

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

MICHAEL ZOLTANY,
Appellant,

v.

D1-12-132

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Joseph A. Padolsky, Esq.
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101 Summer Street, 4th Floor
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Appearance for Respondent:

Julie Daniele, Esq.
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P.O. Box 946, Industries Drive
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Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

On March 28, 2012, the Appellant, Michael Zoltany (“Zoltany”), pursuant to G.L. c. 31, § 43, filed this appeal with the Civil Service Commission (“Commission”) contesting the decision of the Department of Correction (“DOC”) to terminate him as Industrial Instructor III. A pre-hearing conference was held at the Commission on June 5, 2012 and a full hearing was held at the same location on August 7, 2012. Neither party requested a public hearing so the hearing was deemed private. The witnesses were sequestered. The hearing was digitally recorded and the parties were provided with a CD of the hearing. The parties submitted proposed decisions.

¹ The Commission acknowledges the assistance of Law Clerk Kari-Ann E. Greene in preparing this decision.

FINDINGS OF FACT

Twenty-two (22) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

Called by the Appointing Authority:

- Lynn Bissonnette, Superintendent, Department of Correction;
- Janice Perez, Corrections Program Officer III, Department of Correction;
- David Shaw, Sergeant Investigator, Department of Correction;

Called by Mr. Zoltany:

- Michael Zoltany, Appellant;

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

1. On February 24, 2008 Mr. Zoltany was appointed as Industrial Instructor II by the DOC.
(Stipulated Fact)
2. Prior to being hired by the DOC, Mr. Zoltany was employed at the International Golf Club and Corporate Environmental Advisors. These employers report that Mr. Zoltany was a very good employee, punctual, a good worker, and that he got along well with his fellow employees. (Exhibit 15)
3. Mr. Zoltany completed a five (5) week abbreviated, accelerated Basic Training Class administered by the DOC for industrial instructors and received the Commissioner's Award for highest academic average with a 97.75. (Testimony of Zoltany and Exhibit 11)
4. When Mr. Zoltany started working with the DOC, he was assigned to the Industries program ("Industries"), which included a sewing and embroidery shop at MCI-Framingham. MCI-Framingham is a medium security state prison for women. (Stipulated fact)

5. DOC employees are expected to be role models, leaders, coaches, and disciplinarians.

Employees are further expected to supervise a large group of inmates, be aware of their surroundings at all times, and always be professional and objective. Employees are permitted to discuss with the inmates general, impersonal topics like the weather, the job at hand, sports, or the news. Employees are instructed not to discuss any aspect of their personal lives with inmates as such talk could be a threat to the safety and security of the prison. Sharing personal information can lead to jealousy and animosity amongst inmates, especially if inmates are treated differently or given more attention. (Testimony of Bissonnette)

6. Mr. Zoltany supervised Inmate B², who worked in Industries initially in sewing, but quickly moved on to the position of digitizer due to her proficiency in computer and artistic skills.

(Exhibit 7)

7. Around 2009, an allegation of a relationship between Mr. Zoltany and Inmate B arose and an investigation ensued. The allegations were not sustained and it was determined that the inmate who made the allegation, made it out of hostility and jealousy. (Testimonies of Bissonnette and Zoltany)

8. In May 2010, Mr. Zoltany, to his credit, filed a confidential incident report as a result of hearing from an inmate that “there are rumors floating around the shop and the compound, most likely fueled by jealousy, that something inappropriate is going on between [Mr. Zoltany] and the digitizer inmate B.” (Exhibit 19; Testimonies of Bissonnette and Zoltany)

9. On March 6, 2011, Mr. Zoltany was promoted to Industrial Instructor III, which made him a tenured Civil Service employee. In addition to supervising inmates in the Industries, Mr. Zoltany was also responsible for tool control, monitoring the inmates’ work, controlling the

² Inmate B and other inmates are so identified for CORI and privacy purposes.

cleaning supplies, and managing the business end of the shop. (Stipulated fact and Testimony of Bissonnette)

