

# The Commonwealth of Massachusetts

SUFFOLK, ss.

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

**JAMES WALSH,**  
*Appellant*

v.

**DEPARTMENT OF  
CORRECTION,**  
*Respondent*

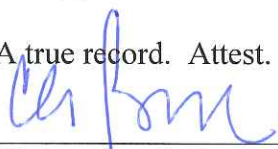
**Case No.: D1-10-121**

## DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on November 3, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated September 27, 2011. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By 4:0 vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, and Stein, [McDowell not participating] Commissioners) on November 3, 2011.

A true record. Attest.

  
\_\_\_\_\_  
Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision. See Curley v. Lynn, 408 Mass 39, 41-42 (1990).

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.

Notice to:

William M. Appel, Esq. (for Appellant)  
Amy Hughes, Esq. (for Appointing Authority)  
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060  
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September 27, 2011

Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

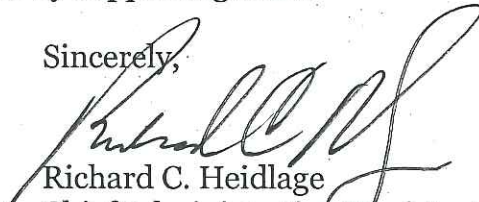
**Re: James Walsh v. Department of Correction**  
**DALA Docket No. CS-11-11**  
**CSC Docket No. D1-10-121**

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CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,

  
Richard C. Heidlage  
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: William M. Appel, Esq.  
Amy Hughes, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

**Division of Administrative Law Appeals**

**James Walsh,**  
Appellant

v.

Docket No. D1-10-121  
DALA No. CS-11-11

**Department of Correction,**  
Respondent

**Appearance for Appellant:**

William M. Appel, Esq.  
159 Washington Street  
Lynn, MA 01902

**Appearance for Respondent:**

Amy Hughes, Esq.  
Department of Correction  
One Industries Drive, PO Box 946  
Norfolk, MA 02056

**Administrative Magistrate:**

**Maria A. Imparato, Esq.**

**SUMMARY OF RECOMMENDED DECISION**

The Department of Correction had reasonable justification for terminating the Appellant from his position of Superintendent of the Lemuel Shattuck Hospital Correction Unit for participating in a state-related business matter in which his brother had a financial interest without notifying the DOC Commissioner or the State Ethics Commission; for acting in a manner which gave the appearance of impropriety, bias and favoritism toward one particular subordinate; for favoring the subordinate by granting special privileges not available to other staff; for initiating private business deals with several subordinates concerning performing work on his home; for his repeated failure to use discretion when discussing personal matters with a subordinate; for failing to report to a higher authority serious allegations of staff misconduct; for defrauding the state by using subordinate's services for his personal matters on state time while using state equipment; and for repeatedly lying when questioned in the investigation of these matters.

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CIVIL SERVICE COMMISSION

**RECOMMENDED DECISION**

James Walsh filed a timely appeal under M.G.L. c. 31, s. 43 of the June 3, 2010 decision of the Department of Correction (DOC) to terminate him from his position of Superintendent of the Lemuel Shattuck Hospital Correction Unit (LSHCU) for participating in a state-related business matter in which his brother had a financial interest without notifying the Commissioner of DOC and the State Ethics Commission; giving the appearance of impropriety, bias and favoritism toward one particular subordinate; for failing to use discretion when discussing personal matters with a subordinate; for failing to report serious allegations of staff misconduct to a higher authority; for defrauding the state by using a subordinate's services for his personal matters on state time and while using state equipment, and for repeatedly lying when questioned, in violation of the General Policy and Rules 1, 6(b), 6(d), 19(c) and 19(d) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction (Blue Book), and in violation of the Department's Philosophy and Goals, 103 DOC 100; the Investigation Policy, 103 DOC 518; and the Conflict of Interest and American Correctional Association Code of Ethics, 103 DOC 215.

I held a hearing on January 10, 2011, continued to March 25, 2011, at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA. The hearing was private because neither party filed a written request to make it public.

I admitted documents into evidence. (Exs. 1 – 17.) The Appellant testified on his own behalf. Testifying on behalf of the Respondent were Lt. Douglas Adams, of LSH; Correction Officer (CO) Kenneth Beers of LSH; CO Christopher Bockholt of LSH; Captain Paul Craven of LSH; Susan E. Herz, a DOC Hearing Officer; Captain Donna Driscoll of LSH; Timothy

Gotovich, a DOC Program Manager IV and Auditor; and Sgt. Donald Perry of DOC Office of Inspectional Services.

The record closed on June 17, 2011 with the filing of post-hearing briefs by both parties..

