

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

GREGORY ZEIROFF,  
*Appellant*  
v.

D-12-292

DEPARTMENT OF CORRECTION,  
*Respondent*

Appearance for Appellant

Bradford N. Louison, Esq.  
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Appearance for Respondent

Jody A. Brenner, Esq.  
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Commissioner:

Cynthia Ittleman<sup>1</sup>

**DECISION**

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Gregory Zeiroff (hereinafter “Mr. Zeiroff” or “Appellant”), filed an appeal on October 19, 2012 regarding the decision of the Department of Correction (hereinafter “DOC” or “Respondent”), to suspend him without pay for three (3) days and reassign him from his position as a Correction Officer based out of the Central Transportation Unit (hereinafter “CTU”) to the position of Correction Officer at Massachusetts Correction Institution – Shirley Medium (hereinafter “MCI-Shirley”). Mr. Zeiroff filed a timely appeal. A pre-hearing conference was held on December 11, 2012, and a full hearing was held on February 20, 2013, at the offices of the Civil Service Commission (hereinafter

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Ryan Clayton in the drafting of this decision.

“Commission”). The hearing was digitally recorded and the witnesses were sequestered. Post-hearing briefs in the form of proposed decisions were filed by Mr. Zeiroff and the Respondent on March 28, 2013, and April 1, 2013, respectively. For the reasons stated herein, the appeal is **dismissed**.

**Findings of Fact:**

Seven (7) exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

*For the Department of Correction:*

- Joshua Lopes, Night Supervisor, Tufts Medical Center
- David Shaw, Then-Sergeant<sup>2</sup>, Department of Correction, Internal Affairs
- Cheryl Brannon, Department of Correction, Division of Human Resources

*For the Appellant:*

- Gregory Zeiroff, Appellant

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

1. Mr. Zeiroff is a tenured civil service employee serving in the position of Correction Officer I (hereinafter “CO”) and has been with DOC since 1994. (*Stipulated Facts*)
2. On April 7, 2012, Mr. Zeiroff was assigned to go to Tufts New England Medical Center Hospital (“Hospital”) in Boston to relieve another correction officer team that was watching Inmate B who was sent to the hospital for medical treatment. A team consists of two Correction Officers, one of whom is armed, and one of whom is not armed. Mr. Zeiroff was the armed officer while his partner, Jordi Troncoso, was unarmed. They were

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<sup>2</sup> I am advised that then-Sgt. Shaw was subsequently promoted to Lieutenant.

in North 7 room 7023, located across from the nurses' station. The unarmed Correction Officer is supposed to be inside the room while the armed Correction Officer sits outside of it. (*Testimony of Zeiroff and Lopes*)

3. There were possibly four or more teams in various rooms and in different areas of the Hospital on the night of April 7-8, 2012. (*Testimony of Lopes*)
4. During the early morning hours, the nurses noticed that two (2) DOC officers were sleeping in room 7023 and notified security staff, who then informed Joshua Lopes, the Hospital's night shift security supervisor, through dispatch. (*Testimony of Lopes*)
5. Mr. Lopes has worked at the Hospital for five (5) years and is the supervisor of the Public Safety Department. He has been in the position of supervisor for approximately one (1) year with the rank of Corporal. His job often entails going around the Hospital to check on the officers and inmates. (*Testimony of Lopes*)
6. Mr. Lopes went to North 7 and spoke to the nursing staff who informed him of the two (2) sleeping officers in room 7023. (*Testimony of Lopes, Exhibit 5, p. 41*)
7. Mr. Lopes described the two sleeping officers as "young," "skinny," and "new to the job." (*Exhibit 7a, Lopes Interview #1*)
8. While Mr. Lopes' description does not describe Mr. Zeiroff, it does describe Mr. Troncoso, who was still a probationary employee at this time. (*Testimony of Shaw, Exhibit 7b Troncoso Interview*)
9. The lights in room 7023 were off but the TV was on. Mr. Lopes noticed that the armed officer was inside the room and both officers were asleep. Mr. Lopes tapped the armed officer on the shoulder with a piece of paper a few times until he awoke and told him that

he needed to stay awake and if he was tired he should walk the hallway. (*Testimony of Lopes, Exhibit 5, p. 11*)

