

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

WILLIAM TIMPERLEY,
Appellant

Case No. D1-09-195

v.

BURLINGTON PUBLIC SCHOOLS,
Respondent

Appellant's Attorney:

Daniel W. Rice, Esq.
Glynn, Landry & Rice, LLP
639 Granite Street
Braintree, MA 02184

Respondent's Attorney:

Darren R. Klein, Esq.
Kopelman & Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110

Commissioner:

Christopher Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, William Timperley (hereinafter "Timperley" or "Appellant") appealed the decision of Burlington Public Schools (hereinafter "Burlington" or "Appointing Authority") to terminate his employment as a permanent, tenured senior custodian because of an incident that occurred at the Lahey Medical Clinic (hereinafter "Lahey Clinic" or "Clinic") on March 2, 2009. The appeal was timely filed. Upon the mutual request of the parties, the appeal was dismissed without prejudice on October 30, 2009, pending the adjudication of criminal charges in the Woburn District Court. Upon a verdict of not guilty, the Appellant's appeal before the Commission was reopened consistent

with the October 30, 2009 order. A hearing was held on June 2, 2010. The witnesses were sequestered and the hearing was digitally recorded. As no notice was received from either party, the hearing was declared private. Proposed decisions were submitted by the parties on September 27, 2010.

FINDINGS OF FACT:

Based on the documents entered into evidence and the testimony of the following witnesses:

For the Appointing Authority:

- Dr. Eric Conti, Superintendent, Burlington School Department;
- Officer David H. Outerbridge, Burlington Police Department;
- Mr. Albert Fitzgibbons, Security Guard, Lahey Clinic;
- Mr. Kevin Roche, Medical Technician, Lahey Clinic;
- Mr. John Hofferty, Custodian, Burlington High School.

For the Appellant:

- Mr. William Timperley, Appellant.

I make the following findings of fact:

1. The Appellant was born on June 17, 1962. He suffered a cerebral aneurysm (stroke) in 1979 when he was 17 years old. (Exhibit 16; Testimony of Appellant)
2. A medical report prepared by the Appellant's treating physician, Mark Kaplan, M.D., in 1999, recounts that the stroke rendered the Appellant in a coma for two weeks, and required him to be treated as an inpatient at New England Rehabilitation Hospital for three months, and then for two years of outpatient treatment. As a result of the stroke, the Appellant is blind in one eye and his ability to speak is impaired as are his fine motor skills. He uses a cane to walk and his hearing is impaired. The Appellant is capable of completing the duties of a janitor; however he has difficulty working in cold weather. (Exhibits 15 & 16; Testimony of Appellant)

3. On March 31, 2000, the Appellant was hired by the Appointing Authority as a custodian on He was last assigned to Burlington High School. (Testimony of Appellant).

Prior Discipline

4. When deciding to terminate the Appellant, the Appointing Authority considered both the Appellant's disciplinary history as well as the incident which is the subject of the instant appeal. (Exhibits 6, 7, 8 & 9; Testimony of Conti)
5. On May 8, 2000, the Appellant was reprimanded for not adequately sweeping and mopping the classrooms and stairwells. (Exhibit 10)
6. On February 2, 2001, the Appellant was issued a second letter of reprimand by Craig Robinson, Director of Buildings & Grounds, for an alleged violation of the school sexual harassment policy. (Exhibit 9)
7. On March 27, 2002 the Appellant was issued a third letter of reprimand by senior custodian Ron Danielson regarding the Appellant's failure to keep toilet paper stocked in the restrooms and to sweep a classroom floor. (Exhibit 8)
8. On December 22, 2006 the Appellant was issued a fourth letter of reprimand by then-superintendent James L. Picone, Ed.D., for an incident that occurred on September 27, 2006. The Appellant was recommended to attend a mandatory stress management program and directed to contact a counselor under contract with the Appointing Authority. (Exhibit 7)
9. On February 2, 2009, the Appellant was suspended for two (2) days for an incident that occurred on January 20, 2009. On that day the Appellant was working overtime while the school gymnastics team was participating in a meet against Arlington High School. At the conclusion of the meet, the Appellant was involved in an altercation with the gymnastics coach. An investigation was conducted and a hearing was held by the Appointing Authority.