10. In April 2011, Superintendent Lynn Bissonnette (“Bissonnette”) met with Mr. Zoltany to address her concerns about his problems with boundary issues. This meeting was the result of a prior incident concerning Mr. Zoltany allowing inmates to take gum out of his desk after he had been instructed not to. During the meeting, Bissonnette informed Mr. Zoltany that she was concerned about how he was interacting with inmates. Bissonnette then coached Mr. Zoltany on how to reestablish boundaries with the inmates and stressed that his boundary issues had to stop. (Exhibit 18 and Testimony of Bissonnette)
11. In July 2011, Inmate B was transferred to South Middlesex Correctional Center (“SMCC”), due to her reclassification to lower security. As a result of her importance and value to Industries as a talented worker, Inmate B continued her position as a digitizer for the program at SMCC. (Exhibit 7 and Testimony of Investigator Shaw)
12. In order for Inmate B to do digitizing work at SMCC, Mr. Zoltany brought a CD to Inmate B twice a week so that she could download orders and place her completed work on the CD. However, this arrangement failed to work as there was a problem with the CDs and Mr. Zoltany was instructed by James Karr, Director of Industries, to instead use his DOC-issued flash drive to transfer the work instead. Approximately two (2) times per week at approximately 7:00 AM before he went to work at MCI-Framingham, Mr. Zoltany would go to SMCC and give the flash drive to Inmate B to download and upload the work. Mr. Zoltany would then take the flash drive and leave. (Exhibit 7 and Testimony of Investigator Shaw)

13. In October 2011, Correction Program Officer Perez (“Perez”) received a report of staff misconduct concerning Mr. Zoltany from Inmate A. Inmate A asserted that she spoke with Inmate B, her roommate at the time, about a relationship between Inmate B and Mr. Zoltany that had existed for three (3) years. Inmate A further asserted that this relationship developed from Mr. Zoltany telling Inmate B personal information, such as that he was recently divorced. Inmate A additionally asserted that Inmate B informed her that she was trying to break off the relationship of with Mr. Zoltany, but that Mr. Zoltany pleaded with Inmate B not to. Perez accordingly completed a Confidential Incident Report on October 20, 2011 and Sergeant Investigator David Shaw (“Investigator Shaw”) of the Internal Affairs Unit was assigned to the investigation. Inmate A also told Perez information that was discovered to be unfounded and not based in any fact. (Testimony of Perez and Exhibit 7)
14. Investigators conducted surveillance on Mr. Zoltany when he visited SMCC to hand off his flash drive to Inmate B. The investigators did not observe any inappropriate behavior between Mr. Zoltany and Inmate B. (Testimony of Investigator Shaw)
15. Investigator Shaw and another investigator interviewed Inmate B and Mr. Zoltany each on two (2) separate occasions. (Testimony of Investigator Shaw; Exhibits 7 and 8)
16. During her first interview, Inmate B denied any type of relationship between herself and Mr. Zoltany. She stated that she did know some personal information about Mr. Zoltany, such as that he was married, had kids, and that she knew the town where he lived. She further asserted that they had talked about future job prospects and about how she wanted to move closer to her family in Washington. (Exhibit 8)
17. Between her first and second interviews, Inmate B was moved from minimum security SMCC to medium security MCI-Framingham. This was done despite Investigator Shaw

telling Inmate B she would not be moved. Investigator Shaw stated this was done as Inmate B could be a “flight risk” due to her being questioned for this incident. (Testimony of Investigator Shaw)

18. After being told by investigators during her second interview that the “truth hasn’t been told,” Inmate B asked Investigator Shaw, “What would be the outcome of this investigation if you hear what you want to hear?” Investigator Shaw then told her, “I don’t want to have to screw up what you’ve already made good for yourself while you’ve been here for four years. I don’t want to be the devil in your head today. I don’t.” Later in the interview, after Investigator Shaw again told Inmate B that he wanted the truth and that he was not hearing it, Inmate B asserted to Investigator Shaw that Mr. Zoltany had stated he loved her and that this had been going on for over a year. However, after a few minutes Inmate B stated that he never really said he loved her, but only said he cared about her and what happened to her. (Testimony of Investigator Shaw and Exhibit 8)

19. During his first interview, Mr. Zoltany denied that there was any inappropriate relationship between himself and Inmate B and that he treated all inmates with respect. (Exhibit 8)

20. Mr. Zoltany has made conflicting statements concerning things he told Inmate B. Specifically, he denied telling Inmate B any personal information, such as his divorce, stated that he “vented” to fellow employees and the inmates must have overheard him, and stated that he “vented” to everyone, including Inmate B. However, Mr. Zoltany and Inmate B told investigators that Mr. Zoltany had discussed his divorce with Inmate B. (Exhibit 8 and Testimony of Zoltany) In light of these conflicting statements, I find Mr. Zoltany not credible in this regard.