10. The night before this, Mr. Lopes had caught two other Correction Officers sleeping while guarding an inmate as well. (*Testimony of Lopes*)

11. Mr. Lopes was 100% positive that the inmate the two sleeping officers were guarding was Inmate B, and Mr. Lopes soon informed his supervisor, Michael Crisp, via email, of the two sleeping DOC officers in room 7023 guarding Inmate B. (*Testimony of Lopes, Exhibit 5, p. 41*)

12. The shift roster shows that Mr. Zeiroff and Mr. Troncoso were assigned to cover Inmate B during the 11:00pm to 7:00 shift on April 7-8, 2012. (*Exhibit 5, p. 37*)

13. The logbook shows that Mr. Troncoso and Mr. Zeiroff were covering Inmate B in room 7023 during the 11:00pm to 7:00 shift on April 7-8, 2012. (*Exhibit 5, p. 38*)

14. Mr. Zeiroff was transferred from MCI Shirley to the CTU on April 22, 2012. Mr. Zeiroff worked for the CTU for approximately five (5) months and was based at the CTU office in Shirley, MA. (*Exhibit 7B, Zeiroff Interview, Testimony of Zeiroff*)

15. Mr. Lopes was interviewed on April 18, 2012 and May 17, 2012 by DOC Sgt. Shaw. (*Testimony of Lopes*)

16. Sgt. Shaw is an experienced DOC investigator, having been with DOC for fifteen (15) years and working in Internal Affairs for seven (7) years. He has been trained to assess credibility of those that he has interviewed (*Testimony of Shaw*)

17. During the April 18<sup>th</sup> interview, Sgt. Shaw showed Mr. Lopes four photographs of Correction Officers. The four officers were those Sgt. Shaw had determined were assigned to watch inmates at the hospital on April 7<sup>th</sup> and April 8<sup>th</sup> and who were

allegedly asleep. He determined this by reading the shift roster and logbooks from the nights in question. (*Testimony of Shaw*)

18. Mr. Lopes identified one of the officers in the photos as one of those who were asleep on one of the two nights. (*Exhibit 7a, Lopes Interview #1*)

19. Sometime after, Sgt. Shaw discovered that the four photographs were not of officers who were at the hospital that evening, meaning, Mr. Lopes gave an incorrect identification. The mistake came when Sgt. Shaw misread the logbook and shift roster due to the overlapping nature of shifts that started on April 7<sup>th</sup> but ended on April 8<sup>th</sup>. (*Testimony of Shaw*)

20. At the re-interview on May 17<sup>th</sup>, Sgt. Shaw presented Mr. Lopes with a photo array of 16 photographs of similarly appearing DOC correction officers. Mr. Zeiroff's photo was included in the array. Mr. Lopes picked out two officers, one being Mr. Zeiroff's partner, Mr. Troncoso, but he did not pick out Mr. Zeiroff. (*Testimony of Shaw, Exhibit 5 p. 13*)

21. Sgt. Shaw interviewed Mr. Zeiroff on May 31, 2012. (*Exhibit 7b, Zeiroff Interview*)

22. Sgt. Shaw asked Mr. Zeiroff if he was sleeping. He responded "not that I can recall or remember..." and "No. I'm saying I don't recall, but I don't... I'm going to say no." When asked if he remembered a security staff member accusing him of sleeping, Mr. Zeiroff responded "Not that I recall anything." Mr. Zeiroff did remember that Inmate B was not disruptive, that medical staff was in and out of Inmate B's room, and that security staff brushed up against Mr. Zeiroff and said "hey, how you doing." (*Exhibit 7b, Zeiroff Interview*)

23. On August 10, 2012, DOC informed Mr. Zeiroff, via letter, of a notice of charges and of a hearing scheduled relating to the charges for September 5, 2012. (*Exhibit 1*)

