “unsatisfactory background check/negative employment.” (Post Hearing Exhibits)
57. In early 2013, Mr. Titta applied for a position as a DOC Correction Officer again. (Post Hearing Exhibits)
58. In this 2013 application, when asked if he had been convicted of a misdemeanor within the past five years, he answered “yes.” He explained “unsure if mis [sic] or a violation, supposed to [unable to read.]” (Post Hearing Exhibits)
59. Later in this 2013 application, he reported the Hampton Beach NH charges and also answered yes “unsure-violation after one year” when asked about misdemeanor convictions.” (Post Hearing Exhibits)
60. In 2013, Mr. Titta reported the reason for leaving WCSO as “probationary ended.” Later in the application, he checked a box saying he had “never been formally disciplined by an employer,” and the reason for leaving was “9 month probationary period.” (Post Hearing Exhibits)
61. In June 2013, Mr. Titta’s application for appointment to the June 2013 Academy was denied because the “Interview Panel did not recommend you for appointment.” (Post Hearing Exhibits)
62. Specifically, the Interview Panel notes state, “Mr. Titta has had previous experience working for the county sheriff’s dept, which prepared him to answer the questions accordingly, but the candidate was less than truthful with his answers in this application. He had been terminated by the County Sheriff’s dept for an incident he had with law enforcement during his probation period. Due to his lack of responsibility for his actions of that incident and his

answers on the application, the panel agreed Mr. Titta is not ready to assume the responsibilities the position requires.” (Post Hearing Exhibits)

63. In approximately July 2013, Mr. Titta submitted another (third) application for employment with DOC. (Exhibit 11)

64. In the July 2013 application, Mr. Titta checked “no” when asked if he been convicted of a misdemeanor within the past five years. (Exhibit 11)

65. Next to the “No box” there is a statement that states “conviction will not necessarily disqualify an applicant from employment. Below that statement, it also says, “an applicant for employment with a sealed record on file with the Commissioner of Probation may answer ‘no record’ with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions”. (Exhibit 11)

66. Mr. Titta did not indicate that he had been convicted of a misdemeanor within the last 5 years in his July 2013 application because he believed the Hampton Beach misdemeanor charge had been annulled at the time of the application. (Testimony of Titta)

67. Mr. Titta’s criminal attorney for the Hampton Beach misdemeanor charge represented to him that the misdemeanor would be annulled within a year of him pleading guilty as long as he didn’t get in any trouble within the year. (Testimony of Titta).

68. Mr. Titta recalls pleading out of the Hampton Beach misdemeanor on or about October or November of 2011 and going back roughly a year later to complete paperwork, submit a New Hampshire CORI and pay fines to annul (seal) the misdemeanor. (Testimony of Titta)

69. Mr. Titta never heard anything again regarding the New Hampshire annulment (sealing of records) and assumed it had been annulled. (Testimony of Titta)

70. After his interview with Officer Appel in March 2018, Mr. Titta obtained a copy of the Docket Case Summary from Seabrook District Court (Exhibit 20) and discovered that the Petition to Annul Record had been denied on November 2, 2013, a day before he was hired by DOC. (Testimony of Titta & Exhibit 20)
71. The Petition to Annul Record was filed on November 14, 2012, before Mr. Titta filed his July 18, 2013 application for employment. (Exhibit 20)
72. Mr. Titta was not notified that the Petition to Annul had been denied and at the time he was interviewed by Officer Appel. (Testimony of Titta)
73. In response to questions about how his WCSO employment ended, Mr. Titta responded “probation era ended” and “pending court case which was dismissed.” (Exhibit 11)
74. In July 2013, Mr. Titta reported having been formally disciplined by an employer and stated the reason for the sanction was “Not offered a job post probation era 9-16-11.” (Exhibit 11)
75. In May 2013, during the background investigation, Mr. Titta told Officer Thomas Taft that the incident at Hampton Beach was “a situation his brother was involved in and he jumped in, all that came out of it was a fine and was later dropped from his file and since he was on probation he was released from the Sheriff’s department a month after the incident.” (Testimony of Taft)
76. Mr. Taft reviewed Titta’s employment file at the WCSO. The termination letter was not in the file. (Testimony of Taft)
77. DOC did not run a 2013 background check of Mr. Titta in NH because he never lived in NH. (Testimony of Jalette)

78. When Mr. Titta's BOP was checked in MA, his NH conviction did not show up. If Mr. Titta had reported his NH convictions for resisting arrest and disorderly conduct, a BOP would have been run in NH. (Testimony of Jalette)

79. Mr. Taft did not have Mr. Titta's prior applications when he conducted the 2013 background check. (Testimony of Taft)

