

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 5/2/08
Civil Service Commission
CB

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

HEATHER YORK,
Appellant

v.

DEPARTMENT OF
CORRECTION,
Respondent

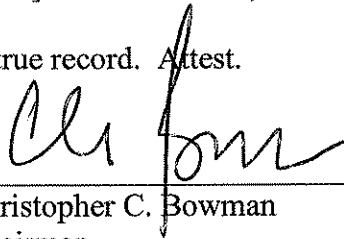
Case No.: D-03-385

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on May 1, 2008 to acknowledge receipt of the report of the Administrative Law Magistrate dated March 24, 2008. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Marquis, Taylor, [Henderson – NO] Commissioners) on May 1, 2008.

A true record. Attest.



Christopher C. Bowman
Chairman

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 to:

James W. Simpson, Esq. (for Appellant)
Jeffrey S. Bolger, Esq. (for Appointing Authority)
Francis X. Nee, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

98 North Washington Street, 4th Floor

Boston, MA 02114

www.mass.gov/dala

Tel: 617-727-7060
Fax: 617-727-7248

March 24, 2008

Christopher Bowman, Chairman
Civil Service Commission
One Ashburton Place
Boston, MA 02108

James W. Simpson, Esq.
Merrick, Louison & Costello
67 Battery March St.
Boston, MA 02110

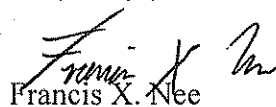
Jeffrey S. Bolger
Department of Correction
P.O. Box 946, Industries Drive
Norfolk, MA 02056

Re: *Heather York v. Department of Correction*, D-03-385, CS-06-678

Dear Chairman Bowman, Attorney Simpson and Mr. Bolger:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c), they have 30 days to file written objections to the decision with the Civil Service Commission, which may be accompanied by supporting briefs.

Very truly yours,



Francis X. Nee
Administrative Magistrate

FXN/df

Enc.

RECEIVED
2008 MAR 25 A 10:41
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

DIVISION OF ADMINISTRATIVE
LAW APPEALS

HEATHER YORK,
Petitioner

Docket Nos. D-03-385
CS-06-678 (DALA)

vs.

DEPARTMENT OF CORRECTION,
Appointing Authority

For Petitioner:

James W. Simpson, Esq.
Merrick, Louison & Costello
67 Batterymarch St.
Boston, MA 02110

For Appointing
Authority:

Jeffrey S. Bolger
Director, Employee Relations
Department of Correction
P.O. Box 946
Norfolk, MA 02056

Administrative Magistrate:

Francis X. Nee

RECEIVED
2008 MAR 25 A 10:42
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

RECOMMENDED DECISION

The Petitioner, Heather York, is appealing the decision of the Appointing Authority, the Department of Correction, to suspend her for ten days from her position as a Correction Officer for (1) disrespectful and insubordinate conduct toward a superior officer, (2) opening a cell door with neither a second officer present nor the permission of the Watch Commander, and (3) leaving cell lights on after lights out as a form of punishment. (Ex. 2). She appealed timely under provisions G. L. c. 31, sec. 43. (Ex. 1). I held a hearing on October 16, 2006 at the Civil Service Commission, Room 503, One Ashburton Place, Boston.

At the start of the hearing, I admitted exhibits 1-8 into evidence. During the hearing, I admitted six additional exhibits (hearing exhibits 1-6). Three witnesses testified for the Department of Correction: Sergeant Everett Cosby, Lieutenant Tina Goins, and Captain Patrick Depaulo. Heather York testified on her own behalf. I recorded the hearing on two tape cassettes.

FINDINGS OF FACT

Based on the documents entered into evidence and the testimony at the hearing, I make the following findings of fact:

1. Since 1995, Heather York has been employed by the Massachusetts Department of Correction as a Correction Officer. (Testimony)
2. In October 2002, Officer York was assigned to the overnight shift, 11:00 p.m. to 7:00 a.m., in the Brewster II Unit at MCI Framingham. (Ex. 6 & Testimony)
3. The center of Brewster II Unit is occupied by a large rectangular common area containing furniture, a television, a microwave, and a hotpot. The common area's longer walls contain doors to ten cells, each containing beds for four to six inmates. Along one of the shorter walls, there is an office for staff with a window into the common area and controls for all the lights in the unit. The opposite wall contains a door leading to the inmates' bathroom. (Testimony)
4. On October 23, 2002, at 11:30 p.m., Officer York found the hotpot in use. Because the rules prohibited use of the hotpot at this time of night, she removed the hotpot's cord from the common area. Additionally, she wrote in the unit's log book that the hotpot was "busted" (temporarily made off-limits to inmates). (Hearing Ex. 4)