24. There were two charges against Mr. Zeiroff: “On or about April 8, 2012, at an outside hospital detail at New England Medical Center, you were asleep on duty while armed”; and “You were less than truthful with DOC investigators during the course of this investigation.” (*Exhibit 1*)
25. The purpose of the hearing was to determine if Mr. Zeiroff violated several Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, specifically: General Policy 1, Rule 7(c), Rule 10(c), Rule 12(a), Rule 19(c).
26. Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, General Policy 1 indicates: “Nothing in any part of these rules and regulations shall be construed to relieve an employee of his/her primary charge concerning the safe-keeping and custodial care of inmates or, from his/her constant obligation to render good judgment and full and prompt obedience to all provisions of law, and to all orders not repugnant to rules, regulations, and policy issued by the Commissioner, the respective superintendents, or by their authority.” (*Exhibit 6*)
27. Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, Rule 7(c) states: “Any Department of Correction or institution employee who is found sleeping at his/her post during the course of their official duties, or otherwise flagrantly, wantonly, or willfully neglecting the duties and responsibilities of his/her office shall be subject to immediate discipline up to and including discharge.” (*Exhibit 6*)
28. Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, Rule 10(c) states: “Employees assigned to or having duties related to inmates confined in isolation, segregation, hospital or special housing sections must comply with institution and Department of Correction policy and orders relative to the daily medical

attention, hourly care (unless special situations such as medical concerns indicate closer or more frequent observation), and custody of such inmates.” (*Exhibit 6*)

29. Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, Rule 12(a) states: “Employees shall exercise constant vigilance and caution in the performance of their duties. You shall not divest yourself of responsibilities through presumption and, must familiarize yourself with assigned tasks and responsibilities including institution and Department of Correction policies and orders.” (*Exhibit 6*)
30. Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, Rule 19(c) states: “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 an inmate, a visitor, another employee or yourself.” (*Exhibit 6*)
31. On October 2, 2012, DOC notified Mr. Zeiroff of its decision to suspend him for three (3) days without pay. (*Exhibit 3*)
32. Subsequently, on October 15, 2012, DOC notified Mr. Zeiroff of its decision to reassign him from the CTU office based at Shirley to MCI-Shirley Medium. (*Exhibit 4*)
33. Mr. Zeiroff’s position (Correction Officer I) and pay rate did not change as a result of the reassignment, and his commute did not change either. (*Testimony of Zeiroff and Brannon*)
34. Mr. Zeiroff filed an appeal at the Commission on October 19, 2012 regarding the DOC’s decision to discipline and re-assign him.

## DISCUSSION

### *Applicable Civil Service Law*

G.L. c. 31, § 43, provides:

“If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority’s procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.”

Under Section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. The role of the 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." Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, 682, 923, *rev.den.*, 426 Mass. 1102, (1997). *See also* City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108, (2003); Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n, 38 Mass.App.Ct. 473, 477, (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, *rev. den.*, 390 Mass. 1102, 453 N.E.2d 1231 (1983).

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214, 268 N.E.2d 346 (1971); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d



923, *rev.den.*, 426 Mass. 1102, (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass.App.Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514, (1983).

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36, (1956).

"The commission's task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact ... the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision ...." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006). *See* Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102, (1983) and cases cited.

Pursuant to G.L. c. 31, § 41, in part,

Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, **transferred** from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished ....

A civil service employee may be suspended for just cause for a period of five days or less without a hearing prior to such suspension ....

(Id.)(emphasis added)

The Civil Service Commission has defined the term "transfer" as a "change of employment under the same appointing authority from a position in one class to a similar position in the same or another class or a change of employ in the same position, under the same appointing authority, from one geographical location to a different geographical location, provided that a different geographical location shall be one which is both more than a commuting distance from the employee's residence than its prior location and more distant from the employee's residence than his prior location...." Sullivan v. Dep't of Transitional Assistance, 11 MCSR 80 (1998).