On June 27, 2011, the Appellant filed what he termed a Supplementary Case Report to Appellant James Walsh's Post-Hearing Memorandum in Lieu of Final Argument. The Respondent filed a Motion to Strike the supplementary case report on June 30, 2011, with a supporting memorandum submitted on July 8, 2011. I did not consider the Appellant's Supplementary Case Report because the record closed on June 17, 2011 and I declined to reopen the record under 801 CMR 1.01(10)(k)2.

#### FINDINGS OF FACT

1. James Walsh worked for the DOC from 1981 until his termination on June 3, 2010. He was granted a permanency in the title of Correction Program Officer D in January 1997. He worked as the Superintendent of Lemuel Shattuck Hospital Correctional Unit (LSHCU) from 1992 to 2010. (Stipulation.)
2. The LSHCU provides medical care to all DOC inmates. (LSHCU website.)

**Participating in a state related business matter in which his brother had a financial interest without notifying the DOC Commissioner and the State Ethics Commission**

3. Mr. Walsh was a member of the Security Technology Committee (Committee). The purpose of the Committee is to recommend products for purchase by the DOC. (Testimony, Gotovich.)
4. On the morning of February 26, 2010, the Committee convened to wait for a vendor presentation that had been put on the agenda by Mr. Walsh more than one month prior. Just before the vendor arrived, Mr. Walsh told the Committee members that his brother worked for the vendor company. (Testimony, Gotovich.)



5. The company was Net Versant. Mr. Walsh's brother, Bob Walsh, is an Account Executive with the company that uses wi-fi technology to track items in a facility such as keys, tools, and radios. After the company's presentation, the vendors left the room. Timothy Gotovich, a DOC Auditor, said he thought there was a conflict of interest because Mr. Walsh's brother was with the company. The Committee counsel agreed and Mr. Walsh was asked to leave the room. (Testimony, Gotovich; Exs. 9, 10.)
6. The Committee decided that it would not be appropriate to consider Net Versant's product. (Testimony, Gotovich.)
7. A short time later Deputy Superintendent Bender called Mr. Walsh to inquire about whether Mr. Walsh's brother was part of the company that presented at the Committee meeting that morning. Deputy Superintendent Bender ordered Mr. Walsh to write a report of the incident. (Testimony, Walsh; Ex. 4, pp. 101-102.)
8. Mr. Walsh did not inform the DOC Commissioner or the State Ethics Commission about his brother's connection to Net Versant prior to Net Versant's presentation. (Testimony, Walsh.)

**Appearance of impropriety, bias and favoritism**

9. The Superintendent's Picks are four (4) officers from the rank of CO through Lieutenant who are hand-picked by the Superintendent and report directly to him. From June 2007 to May 2010, one of Mr. Walsh's Picks was Lt. Peter Brown who was Operations Lieutenant at LSH. (Testimony, Adams; Driscoll.)
10. By memo of September 28, 2007 to his four Picks, Mr. Walsh indicated that the Picks were to report directly to Captain Donna Driscoll. (Testimony, Driscoll; Ex. 4, p. 81.)

11. By memo of December 6, 2006 to his Picks, Mr. Walsh indicated that in order to continue working after scheduled hours, the Picks would have to obtain approval from the Superintendent or Deputy Superintendent. All overtime was to be taken as comp time. (Testimony, Driscoll; Ex. 4, p. 82.)
12. In October 2008, Captain Driscoll noticed that Lt. Brown had put in for overtime on his time card. Captain Driscoll spoke with Deputy Superintendent Burgwinkle and with Mr. Walsh and discovered that neither one of them had authorized Lt. Brown's overtime, so his overtime claim was changed to comp time. Lt. Brown was furious when he found his overtime had been changed to comp time. He stormed into Mr. Walsh's office, and Mr. Walsh allowed Lt. Brown to have the overtime, despite the fact that Lt. Brown did not follow the chain of command. (Testimony, Driscoll.)
13. In April 2009, Lt. Brown again acted outside of the chain of command. Lt. Brown was upset because a supervisor called in sick, but a CO, rather than a supervisor was called in the cover the shift on overtime. In the cafeteria the next day, in the presence of Captain Driscoll, Captain Craven, Deputy Superintendent Burgwinkle, Lt. Rose and Mr. Walsh, Lt. Brown sat down opposite Mr. Walsh and said that he had a problem with too many COs getting overtime and said that he "wouldn't put up with it." Mr. Walsh said they would discuss the matter at a briefing. Lt. Brown stood up and said loudly to Mr. Walsh, "Why don't you grow some fucking balls?" Lt. Brown then walked out. The next day Mr. Walsh said to Captain Craven, "If any other Pick did that, I'd fire him." Mr. Walsh did not discipline Lt. Brown. (Testimony, Adams; Driscoll; Craven; Ex. 4, p. 86.)
14. Lt. Brown was permitted to work overtime whenever he wanted to. If Lt. Brown came in early for his shift, he was allowed to count his early start time towards overtime. No

other employee was permitted to do so. All of Lt. Brown's overtime was approved by Mr. Walsh. (Testimony, Adams; Craven.)