5. On October 24, 2002, at the beginning of her shift, Officer York learned from Officer Golden, who she was relieving, that during the 3:00 p. m. to 11:00 p. m. shift inmates had been able to heat water for coffee even though the hotpot had been "busted." Officer Golden suggested that the inmates may have heated the water in the microwave. In response, Officer York wrote in the log book that the microwave was also "busted." She also took the microwave from the common area and placed it in the office. (Hearing Ex. 4)
6. Early in her shift on October 24, 2002, Officer York, while standing at the door to cell ten, questioned the inmates in the cell about heating water for coffee during the day without the hotpot. She concluded that the inmates had used the microwave, and may have done so with the permission of Sergeant Michael Daponte, who supervised the unit during the day. (Hearing Exs. 2, 3)
7. Officer York then used the office telephone to called Sergeant Daponte, who was working overtime that night in another unit at MCI Framingham. She asked him if he had given the inmates permission to heat water in the microwave that day. He told her that he had not. (Hearing Ex. 2)
8. Officer York returned to cell ten, opened the door, entered, and renewed her questioning of the inmates. (Testimony)
9. When Officer York opened the cell door, she was the only correction officer present; she had neither sought nor obtained authorization from the Watch Commander to open the cell door. (Testimony)

10. While in cell ten, Officer York learned from the inmates that Sergeant Daponte had given them a cord for the hotpot. This was a second cord; it was not the one Officer York had taken from the common area the night before. (Hearing Ex. 2)
11. Officer York called Sergeant Daponte a second time and asked him if he had provided a substitute cord for the hotpot. He told her that he had. Officer York asked him why he had omitted this fact during their first telephone conversation. She became upset and told him that by providing a replacement cord for the hotpot, he had undermined her authority. (Testimony)
12. Shortly after the second telephone call ended, Officer York called Sergeant Daponte a third time and told him that she wanted to be transferred out of his unit. (Testimony)
13. At 11:45 p.m., Sergeant Cosby reported to Brewster II Unit to relieve Officer York so that she could keep a previously-scheduled appointment at the firing range. He noted that although it was past lights out, the lights in cell six were still on. (Testimony)
14. Officer York told Sergeant Cosby that she had turned the lights on because the inmates in cell six had been disruptive, yelling "woohoo" at the door and banging on the walls and the door. (Hearing Ex. 2 & Testimony)
15. Officer York asked Sergeant Cosby to leave the lights on and added that she would shut them off when she returned from the firing range. (Hearing Ex. 2, 3)
16. Shortly after Office York left for the firing range, Sergeant Cosby shut off the lights in cell six. (Testimony)

17. Several hours later, Officer York returned. She was upset with Sergeant Cosby and asked him why he turned off the lights when she had asked him not to.

(Hearing Ex. 3 & Testimony)

18. Officer York did not obtain the unit commander's permission to leave the lights on in cell six. (Testimony)

19. Officer York has a history of prior discipline within the Department of Correction. On November 20, 1997, Officer York received a written warning for tardiness. On April 19, 2001 she received a one day suspension for being loud and argumentative with three supervisors and for leaving her post without being relieved. On February 12, 2002 she received a three day suspension for becoming argumentative with her co-workers. On March 20, 2002, she was suspended for five days for inappropriate behavior.

CONCLUSION AND RECOMMENDATION

The Appointing Authority, Department of Correction, has demonstrated just cause for the suspension of Correction Officer Heather York for opening the door to cell ten and for leaving the lights on in cell six. The Department of Correction, however, did not meet its burden on the charge that Officer York was disrespectful and insubordinate towards Sergeant Daponte. Accordingly, I recommend that the Civil Service Commission modify the action of the Appointing Authority as follows. First, dismiss the charge of insubordination. Second, affirm the other two charges. Third, affirm the full ten-day suspension. because of the seriousness of the two confirmed charges and Officer York's past discipline,

Disrespectful and Insubordinate Conduct Toward a Superior Officer

The Department of Correction charged Officer York with being disrespectful and insubordinate during three private telephone conversations with a superior officer. The only witnesses to these conversations were the participants, Officer York and Sergeant Daponte. The Department of Correction supported this charge with prior written statements of Sergeant Daponte in which he states that Officer York ended two of their three conversations by hanging up on him and during one conversation asked him why he had lied.

Officer York testified under oath and was subjected to cross-examination. She said that she did not hang up on Sergeant Daponte and added that although she was upset during two of the telephone conversations, she was neither insubordinate nor disrespectful.

She stated that during the first call she asked Sergeant Daponte if he had given the inmates permission to heat water in the microwave and he told her that he had not. While this reply was literally true, it was misleading, as Officer York learned during their second conversation when Sergeant Daponte told her he had replaced the cord she had taken from the common area with another cord. Officer York said that this revelation troubled her because it showed that Sergeant Daponte had undermined her authority. She added that although she was upset for the remainder of the conversation, she was neither disrespectful nor insubordinate.

