COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

CHRISTOPHER CORREIA,
Appellant

v. D-05-343

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney: Stephen C. Pfaff, Esq.
Louison, Costello, Condon & Pfaff
67 Batterymarch Street
Boston, MA 02110

Appointing Authority's Attorney: Carol Colby, Esq.
Department of Correction
70 Franklin Street
Boston, MA 02110

Hearing Officers: John J. Guerin, Jr.[1]
Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Christopher Correia (hereinafter "Appellant"), is appealing the decision of the Respondent, the Department of Correction (hereinafter "DOC") as Appointing Authority, to terminate him from his employment as a Correction Officer I. Specifically, via notice dated September 15, 2005, the Appellant was terminated for violations of DOC's General Policy and of Rule 18, Attendance and Absences, of the Rules and Regulations Governing All Employees of the

[1] John J. Guerin, Jr., a Commissioner at the time of the full hearing, served as the initial hearing officer in this matter. His term on the Commission has since expired. Subsequent to leaving the Commission, however, Mr. Guerin was authorized to draft this decision, including those referenced credibility assessments made by Mr. Guerin.

Massachusetts Department of Correction (hereinafter "the Blue Book") for being absent from duty without permission or notice, including his failure to produce satisfactory medical evidence of an illness (physician's slip) when requested. The Appellant filed a timely appeal.

A hearing was held at the offices of the Civil Service Commission (hereinafter "Commission") on November 5, 2007 and April 29, 2008. The November 5, 2007 hearing was suspended when evidence was introduced that there was a pending worker's compensation claim made by the Appellant which could potentially affect this termination proceeding. The parties agreed that the matter would be suspended until after a determination was made by the Department of Industrial Accidents (hereinafter "DIA") regarding the Appellant's claim for disability.

On December 10, 2007, the Appellant filed a post-hearing brief in which notification was given to the Commission that, in fact, an agreement to pay compensation had been reached between DOC and the Appellant for payment of partial disability to the Appellant for an injury sustained on September 29, 1997. The Appellant filed a Motion for Summary Decision. The Motion was denied and the full hearing was continued to April 29, 2008.

Then-Commissioner John Guerin conducted the first day of hearing but was absent due to illness for the second day of hearing on April 29, 2008. The parties agreed to allow Commission Chairman Christopher Bowman to conduct the second day of hearing. Thus, this decision is being jointly prepared by both hearing officers. Two (2) tapes were made of the hearing. As no notice was received from either party, the hearing was declared private. Proposed decisions were filed thereafter by the parties, as instructed.

FINDINGS OF FACT:

Based on the documents entered into evidence, Appointing Authority Exhibits 1 – 5 and Appellant Exhibits 1 - 6 and the testimony of Massachusetts Correctional Institute(MCI)–Norfolk Deputy Superintendent Donald J. Levesque (hereinafter "Mr. Levesque"), Director of the DOC Industrial Accident Unit, Kelly Correira (hereinafter "Ms. Correira") and the Appellant, we make the following findings of fact:

1. The Appellant was appointed as a Correction Officer I in September 1989. (Testimony of Appellant)
2. On January 15, 1992, the Appellant was reprimanded in writing for failing to provide satisfactory medical evidence. (AA's Exhibits 1 and 2)
3. On May 8, 1995, the Appellant was reprimanded for failing to provide satisfactory medical evidence while on Attachment "A" status. Attachment "A" status is pursuant to the provisions of Rule 18(b) of the Blue Book and Article 8, Section 1(K) of the collective bargaining agreement (CBA) between DOC and the Massachusetts Correction Officers Federated Union (MCOFU). Essentially, this provision of the CBA requires an officer with five (5) unsubstantiated absences during a calendar year to provide satisfactory medical evidence for each absence for the next six (6) months following the designation of this status. The letter of reprimand provided that any subsequent violations of Rule 18(b) of this nature will result in appropriate disciplinary action. (AA's Exhibits 1, 2 and 5)
4. On June 7, 1995, the Appellant was given a one-day suspension for failing to provide satisfactory medical evidence while on Attachment "A". Again, the Superintendent