15. In June 2009, Captain Driscoll authorized Lt. Jeghers to pull Pick CO James Callahan to work on Lt. Jeghers's unit. Callahan did not appear. Then Lt. Brown called Lt. Jeghers demanding to know why Callahan had been pulled when he, Lt. Brown, wanted Callahan to work for him. Lt. Jeghers told Lt. Brown that Captain Driscoll had authorized it. Lt. Brown eventually sent Callahan to Lt. Jeghers, but threatened to speak with Mr. Walsh about it. Lt. Brown attempted to circumvent Captain Driscoll's authorization.

(Testimony, Driscoll; Ex. 4, pp. 86, 95.)

16. Captain Driscoll spoke with Mr. Walsh about the incident and about Lt. Brown getting himself involved in the issue of overtime assignments. Mr. Walsh would say, "Peter Brown wears his heart on his sleeve. He is a good kid." (Testimony, Driscoll.)

17. In September 2009, CO Kenneth Beers reported to Captain Driscoll that he felt Lt. Brown had indirectly threatened him. An unnamed employee told Beers that Lt. Brown had threatened "to get" Beers because Lt. Brown blamed Beers for coercing Lt. Reardon to work an overtime shift so that Lt. Brown would not be reached on the overtime list. Beers said he was present in Control when Lt. Brown intimidated the Shift Commander into hiring Lt. Brown for supervisor overtime the next day even though Sgt. Boyd was ahead of him on the overtime list. Captain Driscoll reported this in a confidential incident report. Mr. Walsh spoke with the Shift Commander and Beers and then told Captain Driscoll that Beers did not want to pursue the matter. (Testimony, Driscoll; Ex. 4, pp. 87, 98.)



18. The Picks are required to notify Captain Driscoll if they leave the institution. In October 2009, Captain Driscoll could not find Lt. Brown although he was still punched in on his time card. When she asked Mr. Walsh, he said that Lt. Brown left to print up some DOC Owl material.<sup>1</sup> The next day, Captain Driscoll saw Lt. Brown punching in and asked him where he was on the previous day. Lt. Brown said he had a doctor's appointment. Captain Driscoll reminded Lt. Brown to let her know if he left the institution and to punch out when he left. Captain Driscoll was not able to resolve the discrepancy between Mr. Walsh's explanation and Lt. Brown's explanation for Lt. Brown's absence. (Testimony, Driscoll; Ex. 4, p. 175, 10/20/09 time card.)
19. LSH undergoes periodic security audits. The Picks may not leave during an audit except in an emergency. November 3, 2009 was the second day of an audit. At about 3 p.m., Captain Driscoll asked Mr. Walsh where Lt. Brown was. Mr. Walsh told Captain Driscoll that Lt. Brown was not present at the audit because he had to get his hair cut, and dyed, for a DOC Owl event the next day. Captain Driscoll was displeased because once again Lt. Brown did not report to her and once again Mr. Walsh condoned Lt. Brown's behavior. (Testimony, Driscoll.)
20. On November 3, 2009, Lt. Brown's time card indicated that he punched in but did not punch out. Lt. Brown hand wrote on his time card that he worked until 5 p.m. He claimed to have worked 8 hours plus 1.979 hours in overtime because he punched in at 6:51 a.m. and his regular shift was 9 a.m. to 5 p.m. The time card is incorrect because Lt. Brown had already left the institution by 3 p.m. (Testimony, Driscoll; Ex. 4, p. 176, 11/3/09 time card.)

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<sup>1</sup> The DOC Owl program is a gun awareness program started by Lt. Brown.