Officer York said that after a few moments of reflecting on her situation, she called Sergeant Daponte a third time to tell him that she no longer wanted to work under his supervision, and asked him to convey this to the appropriate superior officer. Again,

Officer York testified that although she was upset during this conversation, she was neither disrespectful nor insubordinate to Sergeant Daponte.

At the hearing, the Department of Correction did not call Sergeant Daponte as a witness; instead, it relied on his previous written statements. These statements are less convincing than Officer York's testimony, which was given under oath and subject to cross-examination. Accordingly, I find that Officer York was neither insubordinate nor disrespectful to Sergeant Daponte.

Opening Cell Door with Neither a Second Officer Present nor Approval of the Watch Commander

The Department of Correction charged Officer York with violating the specific post duties for the Brewster II Unit 11:00 p.m. to 7:00 a.m. shift, which prohibit a correction officer from opening cell doors unless either a second officer is present or the action is authorized by the Watch Commander. (Hearing Ex. 6)

In the incident report filed the day after the event and in her testimony, Officer York admitted that she opened the door to cell ten. She never claimed that there was another officer present and she never asserted that she had obtained permission to open the cell door without a second officer present. Officer York explained that she opened the door and entered the cell to confront an inmate she believed had lied about Sergeant Daponte's actions. York contends that her violation is minor because she stayed near the door while interrogating the inmate. This argument misses the mark. The violation occurred when she opened the door.

Officer York violated her specific post duties for the 11:00 p.m. to 7:00 a.m. shift at the Brewster II Unit. (Hearing Ex. 6). This violation constitutes a violation of the

Department of Correction Rules and Regulations governing employees, specifically, Rule 7, which provides “any Department of Correction employee... who is found otherwise flagrantly, wantonly, or willfully neglecting the duties and responsibilities of his/her office shall be subject to immediate discipline up to and including discharge.” (Ex. 4)

Leaving Lights On as a Form of Punishment

The Department of Correction charged Officer York with violating the unit post rules, which prohibit officers from imposing sanctions such as leaving the lights on without authorization of the Watch Commander.

Officer York testified that after all the cell lights were off for the night, some inmates in cell six began pounding on the door and shouting. She explained that in an effort to identify the disruptive inmates, she turned on the lights in the cell using the controls in the office.

Officer York is not charged with turning on lights, however. She is charged with leaving lights on to punish all of the inmates in cell six. In her incident report, Officer York states that at 11:45 p.m., she asked Sergeant Cosby to leave the lights on because there “was a problem with the room.” She told him that she would turn them off after she returned. Several hours later, when Officer York came back from the firing range, she was upset to discover that Sergeant Cosby had turned the lights off.

Officer York contends that she turned the lights on in cell six to discover the inmates who were causing the disturbance. This contention, however, holds no weight, because Officer York wanted the lights to remain on even after cell six was quiet and she left Brewster II Unit and, thus, could not be there to identify disruptive inmates. The

record thus shows Officer York's intent to punish the inmates of cell six by leaving the lights on that night. Finally, the record is devoid of evidence that Officer York was given authorization to punish the inmates in this manner. The evidence shows rather that she punished the inmates in cell six without authorization to do so.

Officer York's actions violated the specific post policy that there shall be no informal punishments without authorization by the Watch Commander. This violation constitutes a violation of the Department of Correction Rules and Regulations governing employees, specifically, Rule 7, which provides "any Department of Correction employee... who is found otherwise flagrantly, wantonly, or willfully neglecting the duties and responsibilities of his/her office shall be subject to immediate discipline up to and including discharge." (Ex. 4)

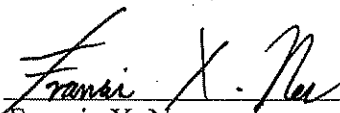
Reasonableness of the Imposed Suspension

I have considered Officer York's prior discipline as well as the outcome of this appeal while formulating my recommendation.

The Department of Correction does not have just cause to discipline Officer York for being disrespectful and insubordinate to Sergeant Daponte. Accordingly, I recommend that this charge be dismissed. The Department of Correction has just cause for disciplining Officer York for the two actions she took without authorization: (1) opening the door to cell ten while alone and (2) leaving the lights on in cell six as a form of punishment. Accordingly, I recommend that these charges be upheld, as well as the original ten-day suspension. The length of the suspension is reasonable because of

Officer York's past discipline and the seriousness of the affirmed charges, particularly opening the door to cell ten.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Francis X. Nee
Administrative Magistrate

DATE: 3/24/08