The Appellant was suspended for two days without pay and his name was removed from the list of employees available to work overtime for one month. The Appellant appealed that decision to the Civil Service Commission. *See* Docket No. D-09-163, decided July 1, 2010, affirming the Appointing Authority's decision.

Incident related to the instant appeal

10. The Appellant lives in Woburn and is a member of the Wakefield Elks Club. On Sunday, March 1, 2010, he went to the Elks Club to play cards and drink a few beers. He was scheduled to work for Burlington the next day. (Testimony of Appellant)
11. That evening there was a snow storm in Wakefield. (Testimony of Appellant)
12. Later that night, the Appellant left the Elks Club and began to walk to his car. The Appellant has difficulty walking in cold weather and has a tendency to fall down. (Testimony of Appellant)
13. The Appellant fell while walking to his car. He struck his head on the ground, suffered a severe laceration and was rendered unconscious. (Testimony of Appellant)
14. The Appellant was picked up by Action Ambulance and transported to the Lahey Clinic. (Testimony of Roche)
15. The Appellant woke up on a hospital gurney. He testified that he was disoriented, scared, and did not know where he was located. According to the Appellant, his already impaired vision was made worse by blood covering his glasses. (Testimony of Appellant)
16. The Appellant could see that his shirt and clothes were covered in blood. He rose to his feet and braced himself by holding onto the gurney. He testified that could hear voices talking to him in the distance but could not identify who was speaking or what was being said. (Testimony of Appellant)

17. The Appellant then remembers individuals lifting him up and placing him back onto the gurney. (Testimony of Appellant)
18. The Appellant next recalls being put through a CAT scan machine and then waiting in the emergency room. At some point, the Appellant called his sister who came and picked him up. (Testimony of Appellant)
19. The Appellant testified that he does not remember doing anything wrong while at the Clinic. He further denies the veracity of the testimony offered by Clinic staff and security. (Testimony of Appellant)
20. Kevin Roche, a medical technician, and Albert Fitzgibbons, a security guard at the Lahey Clinic offered a very different version of events than the Appellant. Mr. Roche and Mr. Fitzgibbons testified as to a series of events involving the Appellant that eventually required that police be called to respond to the Lahey Clinic. Police requested that they write statements describing the incident. Mr. Roche and Mr. Fitzgibbons also testified before the Commission and their testimony and written statement were consistent with one-another. Mr. Roche and Mr. Fitzgibbons were credible witnesses and possessed no personal interests, political motivations or animosity toward the Appellant. (Exhibit 14; Testimony of Roche)
21. On March 1, 2009, Mr. Roche was working in the emergency room of the Lahey Clinic. Mr. Roche stated that the Appellant was brought to the emergency room by ambulance and was escorted by the Wakefield Police. The Appellant was placed in Room Five and the police left the Clinic. (Exhibit 14; Testimony of Roche)
22. The Appellant was initially cooperative with staff. However, at some point he became unruly and combative. He refused to answer questions and demanded that he be left alone. (Exhibit 14; Testimony of Roche)

23. At some point the Appellant stood up from the gurney. Clinic staff instructed him to lie back down so that his head laceration could be treated. (Testimony of Roche)
24. Hospital staff called for security officers to report to Room Five. Mr. Fitzgibbons was one of the responding officers. (Exhibits 13 & 14; Testimony of Fitzgibbons; Testimony of Roche)
25. Mr. Fitzgibbons and Mr. Roche observed the Appellant's shirt and pants to be covered in blood. The Appellant was bleeding profusely from the back of his head and blood was running down his neck. (Exhibits 13 & 14; Testimony of Fitzgibbons; Testimony of Roche)
26. Mr. Roche detected a strong odor of alcohol emanating from the Appellant. (Exhibit 14; Testimony of Roche)
27. Mr. Roche observed the Appellant attempt to leave the room by pushing into Mr. Fitzgibbons, who was positioned between the Appellant and the exit door. Mr. Roche and Mr. Fitzgibbons restrained the Appellant and managed to return him to the gurney. (Exhibits 13 & 14; Testimony of Fitzgibbons; Testimony of Roche)
28. It is not uncommon for hospital staff to need to physically restrain unruly patients. Mr. Roche and Fitzgibbons are familiar with the manner in which people resist being restrained. Mr. Roche described the difference between a person who defensively pushes staff away with open hands versus a person who throws offensive punches with closed fists. (Testimony of Fitzgibbons; Testimony of Roche)
29. The Appellant was swinging his fists at both Mr. Roche and Mr. Fitzgibbons. Mr. Roche called for additional staff to assist in restraining the Appellant. (Exhibit 14; Testimony of Roche)
30. The Appellant continued to resist staff as they attempted to restrain him by anchoring him to the gurney with four-point restraints. Mr. Roche was assisting in securing one of the