21. By memo of February 2, 2010 to Mr. Walsh, Captain Driscoll asked to speak with Mr. Walsh about the fact that Lt. Brown worked administrative overtime in excess of four hours, but failed to drop himself on the overtime list which was unfair to the other supervisors. "Anyone working over four hours goes to the bottom of the list. I know for a fact that Lt. Brown has ensured that others ... are held to this standard." By email of February 3, 2010, Captain Driscoll asked to be present when Mr. Walsh spoke with Lt. Brown about these issues. (Ex. 4, pp. 83, 88, 91; Testimony, Driscoll.)
22. As soon as Captain Driscoll saw that Mr. Walsh had opened this last email, Captain Driscoll walked down to Mr. Walsh's office. Mr. Walsh's secretary told Captain Driscoll that Mr. Walsh had gone off site for lunch with Lt. Brown. No one else leaves the institution for lunch. (Testimony, Driscoll; Adams.)
23. The Picks could be pulled off an assignment at any time to do other work if needed, except for Lt. Brown. Lt. Brown would become explosive and rude if anyone tried to pull him. If Captain Driscoll tried to pull him, Lt. Brown would go right to Mr. Walsh and have Captain Driscoll's order reversed. (Testimony, Driscoll.)
24. Lt. Brown was heard to say that if he did not get what he wanted from Mr. Walsh, he would "go rogue" on him. Lt. Brown told Captain Craven and Lt. Adams that he had installed a fence at Mr. Walsh's house and had never gotten paid for it. (Testimony, Craven; Adams.)
25. Captain Driscoll asked Mr. Walsh whether Lt. Brown had put in a fence for him. Mr. Walsh said, "I'll deny that. That will have to be proved." (Testimony, Driscoll.)

26. Lt. Brown did install a fence for Mr. Walsh. Lt. Brown used his wholesale account to buy the materials and charged Mr. Walsh \$2,975. for the labor to install the fence. Apparently, Mr. Walsh never paid Lt. Brown. (Ex. 7, last two pages.)
27. Lt. Adams is the Superintendent's Special Investigator. In this capacity, Lt. Adams carried a beeper and received \$90.00 extra pay to be on call. Captains Driscoll and Barboza are also investigators. Lt. Brown is not an investigator. (Testimony, Adams.)
28. Typically, when Lt. Adams goes on vacation, he gives his beeper to one of the other investigators, along with the extra pay. Sometime in 2009, after Lt. Adams had a dispute with Lt. Brown over the assignment of overtime, Mr. Walsh directed Lt. Adams to give his beeper to Lt. Brown while Lt. Adams went on vacation. Lt. Adams turned over the beeper to Lt. Brown, but Lt. Adams was shocked because Lt. Brown is not a certified investigator. (Testimony, Adams; Ex. 4, pp. 12, 75.)
- While serving in the capacity as Superintendent, Mr. Walsh initiated private business deals with several subordinates concerning performing work on his home**
29. In or about 2004, Captain Craven asked CO Beers whether CO Beers would build a deck on Mr. Walsh's two-family house. Mr. Walsh asked CO Beers to keep the issue of the deck between them, and CO Beers agreed. (Ex. 4, pp. 134-139.)
30. All negotiations with respect to this work occurred between CO Beers and Mr. Walsh. CO Beers did not negotiate with Mr. Walsh's wife. (Testimony, Beers.)
31. While CO Beers was working on the deck, he stopped by Mr. Walsh's house on a rainy day to cover the wood and inadvertently saw Lt. Brown in Mr. Walsh's cellar. Captain Craven told CO Beers that Mr. Walsh was not happy that Lt. Brown knew CO Beers was building the deck. (Testimony, Beers; Ex. 4, p. 45.)

32. In addition to building a deck for Mr. Walsh, CO Beers also updated Mr. Walsh's rental apartment after a tenant left, and he did some work on the front porch. In or about 2007 or 2008, Mr. Walsh asked CO Beers to paint a room in Mr. Walsh's house. CO Beers did not want to work inside of Mr. Walsh's house and refused the job several times. Ultimately, CO Beers performed the work because he felt pressure from Mr. Walsh to get the job done. Mr. Walsh said the room would be used for Mr. Walsh's father-in-law and CO Beers knew Mr. Walsh's father-in-law and liked him. (Testimony, Beers.)
33. In 2004, Lt. Brown asked CO Bockholt to do some work on Mr. Walsh's rental unit. CO Bockholt met with Mr. Walsh in Mr. Walsh's office to discuss the work while CO Bockholt was on duty. The conversation lasted 15-20 minutes. Mr. Walsh told CO Bockholt that it was a conflict of interest for him to ask CO Bockholt to do the work and said if the information got out, Mr. Walsh could get fired. CO Bockholt said Mr. Walsh could pay him in cash if he was concerned about a paper trail. (Testimony, Bockholt.)
34. On another occasion, Lt. Brown asked CO Bockholt to do additional work on Mr. Walsh's home, but CO Bockholt declined. Mr. Walsh had complained to some staff that Mr. Bockholt's work was substandard because a ceiling began to peel after four or five years, so CO Bockholt did not want to do any more work for Mr. Walsh. (Testimony, Bockholt.)