80. Mr. Titta was appointed as a CO I by DOC on November 3, 2013. (Stipulated Fact)

Providing false information to DOC regarding an off-duty incident at Gillette Stadium in Foxboro

81. On August 11, 2014, during a concert at Gillette Stadium in Foxborough, MA, police were approached by Mr. Titta who reported being hit over the head with a bottle. (Exhibit 11)

82. On August 11, 2014, Mr. Titta filed a Confidential Incident Report stating that he was the victim of a crime and was assaulted while trying to stop an altercation. He reported that "Massachusetts State police arrived on scene and verified me as a victim to a crime. At this time they took down my personal information and explained to me to seek medical attention and that I might be summonsed to court for a statement in the future." (Exhibit 11)

83. On or about September 17, 2014, a complaint was issued and **Mr. Titta** was summoned to court for Assault and Battery. (Exhibit 11)

84. On January 13, 2015, Mr. Titta filed another confidential report advising he had been to "Wrentham District Court in follow up to the confidential written in August 2014" and that it was continued to March 24, 2015. (Exhibit 11, p 83)

85. On March 25, 2015, Mr. Titta reported that "On Tuesday March 24, 2015, I attended Wrentham District court. All of the charges were dropped as previously noted." (Exhibit 11)

86. Mr. Titta never reported being charged with Assault and Battery. (Exhibit 11)

Providing false information to investigators during the internal affairs investigation

87. Mr. Titta told investigators that he had no idea how Inmate A's family found out that he was transported to the hospital. (Exhibit 12)

88. Mr. Titta denied offering Inmate J assistance to find a job. (Testimony of Appel)

Applicable Civil Service Law

G.L. c. 31, § 43 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.”

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 (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 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

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).

Under section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew;” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. However, “[t]he commission’s task.. is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision’,” which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority; Id., quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

Analysis

By a preponderance of the evidence, DOC has shown that Mr. Titta violated DOC rules and engaged in substantial misconduct by:

1. Engaging in inappropriate discussions with his brother and multiple other inmates at the Worcester County House of Correction and failing to disclose those discussions to DOC.
2. Failing to notify DOC that he was charged with assault and battery regarding an incident at Gillette Stadium.

The evidence presented at the hearing before the Commission, including phone records submitted by Mr. Titta, and Mr. Titta’s own testimony, also show that he violated DOC rules and engaged in serious misconduct by:

3. Bringing his personal cell phone into Tower 1.
4. Conducting multiple personal phone calls on his personal cell phone while he was on duty in Tower 1, including a thirty (30)-minute conversation with a friend seven (7) minutes after his shift began.

Mr. Titta's conversations with his brother and other inmates were inappropriate not only because he did not have permission to engage in them, but because of the scope of the confidential information that Mr. Titta shared with his incarcerated brother and other inmates. Mr. Titta talked with his brother about staff members at both MCI Shirley and WCSO. He discussed the crimes (CORI) of multiple inmates, their locations and the fact that they had been in fights. They discussed the layout of MCI Shirley and the fact that certain doors at WCHOC do not lock. Mr. Titta encouraged his brother to have another inmate (H) beat up.

During his recorded phone calls with his brother at WCSO, he discusses several individuals that they both know. It is clear from these conversations that Mr. Titta had unauthorized contact with inmates and former inmates that he should have, but failed to, report to the DOC.

Specifically, Mr. Titta should have, but failed to report that he knew Inmate A, who was housed at MCI Shirley. Mr. Titta admits that he associated with C, a gang member formerly incarcerated at the Middlesex County House of Correction and failed to report it.

In one phone conversation with his brother, Mr. Titta spoke with Inmate J, also housed at WCHOC. In the conversation, Mr. Titta offered to help Inmate J get a job upon his release. Mr. Titta failed to report his contact with Inmate J to the Department and did not have permission to associate with J.

In September 2014, Mr. Titta was issued a complaint for Assault and Battery. Mr. Titta should have, but failed to report criminal charges filed against him to the Department. His

subsequent report, dated March 24, 2015, which stated that “all of the charges were dropped as previously noted” was misleading, given that no charges were ever reported.

Finally, Mr. Titta does not deny that he brought his personal cell phone into Tower 1 or that he conducted multiple personal phone calls while on duty. This also violates DOC policies and constitutes substantial misconduct. Only seven (7) minutes into his shift in the tower, Mr. Titta used his personal cell phone to engage in a thirty (30)-minute personal conversation with an off-duty correction officer. DOC was unaware of this misconduct at the time because Mr. Titta refused to provide DOC with his personal cell phone records at the time. As part of the proceeding before the Commission, Mr. Titta introduced those personal cell phone records to prove that he did not make a call or text his brother during the time period in question. I accepted those records into evidence and gave them weight in that regard. Those records are also relevant, however, in showing that Mr. Titta engaged in the additional misconduct of bringing his personal cell phone into a DOC facility and then using it to make personal calls while on duty. In this context, it is appropriate for me, as part of this de novo proceeding, to consider that this evidence shows further misconduct justifying DOC’s decision to terminate his employment.