Appellant's arms. While doing this, Mr. Roche observed Mr. Fitzgibbons and another security guard, Don Domings, attempting to secure the Appellant's legs. (Exhibit14; Testimony of Roche)

31. While attempting to secure the Appellant, Mr. Roche observed that the Appellant was spitting blood at Mr. Roche and a nurse. (Testimony of Roche)
32. Mr. Roche observed the Appellant free his left leg and kick Mr. Fitzgibbons in the back of the head. (Exhibit14; Testimony of Roche)
33. Mr. Fitzgibbons was struck in the head behind his right ear by the Appellant's tan work boot. (Exhibits 13 & 14; Testimony of Fitzgibbons; Testimony of Roche)
34. Mr. Roche observed Mr. Fitzgibbons stumble backwards as a nurse managed to regain control of the loose leg. The hospital staff was eventually able to restrain the Appellant to the gurney. (Exhibit 14; Testimony of Roche)
35. Although it is not uncommon for Clinic security officers to restrain patients, it is a rare occasion that the staff must call the police. The severity of this incident required that the Clinic summon officers from the Burlington Police Department. (Testimony of Fitzgibbons; Testimony of Roche)
36. Officer David H. Outerbridge was one of the responding officers. Officer Outerbridge took statements from witnesses, including Mr. Roche and Mr. Fitzgibbons. (Testimony of Outerbridge)
37. The Appellant was not placed under arrest or released to the officers' custody because his head laceration still required medical attention. Officer Outerbridge did not ascertain the Appellant's blood alcohol level. (Testimony of Roche; Testimony of Outerbridge)

38. A copy of the police report was forwarded to Dr. Eric Conti, Superintendent of Schools.
(Exhibit 1 & 12; Testimony of Conti)
39. The Appellant was placed on paid administrative leave pending a hearing by the Appointing Authority. (Exhibit 4; Testimony of Conti)
40. The Appointing Authority held a disciplinary hearing on April 1, 2009. The Appellant did not testify. The Appointing Authority reviewed the Appellant's prior disciplinary history including two incidents that occurred on September 27, 2006 and January 20, 2009. The Appointing Authority concluded that it was necessary to terminate the Appellant and did so on April 3, 2009. (Exhibits 2, 3 & 4; Testimony of Conti)
41. The Appellant filed an appeal with the Civil Service Commission on April 9, 2009. The appeal was stayed pending the determination of criminal charges. (Exhibit 5)
42. The Appellant was charged with Assault and Battery with a Dangerous Weapon and arraigned in the Woburn District Court (Docket No. 935-CR-1473). A bench trial was held and the Appellant was found not guilty on December 7, 2009. (Exhibit 1)
43. The Appellant's hearing before the Commission was rescheduled and heard on June 2, 2010.
44. As referenced above, the Appellant testified before the Commission and denied having ever struck Mr. Fitzgibbons. The Appellant expanded this statement to include his claim that he has never struck or hit anyone in his life. (Testimony of Appellant)
45. The Appointing Authority called John Hofferty ("Hofferty") a provisional junior custodian at Burlington High School as a rebuttal witness to refute the Appellant's claim.
46. Mr. Hofferty testified as to another incident (hereinafter "Incident Two") that occurred at some point in February, 2009 between Mr. Hofferty and the Appellant. (Testimony of Hofferty)