**Repeated failure to use discretion when discussing personal matters with a subordinate**

35. Lt. Brown passed out a lot of personal information about Mr. Walsh. Lt. Brown said that he prepared a term paper for one of Mr. Walsh's sons who was in high school, and that Mr. Walsh gave Lt. Brown the next day off; Lt. Brown said Mr. Walsh asked Lt. Brown for a referral to an attorney for Mr. Walsh's son; Lt. Brown said that Mr. Walsh's wife

had been charged with driving under the influence on New Year's Eve; Lt. Brown said he had been to Mr. Walsh's house in Falmouth to help get Mr. Walsh's wife out of jail and Lt. Brown said that Mr. Walsh feared that his wife was cheating on him. (Testimony, Craven; Driscoll; Adams.)

36. Mr. Walsh told Lt. Brown that his wife had been arrested for driving under the influence and requested Lt. Brown's assistance in driving to Falmouth to pick up his wife's car. Lt. Brown used personal time to drive Mr. Walsh to Falmouth. (Testimony, Walsh; Ex. 4, pp. 46, 60ss.)

37. Mr. Walsh admitted during his interview with Sgt. Donald Perry of the Internal Affairs Unit in March 2010 that he felt compromised because staff were aware of his personal information and could "drop a dime" on him at any time. (Ex. 4, p. 60; Ex. 14.)

**Failure to report serious allegations of staff misconduct to a higher authority**

38. Mr. Walsh failed to report that he felt "extorted" by Lt. Brown, that he believed Lt. Brown and Captain Craven felt they could do what they wanted because they believed Mr. Walsh was a "compromised" Superintendent, and that Mr. Walsh felt the staff could "drop a dime" to the Commissioner based on information they knew about his personal business. (Ex. 4, p. 60.)

39. By confidential memo of December 14, 2009 to Mr. Walsh, Lt. Adams requested an investigation of persistent allegations of manipulation of the overtime list. (Ex. 4, pp. 76, 80.) Mr. Walsh did not address Lt. Adams's concerns. (Ex. 4, p. 77; Testimony, Adams.)

40. By confidential memo of February 2, 2010, Captain Driscoll brought the issue of Lt. Brown not dropping himself to the bottom of the overtime list after working four hours of

overtime to the attention of Mr. Walsh. She indicated that Lt. Brown was creating a "climate issue" within the institution. Captain Driscoll asked to be present when Mr. Walsh raised the issue with Lt. Brown. Mr. Walsh failed to request an investigation of the issue, and deliberately kept Captain Driscoll out of his meeting with Lt. Brown by taking Brown off site to lunch. (Ex. 4, p. 83; finding #19, above.)

41. Captain Craven had CO Beers and CO Buckholt do work at his house some years ago when Captain Craven was a Lieutenant. The Massachusetts Correction Officers Federated Union (MCOFU) newsletter of November 1995 suggested that union members hire other union members who were skilled craftsmen. (Ex. 5.) Captain Craven was not in a supervisory role to either Beers or Buckholt at the time. (Testimony, Craven.) Mr. Walsh was aware that Captain Craven had previously hired Beers and Buckholt, but Mr. Walsh did not report the information, although he admitted that he should have. (Ex. 4, p. 49; Testimony, Walsh.)

**Defrauding the State by using a subordinate's services for his personal matters on state time, and while using state equipment**

42. On January 7, 2009, Lt. Brown drafted a letter on his work computer, while on duty, on behalf of Mr. Walsh's wife, Ann Walsh. The letter was drafted on January 7, 2009 at 10:27 a.m., and last saved on January 9, 2009 at 12:05 p.m. (Ex. 4, pp. 149-151; Testimony, Perry.)
43. Lt. Brown's time card for January 7, 2009 indicates that he punched in at 6:03 a.m. and punched out at 6:21 p.m., claiming 4.25 hours of overtime. Lt. Brown was on duty at 10:27 a.m. when he drafted the letter for Ann Walsh. Lt. Brown was on duty when he last saved the letter on January 9, 2009 at 12:05 p.m. (Ex. 4, p. 155; Testimony, Perry.)

