COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

Joseph Waiyaki,
Appellant

v. D1-07-183

Department of Mental Retardation,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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500 Harrison Ave.
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Commissioner:

Daniel M. Henderson

DECISION

The Appellant, Joseph Waiyaki (hereafter "Appellant"), pursuant to G.L. c. 31, §42 and §43, filed an appeal with the Commission on May 10, 2007, claiming that the Appointing Authority, Department of Mental Retardation (hereafter "Department") did not have just cause to terminate him as a Mental Retardation Worker I (hereafter "MRW I") for "Unacceptable Job Performance-Insubordination". The appeal was timely filed. A hearing was held on November 2, 2007. As no written notice was received from either party, the hearing was declared private. The witnesses were sequestered. Two (2) audiotapes were made of the hearing.

FINDINGS OF FACT

Based upon the stipulation of facts (#1-12), the documents jointly entered into evidence (exhibits #1-15) and the testimony of the Appellant, Steven Rollins, MRW II, Jonathan Mutunga, MRW I, Elizabeth Crotty, Residential Services Director ("RSD") and Faith Kirkland, Labor Relations Specialist, I make the following findings of fact:

1. The Appellant was a tenured civil service employee, hired by the Department as an MRW I on April 11, 2004 (Testimony of Appellant, Stipulated fact 2).
2. Throughout the Appellant's tenure with the Department, he was a member of AFSCME Council 93 ("Union"). (Testimony of Appellant).
3. The Appellant's regular work location at the time of this incident, on Sunday, April 1, 2007, was at a community residence located at 14 Lincoln Road in Peabody, working the 11PM to 7AM shift. At the time of his termination, the Appellant had worked at this location for less than one year (Testimony of Rollins, Stipulated fact 3).
4. The Appellant's supervisor at the Lincoln Road home, for that shift at the time of the incident was Stephen Rollins an MRW II. The other staff person working that shift at the Lincoln Road home at the time was Jonathan Mutunga an MRW I. The three staff persons working that shift were described as "Direct Care Workers". (Testimony of the Appellant, Rollins and Crotty, Stipulated facts 4 & 5)
5. The mandatory minimum staffing requirement for the Lincoln Road Home at the time of this incident was two (2) and there were three (3) staff persons working that shift at Lincoln Road, at that time. There were three staff workers on the day of the incident since it was a Sunday and three staff workers are scheduled for Sundays. (Testimony of the Appellant, Rollins and Crotty)
6. The Department operates approximately sixty community residences in the Northeast Region. These houses are organized in clusters of six or seven homes. Each cluster is managed by a Residential Service Director ("RSD") (Testimony of Rollins, Crotty).

7. Stephen Kasirye is the RSD for the cluster encompassing the residences in the city of Peabody (Testimony of Crotty).
8. The chain of command amongst direct care staff within the Department descends from RSD's to Residential Supervisors to MRWs II to MRWs I (Testimony of Crotty).
9. Each residence requires a minimum level of direct care staff on every shift to ensure client safety and wellbeing. In the event that a particular house cannot meet its minimum staffing requirements, steps must be taken to procure additional staff to achieve the minimum (Testimony of Rollins, Crotty).
10. One method by which the Department seeks to fill staffing deficiencies in the residences is through the use of "floats", whereby an employee from another house is assigned to work at the house facing the deficiency (Testimony of Rollins, Crotty).
11. This practice of "floating" is governed by a "memorandum of understanding" as arranged between the Department and the Union. The memorandum of understanding took three years to work out and was signed in 2004, by Labor Relations Specialist Faith Kirkland, representing the Department. (Testimony of Kirkland).
12. The floating policy states that employees are to be floated on a rotating basis, whereby employees alternate turns floating to other residences (Testimony of Rollins, Crotty).
13. An exception to the rule that employees are to alternate floats is that an employee should not be assigned to float to a residence where they have not been in-serviced or previously trained at that residence, except in the case of an emergency (Testimony of Rollins, Crotty).
14. Supervisors are notified of staffing emergencies in existence in any home. However, not every situation that requires a float is characterized as an emergency (Testimony of Rollins, Crotty).
15. All direct care staff receive an overall training on policies and procedures that exist throughout the Region. However, additional training is needed to address

practices, residents and situations particular to each residence (Testimony of Rollins, Crotty).