47. Incident Two was not reported to the Appointing Authority and was not a factor in deciding to terminate the Appellant. The Appointing Authority learned of Incident Two after making its decision to terminate the Appellant. The Appointing Authority chose to not amend the reasons stated for terminating the Appellant. Rather, they held further discipline in abeyance for Incident Two until the instant appeal is decided. Should the Appellant prevail on this present appeal, the Appointing Authority has reserved the right to investigate and possibly discipline the Appellant for Incident Two at a later date. (Testimony of Conti)
48. In February, 2009, Mr. Hofferty was working the night shift at Burlington High School. At about 1:30 A.M., Mr. Hofferty was cleaning a bathroom in the gymnasium when the Appellant entered and voiced disapproval at the manner in which Mr. Hofferty was cleaning. (Exhibit 17; Testimony of Hofferty)
49. The Appellant was not scheduled to work that night. There was no reason for him to be present at Burlington High School. (Testimony of Conti; Testimony of Hofferty)
50. Mr. Hofferty detected a strong odor of alcohol emanating from the Appellant. (Testimony of Hofferty)
51. Without provocation, the Appellant picked up a roll of paper towels and shoved it into Mr. Hofferty's stomach. Mr. Hofferty had undergone recent lung surgery so the impact caused him considerable pain. A fight ensued and continued for multiple minutes. At some point Mr. Hofferty managed to hold the Appellant to the floor. He then attempted to release the Appellant and end the fight. (Exhibit 17; Testimony of Hofferty)
52. When Mr. Hofferty released the Appellant, the Appellant struck Mr. Hofferty in the eye with his right fist. At some point the two parted ways and Mr. Hofferty went to another restroom to tend to his injuries. (Exhibit 17; Testimony of Hofferty)

53. As a result of that fight, Mr. Hofferty suffered a black eye that persisted for four or five weeks. Mr. Hofferty did not report the event because he feared discipline and/or termination. Mr. Hofferty did not want to “rock the boat”. He told friends and co-workers that he had ran into a wall or doorway. He managed to avoid seeing the school principal or his supervisors because he worked the night shift. Mr. Hofferty intended to dismiss the incident and move on. (Exhibit 17; Testimony of Hofferty)
54. Subsequent to terminating the Appellant, the Appointing Authority interviewed members of the custodial staff including Mr. Hofferty. At that point, Mr. Hofferty disclosed Incident Two to the Appointing Authority. (Testimony of Hofferty)
55. Mr. Hofferty’s initial silence does not diminish his credibility. Mr. Hofferty is an honest, mild-mannered adult who tries to avoid conflicts and trouble. Mr. Hofferty testified credibly and sincerely regarding the fight with the Appellant. The Commission credits his testimony. (Testimony of Hofferty)

CONCLUSION

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.”

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. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Serv. 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 Serv. 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, 133 N.E.2d 489 (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,'" which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth v. Civil Serv. 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.

Under Section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (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 Serv. Comm'n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997). See also 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 Serv. Comm'n, 38 Mass App.Ct. 473, 477 (1995); Watertown v. Arria, 16 Mass.App.Ct. 331, rev.den., 390 Mass. 1102 (1983).

There was just cause in the instant matter for the Appellant's dismissal in accordance with the standards articulated above given his record of past discipline and the final, serious misconduct in which he engaged, namely, striking Mr. Fitzgibbons, a Lahey Clinic security officer with his boot in March, 2009. The Appellant's prior record reflects a pattern of extensive, progressive discipline which has failed to correct his misconduct.

When testifying before the Commission, the Appellant denied that the incident at the clinic ever occurred. The Appellant's outright denial of the incident is unbelievable when confronted with the testimony of Mr. Roche and Mr. Fitzgibbons. The Appellant did not appear to be testifying truthfully when he recounted this incident and offered no explanation other than that the violent conduct never occurred. I do not credit the Appellant's testimony in this regard. Further, I conclude that the violent conduct did occur based on the credible testimony of the Appointing Authority's witnesses, including Kevin Roche and Albert Fitzgibbons. It is the function of the hearing officer to determine the credibility of the testimony presented before him. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Department of Social Services, 439 Mass. 766, 787 (2003); (In cases where live witnesses giving

different versions do testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing); Connor v. Connor, 77 A. 2d. 697 (1951) (the opportunity to observe the demeanor and appearance of witnesses becomes the touchstone of credibility). I credit the testimony of Mr. Roche and Mr. Fitzgibbons. They provided a true and accurate account of the incident at the Lahey Clinic. These men do not have any prior knowledge or history with the Appellant and do not harbor any animosity or political motivations. They each made independent observations that corroborated one-another and provided the Commission with a detailed explanation of the Appellant's behavior while at the Clinic.