44. On January 9, 2009, Lt. Brown drafted a letter on his work computer, while on duty, on behalf of Mr. Walsh's son, Timothy Walsh. The letter was created on January 9, 2009 at 4:47 p.m., printed at 4:51 p.m., and last saved on January 13, 2009 at 5:24 p.m. (Ex. 4, pp. 147-148.)
45. Lt. Brown's time card for January 9, 2009 indicates that he punched in at 7:58 a.m. and punched out at 5:59 p.m., claiming 2 hours of overtime. Lt. Brown was on duty at 4:47 p.m. when he drafted the letter, and at 4:51 p.m. when he printed the letter. On January 13, 2009, Lt. Brown's time card indicates that he punched in at 9:00 a.m. and punched out at 6:25 p.m. Lt. Brown was on duty when he last saved Timothy Walsh's letter at 5:24 p.m. (Ex. 4, p. 155; Testimony, Perry.)
46. On February 26, 2010, Deputy Commissioner James Bender directed Mr. Walsh to submit a report about the Technology Committee meeting at which Mr. Walsh's brother appeared as a vendor. The report was emailed from Lt. Brown to Mr. Walsh at 7:32 p.m. on February 26, 2010, and was then emailed from Mr. Walsh to Deputy Commissioner Bender on February 26, 2010. (Testimony, Perry; Ex. 4, pp. 56-57; 100-105.)
47. Mr. Walsh denied that anyone else had written typed, reviewed, read or emailed the report for him. At his second interview, Mr. Walsh admitted that Lt. Brown typed and edited part of it. (Ex. 4, pp. 56, 60.) Lt. Brown was paid overtime for this work. (Ex. 4, pp. 56-57; Testimony, Perry.)
48. During his second interview, Mr. Walsh admitted that Lt. Brown edited a school project for Mr. Walsh's son, but said he did not know whether Lt. Brown was working on state time when he did so. Lt. Brown claimed that he completed the term paper in one day on straight time. (Ex. 4, pp. 46, 59; Ex. 14.)



49. By report of March 14, 2011, the Ethics Commission found facts sufficient to find reasonable cause to believe that Mr. Walsh violated M.G.L. c. 268A, ss. 23(b)(2) and 23(b)(3) by using his position to solicit subordinates to perform private work at his home and to direct a subordinate to write a term paper for his son. (Ex. 17.)

**Lying repeatedly when questioned pursuant to the investigation**

50. On March 8, 2010, Sgt. Perry and Chief Oxford interviewed Mr. Walsh. On that date, Mr. Walsh was detached with pay and without prejudice. The next day, March 9, 2010, Lt. Brown was reassigned from LSH to MCI-Norfolk. On March 14, 2010, Sgt. Perry and Chief Oxford re-interviewed Mr. Walsh. (Ex. 4, p. 6; Ex. 14.)
51. At his first interview, Mr. Walsh denied that any DOC employees had ever done work at his home. When the investigators showed Mr. Walsh photographs of his home and the deck built by CO Beers, Mr. Walsh admitted that CO Beers did the work. (Testimony, Perry; Ex. 4, p. 48.)
52. During his first interview with Sgt. Perry, Mr. Walsh admitted that it was improper to have a subordinate work on his home. Mr. Walsh said, "I tried to stay out of it and let my wife do the dealings with him ... but, I'm not going to lie to you, yes." Mr. Walsh also said, "It would look improper, but I didn't negotiate a price, whatever he wanted." In fact, Mr. Walsh negotiated directly with CO Beers. (Ex. 4, p. 48; Testimony, Perry; Finding #30, above.)
53. In his first interview, Mr. Walsh indicated that no DOC employee other than CO Beers had worked on his house. Both CO Buckholt and Lt. Brown worked at Mr. Walsh's house. When asked why he lied, Mr. Walsh said, "Because I thought I had the confidence of Beers ... I didn't want to see him get in trouble. I thought that was

between us, between my wife and him. I'm not gonna lie and yes, I did say No, but I realize I'm wrong." (Ex. 4, p. 50; Ex. 14; Testimony, Perry.)

54. In his first interview, Mr. Walsh denied that Lt. Brown worked on the fence at his home, (Ex. 4, p. 48; Ex. 14.) At his second interview, Mr. Walsh ultimately admitted that Lt. Brown assisted him in putting up the fence. When asked why he lied, Mr. Walsh said, "I don't know." (Ex. 4, p. 59; Ex. 14.)

55. Mr. Walsh denied that Lt. Brown had ever been to Mr. Walsh's home. (Ex. 4, p. 50.) In his second interview, Mr. Walsh admitted that Lt. Brown had been in his basement. (Ex. 4, p. 59; Testimony, Perry.)

56. In his first interview, Mr. Walsh denied that Lt. Brown had ever ridden in a car with him to Falmouth, denied that Lt. Brown had ever been to the Cape with him, and denied that Lt. Brown had ever been to Mr. Walsh's mother's house in Falmouth. (Ex. 4, p. 50.) In his second interview, Mr. Walsh admitted that Lt. Brown went with him to his mother's house in Falmouth after his wife was arrested. (Ex. 4, p. 60; Testimony, Perry.)