The preponderance of the evidence does not support the remaining charges against Mr. Titta.

In regard to the charges associated with Mr. Titta allegedly notifying his brother about Inmate A’s hospital visit, DOC relied upon quadruple totem pole hearsay from the family of inmate A claiming that the information came from Mr. Titta. DOC produced a recorded telephone conversation between inmate A, his fiancé and his mother to support the allegation that Mr. Titta was the source of the information. This phone call was made on February 5, 2018 as inmate A was being held in solitary confinement pending the investigation into how his family

learned of his medical emergency. There is insufficient evidence to corroborate this multiple tiered hearsay that appeared to be motivated by the desire to get inmate A out of solitary confinement.

In regard to allegedly lying on his employment application, Mr. Titta was hired on his third application for employment with the Respondent. In October 2011, his first application, Mr. Titta stated that he had been terminated for an unknown reason while on probation. He also disclosed that he had an open criminal case in NH. He was not hired due to his background check. In April 2013, his second application, Mr. Titta stated that he was released before the end of his probationary period and would be able to be rehired if “no charges”. The disclosure regarding the NH charges was updated to reflect his belief that he was not sure if it was a misdemeanor conviction and if it was annulled/sealed after 1 year.

Consistent with the two earlier applications, his third application reflects Mr. Titta’s understanding of the progression of his NH case as well as the ending of his employment with WHOC. He discusses his job at WHOC, stating that he was formally disciplined but not offered continued employment after his probationary period because of the pending court case. Mr. Titta did not report the NH charges on this application based on his understanding that he did not have to report the misdemeanor after the year had expired.

Mr. Titta reasonably believed that DOC was aware of the circumstances of his leaving the WHOC. Mr. Titta’s description of how his employment ended at the WHOC does not constitute untruthfulness. The same holds true for the NH case against Mr. Titta. Each application follows his understanding of the status of the criminal case and his obligation to report it.

The remaining allegations of untruthfulness rely primarily on the allegation that Mr. Titta was lying to investigators when he denied contacting his brother regarding Inmate A’s transport

to the hospital. As discussed above, DOC has not proven that Mr. Titta engaged in this misconduct. Thus, his denial cannot constitute untruthfulness.

Having determined that Mr. Titta did engage in misconduct, I must determine whether the level of discipline here (termination) was warranted.

As stated by the SJC in Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814 (2006):

“After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly. G.L. c. [31], s. § 43 (‘The commission may also modify any penalty imposed by the appointing authority.’) Here the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.’” Id. citing Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

“Such authority to review and amend the penalties of the many disparate appointing authorities subject to its jurisdiction inherently promotes the principle of uniformity and the ‘equitable treatment of similarly situated individuals.’ citing Police Comm’r of Boston v. Civ. Serv. Comm’n, 39 Mass.App.Ct. 594, 600 (1996). However, in promoting these principles, the commission cannot detach itself from the underlying purpose of the civil service system— ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” Id. (citations omitted).

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“Unless the commission’s findings of fact differ significantly from those reported by the [appointing authority] or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty. The commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation.” Id. (citations omitted).

My findings do differ from DOC. Most significantly, the evidence does not support the allegation that Mr. Titta contacted his brother and notified him that Inmate A was being transported to the hospital. The seriousness of the other misconduct proven here, however, justifies the termination of Mr. Titta as a Correction Officer.

Mr. Titta has a complete disregard for the basic responsibilities of a Correction Officer. He engaged in jaw-dropping conversations with his brother and other inmates while they were incarcerated at the Worcester County House of Correction, discussing the crimes of multiple inmates, their locations, the layout of MCI Shirley, the fact that certain doors at the Worcester facility do not lock and having another inmate beat up. In short, Mr. Titta sounded more like a fellow inmate during these recorded conversations, as opposed to someone who had been entrusted with the responsibility of serving as a correction officer for the Massachusetts Department of Correction. This egregious misconduct, in addition to failing to report that he was charged with assault and battery regarding the Gillette Stadium incident, justify DOC's decision to terminate Mr. Titta's employment. The additional misconduct related to his personal cell phone usage further reinforces DOC's decision here, but, even without these additional charges, termination was justified.

Conclusion

For all of the above reasons, Mr. Titta's appeal under Docket No. D1-18-099 is hereby ***denied.***

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a 4-0 vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein, and Tivnan, Commissioners) [Camuso-Not Participating] on June 6, 2019.

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:

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