16. The amount of training a staff member may receive at a particular house varies from an entire eight hour shift to a few hours of instruction followed by working closely alongside regularly scheduled staff (Testimony of Rollins, Crotty).
17. Records of trainings are maintained in the house where the float staff receives the training, not where the staff is regularly assigned (Testimony of Rollins).
18. Staff utilize a float rotation list to monitor which employee last floated to another residence (Testimony of Rollins).
19. Rollins testified that he would expect staff at a home requesting a float to inservice an employee floated to that home for the first time before putting them to work. Rollins further testified that he would not float a staff person to another home if he felt the staff at that home would not be able to inservice the floated employee (Testimony of Rollins).
20. In the event that a float is not available, as a matter of practice and policy, staff in the house facing the deficiency may be mandated to work overtime (Testimony of Crotty).
21. MRW IIs, as a matter of practice do not float unless there is an emergency (Testimony of Rollins).
22. On Sunday, April 1, 2007, the Appellant was scheduled to work the 11 PM to 7AM shift at Lincoln Road (Stipulated Fact 3).
23. Rollins and Jonathan Mutunga were also scheduled to work at Lincoln Road from 11 PM to 7 AM that night (Stipulated Facts 4, 5).
24. Rollins was the first employee to arrive at the home. Upon his arrival, he was instructed by one of the second shift employees that a float was scheduled to be sent to the residence at Amanda Way, Peabody. Rollins likewise found a note on the evening schedule instructing him to send a float to Amanda Way (Testimony of Rollins, Exhibit 6).
25. Rollins had no reason to believe that the float was an emergency and not a pre-scheduled float (Testimony of Rollins).

26. It was Rollins' understanding that the Appellant had last performed a float and that it was now Mutunga's turn to float (Testimony of Rollins).
27. It was Rollins' further understanding that the residents of Amanda Way exhibited a number of behavioral problems that required a full contingent of working staff. Because the float was being requested by Amanda Way, Rollins believed that the staff there was below minimum levels and unable to inservice float staff. Therefore, Rollins believed he had to float an individual with prior experience at the Amanda Way home. (Testimony of Rollins).
28. According to the float record for Lincoln Rd., the Appellant had last floated on January 27, 2007, and Mutunga had last floated on August 7, 2005. (Stipulated Facts 7, 8, Exhibit 7).
29. Mutunga was the next individual to arrive at the home after Rollins (Testimony of Rollins, Mutunga).
30. Upon Mutunga's arrival, Rollins asked him if he had ever been inserviced at Amanda Way. Mutunga stated that he had not. (Testimony of Rollins, Mutunga).
31. Rollins had no reason to doubt the validity of Mutunga's assertion, and therefore did not perform any additional inquiry as to whether he had in fact been inserviced at Amanda Way. (Testimony of Rollins).
32. Rollins was aware that the Appellant had been to Amanda Way before because the Appellant had floated to Amanda Way from Lincoln Road in the past. Rollins also recalled the Appellant having told him that he had worked at Amanda Way before Lincoln Rd. became his regular assignment. (Testimony of Rollins).
33. The Appellant was the next individual to arrive at Lincoln Rd. that night. Upon his arrival, he entered the kitchen. As the Appellant walked towards the living room, Rollins told him that he needed to float to Amanda Way that night. (Testimony of Rollins, Mutunga).
34. The Appellant told Rollins that he was not going to float because it was not his turn. (Testimony of Rollins, Mutunga).
35. Rollins explained to the Appellant that Mutunga had not been inserviced at Amanda Way and, due to the behavioral issues at Amanda Way, he needed to

send a trained staff person. The Appellant again refused to float to Amanda Way, again claiming that it was not his turn (Testimony of Rollins).