57. Mr. Brown denied that he was ever told or shown anything suggesting that Lt. Brown was abusing overtime. (Ex. 4, p. 44; Testimony, Perry.) Captain Driscoll wrote a memo to Mr. Walsh dated February 2, 2010 about Lt. Brown's abuse over overtime. (Finding # 19)

58. During his interview, Mr. Walsh said that he went off-site to have lunch with Lt. Brown at a pizza place known as the Real Deal on about three occasions. Mr. Walsh said that he went there with other staff as well, including Captain Craven, Lt. Rose and Lt. Brown to get pizza. Captain Craven never went to the Real Deal with Mr. Walsh. (Ex. 4, p. 52; Testimony, Craven.)

59. During his interview, Mr. Walsh denied ever having a conversation with Captain Driscoll regarding Lt. Brown circumventing her authority. Captain Driscoll did speak with and send memos to Mr. Walsh about Lt. Brown circumventing her authority. (Ex. 4, p. 53; Testimony, Driscoll; Finding #19.)
60. During his interview, Mr. Walsh said that Lt. Brown's comment to "grow some fucking balls" was not directed to Mr. Walsh. The next day, Mr. Walsh told Captain Craven that he would fire any other Pick who said that to him. (Ex. 4, p. 53; Testimony, Craven; Perry.)
61. During his interview, Mr. Walsh said he assumed Captain Driscoll approved Lt. Brown leaving at 3 p.m. on November 3, 2009 during the security audit. When asked why Captain Driscoll would ask Mr. Walsh where Lt. Brown was at 3 p.m., Mr. Walsh said he did not know, but everyone knew Lt. Brown left that day. (Ex. 4, p. 47; Testimony, Perry.)
62. By memorandum of June 29, 2006, then-Commissioner Dennehy notified all DOC personnel that violations of department rules, regulations or policies "will be disciplined, up to and including termination." (Ex. 15.)
63. By memorandum of March 27, 2008, Commissioner Clarke notified all DOC personnel that "Employees who violate departmental rules, regulations or policies will be disciplined, up to and including termination." (Ex. 16.)
64. By letter of April 15, 2010, Mr. Walsh received a Notice of Charges and Hearing from Commissioner Clarke, charging him with violations of General Policy I, and Rules 1, 6(b); 6(d); 19(c); 19(d); and 103 DOC 100, Department Philosophy and Goals; 103 DOC

518, Investigations Policy; and 103 DOC 215, Conflict of Interest and American Correctional Association Code of Ethics. (Ex. 1.)

65. The Hearing Officer issued her report on May 13, 2010. (Ex. 6.) By letter of June 3, 2010, Commissioner Clarke notified Mr. Walsh that he had been terminated. (Ex. 2.)

### CONCLUSION AND RECOMMENDATION

The Department of Correction had reasonable justification to terminate James Walsh from his position as Superintendent of the Lemuel Shattuck Hospital Correction Unit.

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 rule of law. *Id.* at 304, quoting *Selectmen of Wakefield v. Judge of First District Court of E. Middlesex*, 262 Mass. 477, 482 (1928); *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 211, 214 (1971). 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.” *Murray v. Second Dist. Ct. of E. Middlesex*, 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof is one of a preponderance of the evidence, which is established “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). If the Commission finds by a preponderance of the evidence that there was just cause for an action against an Appellant, the Commission shall affirm the action 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).

**General Policy I** states in pertinent part: “Nothing in any part of these rules and regulations shall be construed to relieve an employee ... from his/her constant obligation to render good judgment, full and prompt obedience to all provisions of law, ... 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.”

The Appellant failed to use good judgment when he failed to notify the DOC Commissioner and the State Ethics Commission that he was participating in a state-related business matter in which his brother had a financial interest; when he became too close to Lt. Brown and created an appearance of impropriety, bias and favoritism; when he initiated private business dealings with COs Beers and Bockholt and Lt. Brown to have them perform work on his home while he was their superior; when he discussed

private matters with Lt. Brown; when he failed to report serious allegations of staff misconduct to a higher authority; when he defrauded the State by using Lt. Brown's services for his personal matters on state time using state equipment; and when he repeatedly lied during his first interview with the DOC investigators. (Ex. 3.)

**Rule 1** states in pertinent part, "You must remember that you are employed in a disciplined service which requires an oath of office.... Employees should give dignity to their position and be circumspect in personal relationships ..." (Ex. 3.) The Appellant failed to give dignity to his position of Superintendent when he repeatedly lied to investigators, and when he had Lt. Brown draft letters and a memo for him on state time using a state computer. The Appellant was not circumspect in his personal relationship with Lt. Brown when he shared so much personal information with Lt. Brown that the Appellant became compromised.