5. On November 13, 1995, the Appellant was given a one-day suspension for continued unsatisfactory attendance. This suspension letter stressed that continued violation of Rule 18(a) would result in appropriate progressive discipline. (AA's Exhibits 1 and 2)
6. On November 20, 1995, the Appellant was given a two-day suspension for failing to notify the institution regarding his involvement with outside law enforcement. He was warned that any continued violation of Rule 2(b) would result in appropriate progressive disciplinary action. (AA' Exhibits 1 and 2)
7. On December 18, 1995, the Appellant was given a three-day suspension for continued unsatisfactory attendance. The superintendent reiterated that continued violation of Rule 18(a) will result in appropriate progressive discipline. (AA's Exhibit 1 and 2)
8. On July 5, 1996, the Appellant was given a five-day suspension for continued unsatisfactory attendance. Again, the superintendent warned the Appellant that any subsequent violation of Rule 18(a) would result in appropriate disciplinary action. (AA's Exhibits 1 and 2)
9. On July 9, 1996, the Appellant was given a two-day suspension (reduced from a three-day suspension) for failing to report the disposition of a court case. He was cautioned that any subsequent violation of Rule 2 would result in appropriate progressive disciplinary action, up to and including termination. (AA's Exhibits 1 and 2)
10. On September 18, 1996, the Appellant was given a five-day suspension for continued unsatisfactory attendance. The superintendent advised the Appellant that any

11. On December 9, 1996, the Appellant was given a five-day suspension (reduced from a ten-day suspension) for continued unsatisfactory attendance. Then-DOC Commissioner Larry E. DuBois warned the Appellant that if his attendance did not improve, he would be subject to more severe discipline, up to and possibly including termination. (AA's Exhibits 1 and 2)
12. On June 27, 1997, the Appellant was given a fifteen-day suspension (reduced from a thirty-day suspension) for continued unsatisfactory attendance. Then-SCC Superintendent John Marshall, Jr. advised the Appellant that "unacceptable attendance will not be tolerated as it is detrimental to the operational needs of the facility. Further violations of Rule 18(b) will result in appropriate discipline, up to and including termination." (AA's Exhibits 1 and 2)
13. On September 29, 1997, the Appellant was hurt at work when he fell over backwards in a chair and hit the ground, injuring his right shoulder. (AA's Exhibit 4 and APP's Exhibit 2)
14. The Appellant's workers compensation claim was initially denied on October 17, 1997, but was eventually approved by agreement on December 18, 1997, then sporadically denied and approved, by letters of agreement, through September 6, 1999. (Testimony of Ms. Correira and AA's Exhibit 4)
15. The Appellant returned to work on September 6, 1999. (AA's Exhibit 4)
16. On October 25, 2000, the Appellant was reprimanded for habitual tardiness. The superintendent again warned the Appellant that future incidents of this nature would

17. On April 3, 2001, the Appellant was given a one-day suspension for failing to provide satisfactory medical evidence while on Attachment "A". The superintendent warned the Appellant that future incidents of this nature would result in more severe discipline, up to and including termination. (AA's Exhibits 1 and 2)
18. On July 26, 2001, the Appellant was given a three-day suspension for failing to provide satisfactory medical evidence while on Attachment "A". Again, the Appellant received the same warning that he faced more severe discipline for continued misconduct. (AA's Exhibits 1 and 2)
19. On October 3, 2001, the Appellant was given a written reprimand for habitual tardiness. The Appellant was cautioned, again, against future misbehavior. (AA's Exhibits 1 and 2)
20. On December 3, 2001, the Appellant received a partial worker's compensation payment, pursuant to G.L. c. 152, § 35 (hereinafter "Section 35 payment"), for sporadic dates between January 15, 2001 and July 21, 2001. (Testimony of Ms. Correira and AA's Exhibit 4)
21. On May 13, 2002, the Appellant was given a three-day suspension for failing to report to duty or call the institution. The Appellant was warned that his misconduct cannot and will not be tolerated. The suspension letter provided further that the Appellant was to "be clearly warned that future incidents of this nature will result in more severe disciplinary action up to and including termination." (AA's Exhibits 1 and 2)