36. Rollins offered to give a copy of the float policy to the Appellant to review. The Appellant declined the offer, saying that he was familiar with the policy. (Testimony of Rollins).
37. Both men began to raise their voices at this point. Rollins told the Appellant that he was telling him, and not asking him, to float. The Appellant again refused to float. (Testimony of Rollins).
38. The exchange between Mr. Rollins and the Appellant took place in the living room. During the course of the exchange, Mutunga remained in the adjoining kitchen area. However Mutunga could not hear what was said by either man, but did hear their voices, while they were in the living room. (Testimony of Mutunga).
39. The Appellant said that he was going to call Stephen Kasirye. The Appellant called Kasirye from his cell phone. Kasirye did not answer the phone, and the Appellant left a message on his voice mail. (Testimony of Rollins).
40. At 11:15 PM, Rollins paged the on-call RSD and asked her to call the house. His reason for doing so was to make her aware of the Appellant's refusal to float and to resolve the situation. (Testimony of Rollins, Crotty).
41. Elisabeth Crotty was the "on-call" RSD that night. RSDs alternate weekends in which they function as the supervisor for the entire Northeast area. Lincoln Rd. was not a house in Crotty's regular cluster. (Testimony of Crotty).
42. Typically, RSDs are not involved in ensuring that all houses meet their regular staffing requirements unless an issue is brought to their attention (Testimony of Crotty).
43. Crotty called Lincoln Rd. a few minutes after receiving the page. Rollins answered the phone. He told Crotty that the Appellant was refusing to float to Amanda Way (Testimony of Rollins, Crotty).
44. Crotty asked Rollins if the Appellant had been inserviced at Amanda Way. Rollins answered that he had (Testimony of Crotty, Rollins).

45. Crotty then instructed Rollins to order the Appellant to float to Amanda Way. Rollins replied that he had but the Appellant still refused to go. Crotty then asked to speak with the Appellant, who was sitting 3 feet away on the living room couch. (Testimony of Crotty, Rollins).
46. Upon speaking with the Appellant, Crotty told him that he needed to float. The Appellant stated that he was always being forced to float and that it was not fair. Crotty then stated that Amanda Way required a trained float. The Appellant replied that he would not go; that the other MRW I (Mr. Mutunga) could float to the house and receive in servicing while he was there. (Testimony of Crotty).
47. Crotty explained to the Appellant that if he did not float, he would face disciplinary action for insubordination. The Appellant replied, "I'm not going to float, I won't be intimidated." (Testimony of Crotty, Rollins).
48. Crotty then told the Appellant that she realized he was frustrated with always seeming to be the only person who floated, and that the issue would be brought to Stephen Kasirye's attention; however the Appellant still needed to float. The Appellant repeated that he was not going. Crotty then asked to again speak to Rollins. (Testimony of Crotty).
49. Crotty has no recollection of the Appellant mentioning that Mr. Rollins was using inappropriate or foul language (Testimony of Crotty).
50. Once the phone was handed back to Rollins, Crotty said that she would bring the incident to Kasirye's attention. She then instructed Rollins to document the incident by writing up a description of the occurrence. (Testimony of Crotty, Rollins).
51. At some point prior to phoning Lincoln Rd., Crotty had received a page from a residence at Lowell St. in Peabody requesting a float (Testimony of Crotty).
52. Crotty asked Rollins to float the other staff person to Lowell St. for that shift. (Testimony of Crotty, Rollins).
53. Rollins told Mutunga to contact the Lowell St. residence and inquire if they needed a float. Mutunga did so and found that the residence had the minimum levels of staff for the night. (Testimony of Rollins, Mutunga).

54. As of April 1, 2007, Mutunga had not been inserviced at Lowell St. (Testimony of Mutunga).
55. The residence at Lowell St. was divided into two separate units, and had three other staff members present. Crotty believed that Mutunga could float there and receive in servicing via hands-on training with the regular staff (Testimony of Crotty).
56. However, ultimately, no employee floated from Lincoln Rd. on April 1st (Testimony of Rollins, Mutunga).
57. Crotty specifically explained to The Appellant during her telephone conversation with him that he must float or he would be disciplined for refusing. She also told him that he must float and that he could later raise the issue of his repeated turns of floating with Stephen Kasirye. (Testimony of Crotty)
58. Following their conversation with Crotty, the Appellant and Rollins continued to discuss the float situation. Rollins told the Appellant that he should have complied with the instruction and then later filed a grievance concerning it. The Appellant asked Rollins not to write him up, stating that he already had several disciplines in his record. Rollins responded by saying that he had to write the Appellant up or he himself would be deemed insubordinate. (Testimony of Rollins).
59. Sometime during this subsequent conversation, Rollins, who was agitated by the manner in which the Appellant had addressed him, said to the Appellant, "It's a joke, you being a fucking pastor", a reference to the Appellant's apparent position in the church (Testimony of Rollins).
60. Rollins later realized that he was wrong to refer to the Appellant in the manner that he did, and he apologized to the Appellant that same night (Testimony of Rollins).
61. The three men remained at Lincoln Rd. for the remainder of the night. They performed their duties and interacted in a normal fashion. (Testimony of Rollins, Mutunga).