**Rule 6(b)** states in pertinent part: "Do not foster discontent or otherwise tend to lower the morale of any employee, and be particularly discreet ... when discussing personal matters of yourself or another." **Rule 6(d)** provides in pertinent 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 feel themselves favored or discriminated against." The Appellant failed to be discreet when discussing his personal matters with Lt. Brown. The Appellant was not impartial towards Lt. Brown and allowed Lt. Brown to feel favored by allowing him to work overtime whenever he wanted to, going out to lunch with him, and allowing Lt. Brown to circumvent Captain Driscoll's authority. This fostered discontent and lowered the morale of other DOC employees.

**Rule 19(c)** provides in pertinent part: "Since the sphere of activity within an institution or the Department of Correction may on occasion encompass incidents that require thorough investigation and inquiry, you must respond fully and promptly to any questions or interrogatories relative to the conduct of ... another employee or yourself." The Appellant failed to respond truthfully to questions put to him during both his interviews with the DOC investigators as enumerated in the findings of fact, above.

**Rule 19(d)** provides in pertinent 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." As a Superintendent as LSHCU, the Appellant had an augmented duty to obey the rules and to ensure they were obeyed by others. The Appellant failed to meet this obligation.

**103 DOC 100, Department Philosophy and Goals** provides in pertinent part, "The Department of Correction mission is achieved through ... [p]roviding a safe, professional and rewarding work environment based upon respect and dignity and the highest ethical standards." (Ex. 11, 103 DOC 100.02(7)). The Appellant's continual breaking of the rules and favoritism towards Lt. Brown did not provide a professional and rewarding work environment based upon respect and dignity and the highest ethical standards.

**103 DOC 518, Investigations Policy**, provides in pertinent part, "In the event of information and/or allegations coming to light which may necessitate a staff investigation the following shall occur: ... The superintendent shall: ensure that proper notifications, if necessary, have been made (State Police, D.A., appropriate DOC personnel)." (Ex. 13,



Attachment 4.) The Appellant, in his role as Superintendent, failed to make proper notifications that an investigation may have been needed into the issuance of overtime, the fact that Captain Craven hired subordinates to work on his home, and the fact the Appellant felt "extorted" and "compromised" by his relationship with Lt. Brown.

**103 DOC 215, Conflict of Interest and American Correctional Association Code of Ethics**, provides in pertinent part: "No current employee of the DOC shall knowingly, or with reason to know ... Use or attempt to use his/her official position to secure for himself/herself or others unwarranted privileges or exemption which are of substantial value and which are not properly available to similarly situated individuals." (Ex. 12.) 103 DOC 215.02(1)(b). The Appellant favored Lt. Brown and gave him unwarranted privileges or exemptions of substantial value not available to others, specifically, the ability to work overtime at will, and the ability to begin being paid when he punched in prior to the start of his official work day.

"No current employee of the DOC shall knowingly, or with reason to know ... Act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances to conclude that any person can improperly influence or unduly enjoy his/her favor in the performance of his official duties, or that he/she is likely to act or to fail to act as a result of kinship, rank, position or the undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his/her appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such conclusion." 103 DOC 215.02(1)(c). The Appellant's relationship with Lt. Brown, and using subordinates Beers and Bockholt to work on his home, would cause a reasonable

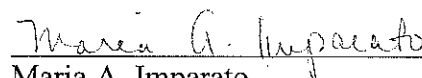
person to conclude that the Appellant could be improperly influenced or that his subordinates could receive preferential treatment from the Appellant.

"A DOC employee, in the performance of his/her official duties, is prohibited from participating in a particular matter in which the following people or entities have a financial interest: ... the employee's immediate family ..." 103 DOC 215.06(1). The exception to this rule provides, "Any DOC employee whose duties would otherwise require him/her to participate in such a particular matter shall advise the Commissioner and the [State Ethics Commission] in writing of the nature and circumstances of the particular matter and make full disclosure of such financial interest." 103 DOC 215.06(2). The Appellant put his brother's company, Net Versant, on the agenda for the Technology Committee and failed to notify the DOC Commissioner and/or the State Ethics Commission in writing of the nature and circumstances of the matter and failed to make full disclosure of whatever financial interest he had in the matter.

"A DOC employee is prohibited from having a direct or indirect financial interest in a contract made by a state agency. 103 DOC 215.08. The Appellant put his brother's company on the Technology Committee agenda so that the Committee might recommend that the DOC purchase Net Versant's product.

I recommend that the Civil Service Commission affirm the action of the Department of Correction to terminate the Appellant.

DIVISION OF ADMINISTRATIVE LAW APPEALS

  
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Maria A. Imparato  
Administrative Magistrate

DATED:

**SEP 27 2011**