

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

BRYAN ST. PIERRE,
Appellant

Docket No.: D-14-31

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Torrey Botelho
M.C.O.F.U Union Rep
15 Blueberry Knoll
Bridgewater, MA

Appearance for Respondent:

Julie E. Daniele, Esq
Department of Correction
Human Resources
1 Industries Drive
Norfolk, MA 02056
Paul M. Stein¹

Commissioner:

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Bryan St. Pierre (“Officer St. Pierre ” or “Appellant”), filed a timely appeal with the Civil Service Commission (Commission) on January 31, 2014, contesting the decision of the Department of Correction (“DOC” or “Appointing Authority”) to suspend him for three (3) days. A pre-hearing conference was held at the offices of the Commission on February 25, 2014. A full hearing was held at the Commission on May 30, 2014. Neither party requested a public hearing, so the hearing was deemed private. All witnesses were sequestered, except the Appellant. The hearing was digitally recorded and the

¹ The Commission acknowledges the assistance of Law Clerk David Roberson in the drafting of this decision.

parties were given copies of the digital recording of the hearing². The parties submitted post-hearing briefs. For the reasons stated below, the appeal is allowed.

FINDING OF FACTS

Based on Exhibits 1 through 12, as well as the stipulations of the parties, the testimony of:

Called by the Appointing Authority:

- Sergeant Fredrick Fontaine, MASAC-Civil Commander
- Sergeant Steven Lydon, MASAC-DOC
- Lieutenant Arthur Gerard, MASAC- Shift Commander
- Officer Krysten Collins, Internal Affairs Investigator

Called by Mr. St. Pierre:

- Correction Officer Bryan St. Pierre, MASAC Correction Officer

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations and policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Officer St. Pierre has been employed with the DOC as a Correction Officer since January 13, 2013. (Stipulated Facts)
2. Officer St. Pierre had been assigned to Massachusetts Alcohol and Substance Abuse Center (MASAC) facility for 3 months prior to the incident. (Testimony of St. Pierre)
3. On June 23, 2013, Officer St. Pierre arrived at the Delta Unit control station to relieve Sgt. Lydon at 8:41 PM. The exchange of equipment took approximately five (5) minutes. Sgt.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

Lydon is a heavy set, gray-haired individual, one of two officers fitting this description. After being relieved, Sgt. Lydon exited Delta Unit through the Delta/Alpha courtyard, stopping to converse with Office Souza and Lt. Gerard. (Testimony of Lydon, Exhibit 5, p.9-12)

4. Officer St. Pierre, after relieving Sgt. Lydon, assisted Nurse Souza with vital checks. He then left control to conduct a round of Delta Unit at 9:10 PM. (Testimony of St. Pierre, Exhibit 5, Exhibit 4)
5. Two (2) civil commitments attempted an escape from the Delta Unit inside MASAC. Civil commitment "A" was discovered by Lt. Gerard, C.O. Souza, and Sgt. Murphy, outside the intake building, covered in dirt and in possession of a blood soaked sheet at 9:12 PM on June 23, 2013. After he secured civil commitment "A", Lt. Gerard ordered a bed book count and a fence check. St. Pierre conducted the fence check and discovered a shirt and blanket hanging in the razor wire of the fence. He alerted Lt. Gerard that the shirt and blanket were in the razor wire and was ordered to stay at that position until another officer arrived to document the scene and so Officer St. Pierre could continue his fence check. (Testimony of Gerard, St. Pierre, Exhibit 5)
6. A mark and scars check was conducted at 9:35 PM by Officer Speakman and civil commitment "B" was discovered in bed with fresh cuts that were bleeding. He was not discovered during the bed book check because inmates in Delta Unit are not required to stand for count because the unit is a medical/detox unit. (Exhibit 5, p. 31; Testimony of St. Pierre)
7. Once Officer Speakman handcuffed civil commitment "B" he was escorted to the medical office for evaluation. Nurse Souza examined "B" and discovered that his injuries were more significant and requested that handcuffs on "B" be removed. Nurse Souza then treated the

wounds and requested “B” to be taken to the hospital between 9:35 PM and 10:30 PM.