62. Before the end of the shift, Rollins wrote a statement and left it for "Annette", the house manager and Rollins' immediate supervisor (Testimony of Rollins, Exhibit 8).
63. Crotty made an entry in the beeper report about the incident. She also spoke to Kasirye in person about the incident on April 2, and provided him with a written statement. (Testimony of Crotty, Exhibits 10, 11).
64. On the basis of the statements given to him, Kasirye requested that a show cause hearing be conducted to determine if discipline should be recommended. (Exhibit 9).
65. Faith Kirkland, Labor Relations Specialist for the Northeast Region, reviewed the statements and notified the Appellant that a show cause hearing was scheduled for April 19, 2007. (Testimony of Kirkland, Exhibit 12).
66. The show cause hearing was held on April 19, 2007. Kasirye presented the case for the Department. The Appellant was present and represented by his union. (Testimony of Kirkland, Exhibit 13).
67. Based on the evidence presented to her, Kirkland considered the Appellant to have been insubordinate as charged. (Testimony of Kirkland, Exhibit 15).
68. Kirkland representing the Department subscribes to the principals of progress discipline. She generally believes that the first offense warrants a warning to be followed by two suspensions then to be followed by termination. (Testimony of Kirkland)
69. During his three year tenure with the Department, the Appellant received the following discipline: Two informal warnings issued on February 10, 2006 for insubordination and unacceptable job attendance, respectively; a one-day suspension issued on October 7, 2005 for sleeping on duty; a one day suspension issued on June 28, 2006 for unacceptable conduct; and a three day suspension issued on January 24, 2007 for insubordination. Kirkland was aware of the Appellant's past disciplinary record when she made her recommendation for termination (Testimony of Kirkland, Exhibits 1-5, 15).
70. Kirkland also considered as factors in her recommendation, the following: the "continuation of insubordination" after repeated warnings of disciplinary

consequences, the argumentative nature or defiance of the Appellant and the relatively short period of the Appellant's employment for the amount of prior discipline he received. She testified that she would have recommended the Appellant's termination, even if he did float after his conversation with and order from Elizabeth Crotty. (Testimony of Kirkland)

71. The Appellant denies that he was insubordinate on the evening in question. (Stipulated fact 3 and Testimony of Appellant)
72. The Appellant's defense amounted to his belief that he did not refuse a direct order to float. The Appellant claims that he thought that the issue was still open for discussion or debate by the time it was eventually determined that no float was needed that evening. However, by that time the Appellant had already been given numerous orders to float by both Rollins and Crotty and several warnings that he would be disciplined for his refusal to float. The Appellant repeatedly refused both Rollins' and Crotty's clear and direct orders to float to the Amanda Way home. (Testimony of Appellant, Testimony and Exhibits)
73. The Appellant also proposed the secondary defenses of: Rollins' use of bad language when speaking with him, Kasirye's failure to return his telephone call and the fact that it was not his turn to float. (Testimony of Appellant)
74. The Appellant's testimony regarding his belief that the order to float was still open for debate is not believed. He was consistently defiant that evening and seemed to be searching for some justification for his defiance, after the fact. Rollins and Crotty were clear, consistent and corroborating in their respective testimony. Mutunga's testimony also corroborated the sequence of events that evening and the emotional charged atmosphere. Their testimony was in stark contrast to the Appellant's version of no direct order to float. The Appellant was clearly upset that evening and obstinate, refusing to budge from his refusal to float, despite several warnings of consequential discipline. (Testimony and demeanor of Appellant, Testimony and Exhibits)
75. The Department held a show cause hearing on April 19, 2007. The preferred charge against the Appellant was "Continued Unacceptable Job Performance-Insubordination." (Stipulated fact 11)

76. By letter dated May 1, 2007, the Department notified the Appellant that it was terminating him from his position effective immediately (Stipulated Fact 12, Exhibit 15).