21. Mr. Zoltany also made conflicting statements concerning Inmate B's use of the flash drives she was given for her work. Specifically, Mr. Zoltany told Investigator Shaw that there were only work-related items on the flash drives. Mr. Zoltany then admitted to Investigator Shaw that he once allowed Inmate B to transfer a paper she had written for a college class onto one of the flash drives in order to print the paper out on a different computer. Mr. Zoltany subsequently denied during his testimony at the Commission that he had allowed Inmate B to store her college paper on one of the flash drives. (Exhibits 7 and 8; Testimonies of Zoltany and Shaw) In light of these conflicting statements, I find Mr. Zoltany not credible in this regard.

22. Mr. Zoltany made conflicting statements concerning handwritten messages to Inmate B. Specifically "143" was written on the piece of paper on which the flash drive passwords were written. Mr. Zoltany first told Investigator Shaw that he did not know the meaning of the numbers. Mr. Zoltany went on to tell Investigator Shaw that his daughter had told him that "143" means "I love you" and that he had written the numbers on the paper with the flash drive passwords, but that he only did so in order to encourage Inmate B to keep doing good work. During his testimony at the Commission, Mr. Zoltany asserted that his daughter never told him the meaning of the numbers and that he only subsequently learned the meaning of the numbers after the investigation had begun. Inmate B discovered among her belongings a picture of a starfish on which was written "Love you forever," which Inmate B told investigators she believed to be from Mr. Zoltany. During his second investigative interview, Mr. Zoltany stated that the handwriting on both the paper with the flash drive passwords ("143") and the starfish picture ("Love you forever") looked like his writing, but that he did

not recall writing on either. (Exhibit 8 and Testimony of Zoltany) In light of the foregoing, I find Mr. Zoltany's statements not credible in these regards.

23. Mr. Zoltany did not know how to operate a flash drive. Consequently, he gave Inmate B the passwords for both his flash drive and his coworker's flash drive, both of which he was not supposed to do. Director of Security at SMCC, Michael Sousa, confiscated a manila envelope from Inmate B containing the passwords. When asked why he gave the passwords to Inmate B, Mr. Zoltany stated "I gave them to her. I don't operate the thing, she does. I wouldn't know how to operate them. I left the passwords in an envelope that stays with front control." Mr. Zoltany further explained that he returned his coworker's flash drive to MCI-Framingham and always kept his own flash drive on his person.(Exhibits 7 and 8)

24. Mr. Zoltany has no prior discipline in his personnel record. On his employee performance progress and annual reviews he received "Exceeds/Excels" ratings from his supervisors.
(Exhibit 16)

25. On January 27, 2012 Mr. Zoltany was given a copy of G.L. c 31 §§ 41-45 and was notified by letter that he was being charged with violating:

a. General Policy, which states, in part:

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, full and prompt obedience of 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. All persons employed by the Department of Correction are subject to the provisions of these rules and regulations. 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. Your acceptance of appointment to the Massachusetts Department of Correction shall be acknowledged as your acceptance to abide by these rules and regulations.
(Exhibit 1)

b. Rule 1, which states:

You must remember that you are employed in a disciplined service which requires an oath of office. Each employee contributes to the success of the policies and procedures established for the administration of the Department of Correction and each respective institution. Employees should give dignity to their position. (Exhibit 1)

c. Rule 7(d), which states: “Employees should not read, write, or engage in any distracting amusement or occupation during their required work hours, except to consult rules or other materials necessary for the proper performance of their duties.” (Exhibit 1)

d. Rule, 8(a), which states:

Relations with inmates may be twofold, that of counselor and disciplinarian simultaneously, which will require your utmost tact and diplomacy. For those employees having job responsibilities which require inmate contact, your attitude toward inmates should be friendly not familiar, firm not harsh, vigilant not unduly suspicious, strict not unjust. Your leadership ability may be enhanced by the professional image you project. (Exhibit 1)

e. Rule 8(b), which states, in part:

You shall not discuss the management or discipline of the Department of Correction or any correctional facility, or the affairs of any employee while in the presence or hearing of an inmate, nor shall you inform any inmate of the comments, entries or reports made by another employee which may concern any inmate, unless it is required as part of your official duties. (Exhibit 1)

f. Rule 8(c), which states, in part:

You must not associate with, accompany, correspond or consort with any inmate or former inmate except for a chance meeting without specific approval of your Superintendent, DOC Department Head or the Commissioner of Correction. Any other outside inmate contact must be reported to your Superintendent, DOC Department head or Commissioner of Correction. Treat all inmates impartially; do not grant special privileges to any inmate. Your relations with inmates, their relatives or friends shall be such that you should willingly have them known to employees authorized to make inquiries. (Exhibit 1)

g. Rule 12(a), which 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 1)

- h. Rule 15(a), which states, in part: “Employees shall use or possess the equipment, material, and personal services of the institution or Department of Correction for official purposes only and not for personal gain.” (Exhibit 1)

- i. Rule 19(c), which states, in 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 an inmate, a visitor, another employee, or yourself. (Exhibit 1)

- j. 103 DOC 225.01, which states, in part:

It is the Department’s policy to ensure that all employees, contractors, and volunteers maintain professional boundaries with inmates. Any act by an employee, contractor, or volunteer that violates professional boundaries is prohibited. All allegations and incidents involving the violations of professional boundaries shall be reported and fully investigated and may result in action ranging from discipline, including termination, to criminal prosecution. (Exhibit 2)

- k. 103 DOC 225.02, which states, in part:

Relationships and interactions by employees, contractors, and volunteers with inmates, and the family members and friends of inmates are impartial, limited to fulfill official duties, and that are within the boundaries of applicable federal and state laws, regulations and other DOC policies. Such relationships and interpersonal interactions are those that a person would willingly have made known to a superior and any official authorized to inquire and investigate about them and ensure compliance with applicable laws, regulations, and policies. Professional boundaries are the space between a staff member’s power and control over an inmate and the inmate’s vulnerability to the misuse of that power and control. Violations of professional boundaries include but are not limited to misuse of power and control over an inmate; giving to or receiving from an inmate any unauthorized item; granting special privileges of any kind to an inmate; spending excessive time with an inmate that is not warranted by official duties; discussing the personal life or issues of any employee, including one’s self, with an inmate or in the presence of an inmate; discussing the personal life or

issues of another inmate with an inmate or in the presence of an inmate; engaging in any act that may undermine the ability of any employee to effectively manage an inmate. Similar behavior with the family member or friend of an inmate may also be a violation of professional boundary. Staff sexual misconduct with inmates, which is a violation of professional boundaries, is prohibited by M.G.L. c. 268 § 21A and 103 DOC 519.00, Staff Sexual Misconduct with Inmates. (Exhibit 2)

- l. 103 DOC 225.03(3), which states, in part: “When boundaries are blurred or non-existent inmates may develop inappropriate relationships with staff, which may compromise staff’s professionalism and significantly jeopardize the operation of the Department’s institutions and divisions.” (Exhibit 2)
- m. 103 DOC 519.01, which states, in part: “All intentional acts of sexually abusive behavior or intimacy between an inmate and a Department employee, contractor or volunteer, or an inmate and an inmate, regardless of consensual status, are prohibited . . .” (Exhibit 3)
- n. 103 DOC 519.01, which states:

Any behavior not defined as sexual contact or sexual abuse of an inmate including kissing, touching parts of the body not defined under sexual abuse or other related acts, including but not limited to, sending/receiving personal letters/cards/gifts or receiving phone calls from an inmate. Intimate relationships between staff and inmates are expressly prohibited. (Exhibit 3)
- o. 103 DOC 751.06, which states, in part: “The security standards used shall take into account that all Department-owned equipment and/or systems are for official use only and are not to be used for personal business or other non-government activities.” (Exhibit 4)
- p. 103 DOC 751.07(2), which states, in part: “Authorized users are responsible for the security of their passwords and accounts. Under no circumstances shall passwords be shared with any other staff person or individual.” (Exhibit 4)

26. Mr. Zoltany was informed that he was being specifically charged as follows:

- a. “You were involved in an inappropriate relationship with an inmate (Inmate “B”).
- b. During the course of the above-mentioned relationship you shared personal information with Inmate B, and she shared personal information with you.
- c. During the course of the above-mentioned relationship, you engaged in inappropriate actions of intimacy with Inmate B.
- d. During the course of the above-mentioned relationship you made inappropriate intentional physical contact with Inmate B.
- e. During the course of the above-mentioned relationship, you gave Inmate B personal letters, notes and/or gifts.
- f. You gave Inmate B the password for both your Department issued flash-drive, and a co-worker’s Department issued flash-drive.
- g. You allowed Inmate B to utilize your Department issued flash-drive for her personal use.
- h. You were less than truthful when interviewed by a Department investigator regarding your relationship with Inmate B.” (Exhibit 6)

27. On February 14, 2012, the DOC held a hearing concerning these charges where Mr. Zoltany testified. (Stipulated fact)

28. On March 20, 2012, as a result of the DOC hearing, the DOC issued Mr. Zoltany a termination letter. In the termination letter, it was noted that the investigation did not result in a sustained finding for allegation (d.) above: “During the course of the above-mentioned relationship you made inappropriate intentional physical contact with Inmate B.” The letter

did indicate, however, that all other charges were sustained and resulted in the decision to impose discipline on Mr. Zoltany in the form of termination. (Exhibits 6 and 9)

29. Mr. Zoltany filed this appeal at the Commission on March 28, 2012.

LEGAL STANDARD

The role of the Civil Service 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 Serv. Comm’n, 43 Mass. App. Ct. 300, 304 (1997); Town of Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). Reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Comm’rs of Civil Serv. v. Mun. Ct., 359 Mass. 211, 214 (1971) (quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (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.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); Sch. Comm. of Brockton v. Civil Serv. Comm’n, 43 Mass. App. Ct. 486, 488 (1997).

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). “In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.”

Id. at 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, rev. den., 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). Further, “[t]he commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” Id. at 824 (quoting Watertown, at 334).

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 at 332; Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

ANALYSIS

The DOC argues that its decision to terminate Mr. Zoltany was reasonably justified. Mr. Zoltany breached the boundaries of appropriate behavior towards an inmate. Specifically, Mr. Zoltany discussed his personal life with Inmate B and gave her passwords to two (2) DOC-issued flash drives, both of which violate DOC regulations. The DOC further contends that Mr. Zoltany wrote “143” on the sheet of paper containing the passwords, in addition to writing “Love you forever” on a picture of a starfish, both of which were in Inmate B’s possession at one point, indicating an inappropriate relationship between Mr. Zoltany and Inmate B. Based on this behavior towards an inmate, the DOC chose to terminate Mr. Zoltany. Therefore, the DOC avers, based on the DOC’s policies regarding proper behavior towards inmates, it was justified in terminating Mr. Zoltany.

Mr. Zoltany argues that he should not have been terminated from his position at the DOC. He has only positive reviews on his evaluations at the DOC and from his past job, indicating that he is a hard worker and good at his job. Mr. Zoltany denies behaving inappropriately towards Inmate B or having any type of relationship with her. He notes that although he gave Inmate B the sheet of passwords for the flash drives, he was always in possession of the flash drives and did not write “143” on the paper. Furthermore, Mr. Zoltany denies both giving Inmate B the starfish picture and writing “Love you forever” on the picture. Therefore, Mr. Zoltany argues, the DOC should not be allowed to terminate him based on these allegations.