(Exhibit 5)

8. Sgt. Fontaine arrived at the MASAC facility and took pictures of the razor wire fence. He also began an investigation of the event in question and chronicled the attempted escape to the securing of civil commitment “A” in a cell in Delta Unit. (Testimony of Fontaine, Exhibit 5, Joint Exhibit 6)
9. A formal investigation was conducted by Officer Krysten Collins, an Internal Affairs investigator. She interviewed several Correction Officers and the two civil commitments. In the course of the investigation, Officer Collins learned that civil commitment “A” attempted to make a phone call at 8:05 PM but was denied by Sgt. Lydon because “A” had already received a courtesy phone call. (Exhibit 5, p. 9-12)
10. Civil commitment “A” stated during their interview with Officer Collins, that they left Delta Unit around 8:30. Civil commitment “A” stated that he remembered seeing a black female and heavy set, grey haired male in the officer’s station when they began their escape attempt. Officer Collins’ report also stated the process in which the civil commitments attempted to escape from MASAC. The civil commitments planned the escape twenty (20) minutes before their attempt. They were outside in the Delta/Alpha unit courtyard. They realized that they would get cut up attempting to climb the fence, so each procured sheets and blankets to aid in their escape and waited until they did not see any Correction Officers and started their escape. The civil commitments climbed the chain link fence onto the roof top of the Delta Unit Building and jumped into the second fenced area. When they arrived at the corner of the second fence they threw the remaining blanket and a shirt onto the razor wire fence and attempted to climb that fence. They realized that this escape route was not going to work so

they went to the shed in the garden area and retrieved tools to dig under the fence. After digging a one foot deep hole, they realized that they would need to dig at least another 10 feet to get pass the fence, so they gave up the escape and each retreated towards Delta Unit. Civil commitment "B" was able to climb back onto the roof and enter Delta Unit. Once he was back in Delta Unit he went to the shower area, removed his bloody clothing, and took a shower. He then put on a new t-shirt and scrubs and went to lie in bed and covered his wounds with towels that he acquired from the dirty linen. (Exhibit 5 p. 17-24)

11. Civil commitment "B" stated that he was presence for two counts and that it was not until the third count that he was discovered to have wounds. He was in bed thirty (30) to forty (40) minutes before his wounds were discovered. Civil commitment "A" was discovered outside the Delta Unit gate by the guards while the 9:10 count was taking place. (Exhibit 5)
12. Officer Collins concluded that the escaped occurred while Correction Officer Speakman, St. Pierre, and Kress were on duty and that it was their responsibility to monitor the unit when the escape occurred. Officer St. Pierre, along with the only two officers, was found to have violated four (4) DOC rules and regulations that govern all employees. (Exhibit 5)
13. A hearing was held December 16, 2013 as a result of the of the investigation that stated that Officer St. Pierre failed to observe the shirt and sheet stuck in the razor wire, failed to notice a civil commitment enter the unit bleeding, and failed to remain vigilant by allowing two inmates in his care and custody to be out of place. (Exhibit 4)
14. On January 29, 2014, Commissioner Spencer founded that sufficient evidence existed to support that Officer St. Pierre was liable of the charge levied against him. As a result he was suspended for three (3) days without pay. (Exhibit 2)

15. Officer St. Pierre then filed a timely appeal with the Commission on January 31, 2014.

(Stipulated Facts)

CONCLUSION

Applicable Civil Service Law

An employee aggrieved by a disciplinary decision an Appointing Authority may appeal to the Commission under G.L. c. 31, § 43, which 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.

Analysis

The timeline of the attempted escape is important to the decision in this case. The two civil commitments hatched their planned escape at 8:00 PM. This is evidence from statements made by civil commitment "A" and Sgt. Lydon during the Internal Affairs investigation. Civil

Commitment “A” stated that he and “B” started discussing an escape about twenty minutes prior to the actual attempt. “A” then requested to make a phone call at 8:05 PM to secure transportation after the escape.

After “A” was denied this request, the two civil commitments continued their plotting and at 8:30 PM they started the escape. This timeframe is supported by civil commitment “B” statement that the two officers in the control station when they left did not fit the description of Officer St. Pierre but of Sgt. Lydon. Civil commitment “A” also stated that they left at 8:30 PM and I find no reason to discredit these statements made to Officer Collins.