A series of Commission decisions has established the difference between a transfer and a reassignment and that the Commission lacks jurisdiction over those appeals involving a reassignment:

In Appellant<sup>3</sup> v. Department of Revenue, 1 MCSR 28, 29 (1985), the Commission dismissed the Appellant's appeal on the grounds that the action being appealed was a reassignment as opposed to a transfer. In that case, the employee's position in the Worcester DOR office was eliminated and he was reassigned to the Cambridge office. The employee claimed that this change in duty was effectively a transfer. The Commission found that the distances to Cambridge or to Worcester from the employee's home were approximately equal. It further found that that the reassignment did not affect the employee's job title, duties, grade or salary. Therefore, the appellant in that case was reassigned, not transferred.

In McLaughlin v. Registry of Motor Vehicles, CSC Case No. G-01-1461 (2004), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but a reassignment. In McLaughlin, the appellant was not transferred to

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<sup>3</sup> Unfortunately, this is the manner in which the 1985 edition of the MCSR cites the decision (Docket No. D-2361).

a different position, but merely relocated to a different branch office while keeping the same job title, duties and pay.

In Sands v. City of Salem, 21 MCSR 502, 504 (2008), the Commission, citing Sullivan, determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but, rather, a reassignment. In Sands, the appellant, a Hoisting Equipment Operator, was no longer able to perform some of the essential duties in his previously held position. Therefore, in order to make reasonable accommodations for his medically documented permanent disability, he was reassigned to perform cemetery-related duties in the Cemetery Department. Although his distance of travel from his residence was greater than previously, the Commission concluded that the change in travel did not impose an unreasonable hardship on the employee.

In McQueen v. Boston Public Schools, 21 MCSR 548, 551 (2008), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but, rather, a reassignment. In McQueen, the appellant was reassigned from one elementary school to another. In dismissing his appeal, the Commission considered that the Appellant retained the same position of junior custodian and retained the same rate of pay in his new position.

In Anderson v. Saugus Public Schools, CSC Case No. D-09-381 (2010), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but, rather, a reassignment. In Anderson, the appellant retained her title of Principal Clerk; she did not face any reduction in pay nor had she been assigned to a work location that resulted in a longer commute. While her functional duties had changed, those duties still fell clearly within the clerical series. Even if the functional duties were substantially different, as

they were in the Sands case, the Commission concluded that this alone would not constitute a transfer that is reviewable by the Commission.

In Haye and Simone v. Methuen Public Schools, 23MCSR 122 (2010), the Commission determined that it lacked jurisdiction to hear the appeal in that the action did not constitute a transfer, but, rather, a reassignment. In Haye and Simone, the Appellants were both permanent junior building custodians. They were reassigned to building custodian positions different from those in which they had been serving. Each of them continued to serve in junior building custodian positions without any loss of compensation. Mr. Haye, who had previously worked in the functional title of “building custodian / store delivery person” and Mr. Simone, who had previously worked as “building custodian / system-wide groundskeeper”, each had been reassigned to positions as junior building custodians in one of the elementary schools in the Methuen Public Schools.

In Breen v. Gardner School Department, 25 MCSR 154 (2012), the Commission determined that it lacked jurisdiction to hear the appeal in that the action did not constitute a transfer, but, rather, a reassignment. In Breen, the appellant was a Senior Clerk / Typist. She was laid off, then reinstated to her permanent civil service title of Senior Clerk / Typist. A subsequent arbitration decision, related to another employee, addressed provisions of the collective bargaining agreement related to the assignment of clerks to various positions in the School Department. Although the appellant was assigned to a different work location, her permanent title of Senior Clerk/ Typist was not disturbed.

In Bedard v. Marlborough Public Schools, CSC Case No. G-13-225 (2013), the Commission determined that it lacked jurisdiction to hear the appeal in that the action did not constitute a transfer, but, rather, a reassignment. In Bedard, Ms. Bedard’s permanent civil

service title was not disturbed, she continued to perform administrative duties that were consistent with the clerk series, she suffered no reduction in pay and her new work location was only a couple of miles away from her prior work location.