Mr. Roche had observed the Appellant arrive at the Clinic and was nearby for the duration of the incident. Mr. Roche observed the Appellant as he was placed in Room Five and subsequently attempt to get up off the gurney. Mr. Roche and other staff had to prevent the Appellant from leaving by physically restraining him. While attempting to secure the Appellant to the gurney, Mr. Roche witnessed the Appellant kick Mr. Fitzgibbons. Mr. Fitzgibbons testified to having felt the kick and it knocking him off balance. Staff continued to struggle to restrain the Appellant. Mr. Roche observed the Appellant spitting blood at himself and another nurse. This conduct exposed Mr. Roche and the nurse to unknown blood borne pathogens and diseases. Eventually staff managed to restrain the Appellant by securing his wrists and ankles to the gurney. Officer Outerbridge testified that he was called to respond to this incident. Officer Outerbridge took statements from witnesses and those statements did not vary from the testimony presented at trial. I credit the testimony offered by these three witnesses and finds their account of events to be true and accurate.

The Appellant's conduct on this occasion offended the senses of an ordinary person. The conduct also highlights the Appellant's on-going difficulties with aggression and violence. Despite the Appellant's infirmities, he remains accountable for his actions and is held to the same standards of acceptable conduct. The Appellant's conduct on this occasion clearly fell below these standards. Based on this incident, as well as the Appellant's prior history of discipline, the Appointing Authority was reasonably justified in terminating the Appellant.

While testifying before the Commission, not only did the Appellant claim that he did not kick anyone at the Lahey Clinic, but he expanded his claim by stating that he has never struck or hit anyone, ever. The Appointing Authority produced John Hofferty to rebut this assertion. Mr. Hofferty's account of the incident that occurred in the gymnasium near the bathrooms directly contradicts the Appellant's assertion. Mr. Hofferty is mild-mannered and sincere. He testified honestly and credibly before the Commission. His description of his encounter with the Appellant is believable and is in-step with the Appellant's conduct at the Lahey Clinic. Mr. Hofferty's initial reluctance to inform the Appointing Authority is understandable. Mr. Hofferty was a newly hired provisional janitor. He did not want to cause trouble for a coworker or for himself. However, when prompted to make a statement, Mr. Hofferty provided a truthful statement and subsequently testified truthfully before the Commission.

The Appointing Authority has not imposed discipline on the Appellant for the gymnasium incident because it learned of it after terminating the Appellant. However, should the Appellant appeal this decision and prevail, the Appointing Authority may revisit this later incident and impose discipline as it sees fit.

Based on the Appellant's prior disciplinary history, exhibits entered into evidence and testimony received, it is clear that the Appointing Authority was reasonably justified in terminating the Appellant.

Finally, the Appellant's argument that Burlington failed to show it had just cause to terminate the Appellant because the allegations involved off-duty misconduct are misplaced. Here, based on the Appellant's prior disciplinary history and the credible testimony of Mr. Hofferty regarding another on-duty incident, it is clear that the Appellant's violent behavior also extends to the workplace. In Timperley v. Burlington, 23 MCSR 382 (2010), the Commission recently upheld a 2-day suspension against the Appellant for related behavior. Specifically, the Commission found that the Appellant was prone to unexpected outbursts with staff members and had also confronted students. Those outbursts turned violent in the case of Mr. Hofferty. Thus, his misconduct is "reasonably related to [his] fitness . . . to perform in his position" as a custodian. Contrast with Cambridge v. Baldasaro, 50 Mass. Appt. Ct. 1 (2000). A school department is well-justified in taking steps to ensure the safety of its students and staff and the continued employment of the Appellant would undermine their attempt to do this.

For all the above reasons, the appeal under Docket No. D-09-195 is hereby *dismissed*.

Civil Service Commission

Christopher Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman - Yes; Henderson, Commissioner - No; McDowell, Commissioner - Yes; Stein, Commissioner - Yes; Marquis, Commissioner - Yes) on October 21, 2010.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this decision. 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:

Darren R. Klein, Esq. (for Appointing Authority)

Daniel W. Rice, Esq. (for Appellant)