While it is true that Mr. Zoltany had positive reviews from the DOC and that there is no evidence of a physical relationship between Mr. Zoltany and Inmate B, there is evidence that Mr. Zoltany exhibited inappropriate behavior towards Inmate B, which is prohibited by DOC rules. In the past, Mr. Zoltany had been spoken to about allowing inmates to take gum from his desk in Industries, which was inappropriate behavior. Although the DOC acknowledges that there had been prior complaints and investigations with regard to Mr. Zoltany and Inmate B that had proven to be false, Inmate B admitted in the DOC investigation that there was an emotional relationship between her and Mr. Zoltany. When he was interviewed during the investigation, Mr. Zoltany admitted that he told Inmate B he loved her, but later changed his story to state that he only told Inmate B that he cared for her wellbeing. Mr. Zoltany further changed his story about whether he wrote “143” on the password sheet and whether his daughter told him the meaning of “143.” At first he told investigators that he did not write the numbers on the sheet, but then he said he did so to boost Inmate B’s morale, after which he again denied writing the numbers. Mr. Zoltany also at first said that his daughter told him the meaning of “143”, but then later asserted that she never told him the meaning. This indicates that Mr. Zoltany was not being

truthful with the investigator or with the Commission and calls into question the honesty and candor of his statements. Therefore, Mr. Zoltany's statements are not credible in these regards.

The DOC cannot have an employee who behaves inappropriately towards inmates in violation of pertinent DOC rules and regulations. Such behavior creates jealousy amongst inmates and negatively impacts the employee's ability to properly oversee inmates. Furthermore, such substantial misconduct adversely impairs the public interest of maintaining boundaries between DOC employees and inmates and negatively affects the efficiency of the DOC to ensure the safety of the correctional facilities. Upon discovery of Mr. Zoltany's alleged conduct, it was incumbent upon the DOC to investigate the allegations.

The DOC conducted an investigation and, while most of the investigation appeared to be proper, it included a deeply troubling aspect involving apparent coercion of Inmate B. Specifically, investigators initially told Inmate B that she would not be moved from minimum security at SMCC to medium security at MCI-Framingham. However, following her first interview, when Inmate B apparently did not tell investigators that she had an inappropriate relationship with Mr. Zoltany, Inmate B was moved to MCI-Framingham. In addition, at Inmate B's second interview, investigators told Inmate B that the "truth hasn't been told." Inmate B asked the investigator, "What would be the outcome of this investigation if you hear what you want to hear?" The investigator told her, "I don't want to have to screw up what you've already made good for yourself while you've been in here for four years. I don't want to be the devil in your head today. I don't." Only after the investigator again told Inmate B that he wanted the truth and wasn't hearing it did Inmate B state that Mr. Zoltany had told her he loved her and that

this had been going on for over a year. Inmate B subsequently stated that Mr. Zoltany had not said that, but only said that he cared about her. There can be little question that Inmate B was pressured into stating what her jailers wanted her to say, accurate or not. Therefore, I place limited weight on Inmate B's statement that Mr. Zoltany told her that he loved her. However, the remaining credible evidence supports the findings that the Appellant violated the cited remaining DOC rules and regulations.

Despite the shortfalls of its investigation, the DOC here has sustained its burden of demonstrating, by a preponderance of the evidence, that it had just cause to terminate Mr. Zoltany from his position of Industrial Instructor III. The cited DOC rules and regulations must be observed in order to maintain the safe and secure function of DOC's prisons in the interest of Correction Officers and inmates alike. As a result of Mr. Zoltany's inappropriate behavior towards Inmate B, the DOC was reasonably justified in terminating Mr. Zoltany from employment at the DOC.

CONCLUSION

For the reasons stated herein, the DOC had reasonable justification to terminate Mr. Zoltany's employment. Therefore, Mr. Zoltany's appeal filed under Docket No. D1-12-132 is hereby *denied*.

Civil Service Commission

Cynthia A. Ittleman, Esq., Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, and Stein, and McDowell [abstained], Commissioners) on June 27, 2013.

A true record. Attest:

Commissioner

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

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

Notice:

Joseph A. Padolsky, Esq.(for Appellant)

Julie Daniele, Esq. (for Respondent)