#### *Respondent's Argument*

The Respondent argues that Mr. Lopes confirmed that the two officers he saw sleeping were in room 7023 in an email to his Hospital supervisor, Mr. Crisp. Mr. Lopes was later able to identify one of the two sleeping officers out of a sixteen (16) person photo lineup created by Sgt. Shaw. As Mr. Lopes positively identified Jordi Troncoso, Mr. Zeiroff's partner, this places Mr. Zeiroff in the room as one of the two sleeping officers. In addition to this, both the logbook and shift roster from the night in question confirm that Mr. Zeiroff was one of the two sleeping officers discovered by Mr. Lopes. The shift roster shows that Mr. Zeiroff and Mr. Troncoso were assigned to cover Inmate B during the 11:00 pm to 7:00am shift on April 7-8, 2012, and the logbook from that same night shows that Mr. Zeiroff and Mr. Troncoso were covering Inmate B in room 7023. While Mr. Lopes might not have readily known who the two sleeping officers were, he was 100% positive that the inmate the two sleeping officers were guarding was Inmate B and Mr. Lopes informed his supervisor of events within just a couple of hours after his observations.

Further, the Respondent avers, Mr. Zeiroff was, as Sgt. Shaw explained, "textbook" evasive in his DOC interview, meaning he was less than truthful during his investigatory interview. Mr. Zeiroff's memory appeared to be hazy when asked if he was sleeping that night while he clearly remembered many other details. When asked, he remembered working at an outside hospital detail at Tufts, he was covering Inmate B, relieving the 3-11 officers, he was moved to a hospital room from the ER, that nursing staff were in and out of the room, and that

security staff brushed up against Mr. Zeiroff and said “hey, how you doing.” This starkly contrasts with his response when he was asked if he was sleeping at any time during his shift and he said “not that I can recall or remember...” and “No. I’m saying I don’t recall, but I don’t... I’m going to say no.” When asked if he remembered a Hospital security staff member accusing him of sleeping, Mr. Zeiroff responded “Not that I recall anything.” Mr. Lopes, of Hospital security, had no motivation to lie about any of the DOC officers involved, not knowing who any of them are, while Mr. Zeiroff had motivation to lie to avoid discipline.

Lastly, the Respondent argues that the Commission does not have jurisdiction over Mr. Zeiroff’s change of assignment. He was reassigned from the position of a Correction Officer on the CTU at the office in Shirley, MA, to the position of Correction Officer at MCI Shirley Medium. In so doing, he retained the same job position and salary rate. Mr. Zeiroff admitted that his commute stayed the same, so it cannot be said that his change in work location imposed an unreasonable hardship on him.

#### *Appellant’s Argument*

The Appellant here avers that as a result of two incidents involving sleeping DOC officers two nights in a row, DOC initiated an investigation. Mr. Lopes’ two interviews by Sgt. Shaw were a part of that investigation. On April 18, 2012, Mr. Lopes was interviewed for the first time and was shown four photographs of Correction Officers. The four officers were those whom Sgt. Shaw had determined were the four officers that were assigned to watch inmates at the hospital on April 7<sup>th</sup>, and April 8<sup>th</sup>, and who were allegedly asleep. Mr. Lopes told Sgt. Shaw that he recognized one of the officers as one who was asleep on one of the two nights. However, Sgt. Shaw discovered that the four photographed officers were not at the Hospital on those two nights, meaning that Mr. Lopes misidentified the one officer. At the second interview with a

photo array of sixteen (16) photographs, Mr. Lopes again failed to identify Mr. Zeiroff. He also described the two sleeping officers as “skinny,” “young,” and “new to the job.” None of those describe Mr. Zeiroff. There were multiple teams at the hospital that night and this could have combined to confuse Mr. Lopes.

The Appellant argues further that, Sgt. Shaw felt that Mr. Zeiroff was evasive when he interviewed him. He based his opinion on being evasive solely on the fact that Mr. Zeiroff did not deny the allegations adamantly enough. Mr. Zeiroff appeared promptly at his interview, answered the questions, and fully cooperated. In addition, Mr. Zeiroff was nervous; he had never before been investigated or accused of anything. He was not trying to be evasive or untruthful. Mr. Zeiroff appeared at the interview, made no attempts to avoid it, appeared with a union representative and fully answered the questions.