CONCLUSION

Appellant's §42 Appeal Claim

The Appellant concurrently appealed the Department's decision pursuant to G.L. c. 31, §42, alleging that the Department failed to follow the requirements of § 41 in terminating him. Specifically, the Appellant alleges that the Department failed to provide him with written notification of his termination within the time frames established by §41.

However, §42 provides that any employee prejudiced by the failure of the appointing authority to comply with the requirements of §41 in making an employment decision shall be restored to their position without loss of rights. The Commission has held that the burden of proof in a §42 appeal falls upon the Appellant, who must demonstrate how they were actually prejudiced by the Department's failure. Meaney v. City of Woburn, 12 MCSR 253 (1999). Meyers v. Boston Police Department, 14 MCSR 79 (2001). In this case, the Appellant failed to present any evidence of prejudice suffered by virtue of any delay from the date of his show cause hearing and his receipt of the letter of termination. As the Appellant has failed to meet his burden of proof, the §42 component of his appeal must be dismissed.

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). An action is "justified" "when 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." Id. quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). When reviewing disciplinary actions, the Commission determines justification by inquiring "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). If the Appointing Authority demonstrates to the Commission by a preponderance of the evidence in the record that there was just cause for an action taken against an Appellant, the Commission shall affirm the decision of the appointing authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the Commission, 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." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) *and* Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The Department has demonstrated by a preponderance of the evidence that it had just cause to terminate the Appellant. On April 1, 2007, the Appellant was given a direct and unequivocal instruction to float from Lincoln Rd. to Amanda Way by Steve Rollins, the supervisor at Lincoln Rd. for that shift. In giving this instruction, Mr. Rollins was complying with an instruction from his supervisor to float a staff person to Amanda Way. Rather than complying with the instruction, the Appellant told Mr. Rollins that he would not float. Both the Appellant and Mr. Rollins testified that they believed the Appellant had been the last individual to perform a float from Lincoln Rd. However, Mr. Rollins took steps to explain the reasoning behind his instruction to the Appellant, namely that Mr. Mutunga had not been inserviced at that particular residence and the particularities of Amanda Way required him to float a trained staff person. Mr. Rollins even offered to

show the Appellant a copy of the float policy to explain the basis for his instruction. At this point, the Appellant should have floated as instructed. Instead, the Appellant continued to refuse to float and insisted on speaking to Mr. Kasirye. When the on call RSD, Liz Crotty, was contacted, Ms. Crotty also unequivocally told the Appellant to float to Amanda Way. Again, the Appellant refused to do so. In so instructing the Appellant to float to Amanda Way, Mr. Rollins and Ms. Crotty took the effort to explain the situation and the reason why, based on their understanding of Departmental policy, it was the Appellant and not Mr. Mutunga that needed to float. Despite this effort on the part of the supervisors, the Appellant clearly and repeatedly refused to comply with these directives.

The Appellant may have had concerns about the fairness or equity of the directive, or he may have felt that there were flaws in the floating/in servicing process that left him with a disproportionate number of float assignments. However, these concerns could and should have been addressed through different means. Ms. Crotty made it clear that the Appellant's concerns would be brought to the attention of Mr. Kasirye, with whom the Appellant could subsequently meet and discuss what he perceived to be failures in the way the policy was carried out. Furthermore, the Appellant, as a member of AFSCME, could have sought to address the issue through informal or formal union channels. What the Appellant's concerns did not grant him was carte blanche to disregard the instructions of his supervisors after they explained the reason for ordering him, and not Mr. Mutunga, to float. *See* Beal, et. al. v. Boston Public Schools, 18 MCSR 57 (2005); Ouillette v. City of Cambridge, Civil Service Case No. D-03-123 (September 14, 2006) (citing concept of "obey now, grieve later"). It must also be noted that the Appellant's disciplinary record indicates that he has been punished on several occasions for refusing or challenging an order given to him by a superior (Exhibits 2, 4, 5). Certainly, the Appellant is hard-pressed to assert that he had no idea what level of compliance the Department expected of him when given an assignment.