Officer St. Pierre officially took over one of three control station position at 8:41PM when he relieved Sgt. Lydon and joined the Officer’s Kress and Speakman. The exchange of duty took five minutes. By this time the two civil commitments had already been in the midst of their escape for at least 15 minutes. Once on duty, Officer St. Pierre reported to the nursing station to assist the nurse with vital checks. Officer Kress conducted a round at 9:00PM and Officer St. Pierre conducted a round at 9:10 PM and civil commitment “B” was present during that round based on “B”’s statements during the Internal Affairs investigation. Civil Commitment “A” was caught outside of Delta Unit fence at 9:12PM and was handcuffed and searched. The bed book count was ordered at 9:23 along with Officer St. Pierre being instructed to conduct a fence check. Officer St. Pierre founded the sheet and shirt in the outer fence at 9:32PM. At 9:35 civil commitment “B” was found badly injured during the marks and scars check. Civil commitment “A” was escorted back to Delta Unit, the fence check and the marks and scar check were completed by 9:45PM.

The Appointing Authority argues that the escape attempt occurred at approximately 8:50 and ended when civil commitment “A” was discovered outside the fence at 9:12. Because of the

timeframe, Officer St. Pierre was charged with the care and custody of the two inmates and should have been aware that the escape attempt was taking place. They argue that he failed to perform the duties in which his position required him to perform his lack of observation allowed two inmates to escape over the fence.

Officer St. Pierre argues that the DOC's timeline is inconsistent with the interviews conducted during the investigation. He argues further that statements from witnesses, the civil commitments, and Officer St. Pierre, show that the timeframe that the DOC states the incident occurred is implausible.

Based on the preponderance of evidence in the exhibits and witness testimony, Officer St. Pierre's argument is the most accurate explanation of the attempted escape. The DOC states that the two inmates started their escape at 8:50. That would require the two to scale a fence and climb on the roof, run across the roof, jump off the roof, run 200 yards to the corner of the second fence, attempt to climb the fence and fail, run 170-180 yards to the garden and grab digging tools and run back, then dig a 1 foot deep hole. Then each would have had to cross 200 yards to get Delta Unit fence and allow time for civil commitment "B" to scale the fence, cross the Delta Unit roof, drop into the Delta/Alpha Unit courtyard, enter Delta unit, take a shower and dispose of bloody clothes, and be in his bed for 9:10 count. All of this would have had to occur in a span of 20 minutes by two inmates that were currently dealing with medical issues. The DOC's argument also ignores statements from the civil commitments as to when they started their escape. Civil Commitment "A" stated that they started their attempt at 8:30 PM and "A" saw a man in the control station fitting the description of Sgt. Lydon (but not Officer St. Pierre). The most plausible scenario, therefore, places the escape prior to Officer St. Pierre reporting to duty.

Once Officer St. Pierre took over for Sgt. Lydon, he assisted the nurse with vital checks and performed a round count at 9:10 PM. The evidence does not support a conclusion that Officer St. Pierre would have been able to observe the sheets hanging from the razor wire prior to being ordered to conduct the fence check, or to have seen either commitment leaving from or returning to the unit.

In sum, Officer St. Pierre performed his duties after reporting to the control station exactly as he was ordered. He could not be expected to be everywhere at all times. The escape did not take place during his “watch” and the evidence fails to show how Officer St. Pierre could have prevented the escape or detected it before other officers did. Nothing in the post orders position states that officers assigned to the control station are required to monitor all the activity in the Delta/Alpha courtyard.

By a preponderance of the evidence, I find that no just cause exist to support the decision made by the Appointing Authority to suspend Officer Brian St. Pierre for three (3) day without pay.

For all of the above reasons, Officer Brian St. Pierre’s appeal under Docket No. D-14-31 is hereby ***allowed***. The Appellant’s suspension is vacated and he shall be restored to his position without loss of any compensation or benefits.

Civil Service Commission

Paul M. Stein
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on August 7, 2014.

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:

Torrey Botelho, MCOFU (Appellant)

Julie E. Daniele, Esq (Respondent)