Finally, the Appellant avers, after the incident, he was moved to a less preferred position, “permanently reassigning” Mr. Zeiroff to MCI Shirley. The transfer was clearly made part of the discipline. While evidence indicated that the CTU where Mr. Zeiroff was working was based at MCI Shirley, the same institution where he was working before he was moved, and that his pay remained the same. However, there are significant benefits for working for CTU and the transfer was punitive.

### *Analysis*

The parties offer plainly divergent views as to whether Mr. Zeiroff was sleeping in room 7023 on the night of April 7 – 8, 2012 and was then less than truthful during the subsequent investigation. Mr. Zeiroff both denies sleeping and suggests that Mr. Lopes, although with good intentions, was mistaken due to the number of teams in the hospital on the night in question, as evidenced by Mr. Lopes’ misidentification during his first interview with Sgt. Shaw. If this was

just one person's word against the other, more weight might be given to that argument. Here, however, a preponderance of the credible evidence indicates that the Appellant was asleep on the night of April 7 – 8, 2012 during his shift. We have not just Mr. Lopes' testimony that he found two officers in room 7023 sleeping guarding Inmate B and not just his assurance that he was 100% positive that it was Inmate B. We also have Mr. Lopes' e-mail message to his supervisor sent soon after that state the officers in room 7023 were sleeping. If more time had passed before he had sent that e-mail then maybe his memory would come into doubt. On top of this, we have the shift roster and the logbook, which place Mr. Troncoso and Mr. Zeiroff at the Hospital in room 7023 that night. Furthermore, while the first identification of the Appellant ended up being wrong, the second identification lead to Mr. Troncoso, the Appellant's partner that night, being identified. While Mr. Lopes was not able to identify, or misidentify, Mr. Zeiroff, the identification of his partner places him in the room as one of the sleeping officers. Moreover, Mr. Zeiroff does not deny he was in room 7023. The potential danger of an armed Correction Officer sleeping in the room of an inmate has was assigned to guard cannot be understated. Therefore, the Respondent had just cause to discipline the Appellant in this regard.

Secondly, a preponderance of the credible evidence establishes that Mr. Zeiroff was less than truthful in his interview with Sgt. Shaw. Sgt. Shaw's own investigative experience suggests that Mr. Zeiroff was evasive, diminishing Mr. Zeiroff's credibility. Mr. Zeiroff claims that this was due to nerves. It is understandable that someone who has not been disciplined before would be nervous coming into such an interview. However, Mr. Zeiroff gave simple, straight-forward answers to all other questions asked, except when he was asked if he had been sleeping that night while on duty. He answered with clear replies and his memory seemed sharp in describing the rest of the events that night. Yet when asked if he had been sleeping, his answers were that he



could not recall. This contrast and the Appellant's evasiveness establishes, by a preponderance of the credible evidence, that Mr. Zeiroff was less than truthful during his interview.

With regard to Mr. Zeiroff's purported transfer, Mr. Zeiroff was reassigned from the CTU office in Shirley, MA, to MCI Shirley Medium. Following the reassignment, Mr. Zeiroff retained his job title and salary rate and his commute was not changed. Therefore, Mr. Zeiroff was reassigned, not transferred, and the Commission has no jurisdiction over this portion of Mr. Zeiroff's appeal.

I find no bias or other inappropriate motive with respect to the discipline issued by the Respondent warranting modification, especially in view of its limited nature.

### CONCLUSION

Based on the facts and the law herein, the Appellant's appeal under Docket No. D-12-292 is hereby *dismissed*.

Civil Service Commission

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Cynthia A. Ittleman, Esq.  
Commissioner

By a 3-1 vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell [NO] and Stein, Commissioners) on April 3, 2014.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten (10) days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty (30) day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of

this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Bradford N. Louison, Esq. (For Appellant)

Jody A. Brenner, Esq. (For Respondent)