The Appellant's argument that he never refused an order to float simply is not believed and does not comport with the facts as found here. Mr. Rollins instructed him to float to Amanda Way; that is confirmed by both Mr. Rollins' testimony and the written

statements submitted by Mr. Rollins and the Appellant. The Appellant contends that he did not refuse the order but only sought an explanation of the reasoning behind that order. Even if the Appellant stated that he was only looking for clarification of the float policy, the fact of the matter remained that he still did not comply with Mr. Rollins' instruction, and instead insisted on getting further clarification from Mr. Kasirye, while failing to carry out his assignment. It is also noted that Mr. Rollins offered the Appellant a copy of the float policy but the Appellant refused it, saying that he was familiar with it. See Beal, Supra. (Employees' failure to carry out instruction while seeking clarification not justification for insubordination).

It is especially noted that there are special circumstances here, including the following: the late hour, the special needs of the residents, the potentiality of the need for specific and experienced care arising for a resident and the limited staffing by direct care providers at each home. This is an atmosphere in which stability, cooperation and order among the staff is valued and any controversy, defiance or confrontation could have potentially untoward consequences.

The Appellant asserted that Mr. Kasirye had previously told him to contact him whenever the Appellant had a concern regarding the implementation of NRS policy. Assuming that the Appellant's statement is in fact accurate and true, it fails to excuse his refusal to perform the float. It was undisputed that Mr. Kasirye did not respond to the Appellant's call that night. In the absence of Mr. Kasirye, it was the on-call RSD, Ms. Crotty, who had immediate authority to settle this matter. Ms. Crotty instructed the Appellant several times to float and warned him that refusal would result in discipline. At that point, the Appellant should have considered the matter settled and performed the float.

The Appellant's allegations of Mr. Rollins' use of inappropriate language do not mitigate or excuse the Appellant's refusal to perform the assigned task. Ms. Crotty testified that she had no recollection of the Appellant asking her to address Mr. Rollins' use of foul language towards the Appellant. Even if the Commission were to presume that the Appellant did make such a complaint known to Ms. Crotty, such a complaint

would be a separate matter and did not have any bearing on his refusal to perform the assignment. The Appellant would have known that Ms. Crotty was aware of his complaint, and he therefore could follow up with Ms. Crotty or Mr. Kasirye to ensure that the issue was addressed. As with his concerns regarding the propriety of the assignment, the Appellant had means of addressing the use of foul language that did not involve a refusal to perform his assignment. This was not a situation in which Mr. Rollins' language goaded the Appellant into committing an insubordinate act. Indeed, it should be noted that the Appellant's alleged complaint about Mr. Rollins' inappropriate language would not have occurred until after the Appellant's initial refusal of Mr. Rollins' instruction to float.

The decision to terminate the Appellant was justified in the context of progressive discipline. The Department's decision was based on the progressive implementation of prior discipline. As the undisputed record reflects, the Appellant had been the recipient of five acts of discipline in less than three years of employment with the Department. This discipline began with informal warnings, and escalated to suspensions of increasing duration. It is important to note that the nature of several of these offenses related to insubordination and unacceptable conduct focused at his supervisors. This demonstrates that the Appellant continually exhibited a pattern of defiance and confrontation towards his supervisors, despite increasingly severe admonishment from the Department. The Appellant's insubordination on April 1, 2007 is an indication of the lack of effect that the Department's prior discipline of the Appellant, had on him. The Appellant was continuously defiant and obstinate throughout the course of this incident. He ignored repeated directives and repeated warnings that discipline would result from his refusals.

The Department's discipline here is in conformity with the principles of progressive discipline.

Based on the reasons stated above, the Commission finds that the Department had just cause to terminate the Appellant.

The Appellant's appeal under docket number D1-07-183 is hereby ***dismissed.***

Civil Service Commission,

_____

Daniel M. Henderson,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, and Taylor; Commissioners) on May 1, 2008

A True Record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:
Scott A. Lathrop, Atty.
Robert J. Smith, Atty.