22. On December 26, 2002, a Section 35 payment was ordered by the Department of Industrial Accidents (DIA) for sporadic dates from September 24 - December 27, 2001 and then again from January 12, 2002 through May 9, 2002. (Testimony of Ms. Correira and AA's Exhibit 4)

23. There was not another workers compensation claim filed by the Appellant until September 26, 2006, for which both parties appealed and which resulted in an agreement to pay compensation signed by an administrative judge of the DIA, dated November 28, 2007, which, among other things, found that the Appellant was "partially disabled from May 30, 2006 through December 5, 2006." (Id.)

24. On January 13, 2004, the Appellant was given a five-day suspension for failing to make proper notification to the facility, and for being disrespectful to a Captain. Again, the Appellant was put on notice that another incident will result in more severe discipline including termination. (AA's Exhibits 1 and 2)

25. On October 30, 2004, the Appellant failed to notify the institution of his absence from duty on that day, as required by Rule 18 of the Blue Book. The Appellant claimed that he did call into the Outer Control unit staff, per his understanding of the notification policy, however he did not know with whom he spoke. (Testimony of Appellant and AA's Exhibit 1)

26. Rule 18 of the Blue Book states in pertinent part:

> "(a) Punctual attendance for your regular hours of duty must be strictly observed. Delay in terminating your tour of duty will not compensate for tardiness at its beginning. Notification of anticipated delay or absence due to unavoidable detention must be telephoned or sent promptly to the person designated by the Superintendent or DOC Department Head to receive and record such calls, in order that provisions may be made to cover your assignment. Absence from duty without permission or notice shall

not be allowed . . .

> (b) Employees who abuse sick leave, fail to produce satisfactory medical evidence of illness (physician's slip) when requested, or use sick leave for personal matters not related to illness, will be denied said sick leave, and may be subject to disciplinary action up to and including discharge, in compliance with all valid collective bargaining agreements." (AA's Exhibit 3)

27. Mr. Levesque was the Deputy Superintendent at OCCC for 18 months, from the end of 2003 until May 2005. He began his career with the DOC as a Correction Officer I in 1979 and worked his way up the ranks of the DOC to his present position. He is currently the Deputy Superintendent at MCI-Norfolk. As a Deputy Superintendent, Mr. Levesque is responsible for day-to-day scheduling and attendance operations. (Testimony of Mr. Levesque)

28. Mr. Levesque testified at the Commission hearing that the results of excessive non-attendance or tardiness of correction officers are unexpected overtime expenses, facility adjustments (closing the outside yard, inner facility lock-downs, etc.) and poor staff morale caused by commanders having to "draft" officers to stay on duty past the end of their shift with very short notice. Mr. Levesque pointed out that DOC institutions are everyday, around-the-clock operations so staffing is a critical component. Considering Mr. Levesque's lengthy career with the DOC in which he experienced staffing issues as both a rank officer and a responsible administrator, I find that his testimony on this subject is credible. (Testimony of Mr. Levesque)

29. Mr. Levesque testified that Correction Officer Is earn 15 sick days per year and that using excessive sick days affects an officer's eligibility for vacation and seniority time. He further testified that he was well aware of the Appellant's past history of attendance problems and that the Appellant was "on his radar screen" for such issues.

30. Mr. Levesque testified that the Appellant was off payroll for over 578 hours for calendar year 2002 and was off payroll for approximately 293 hours from July 2003 through December 2003. The DOC submitted documentary evidence corroborating this testimony. (Testimony of Mr. Levesque and AA's Exhibit 2)
31. Mr. Levesque testified that in 2004, the Appellant was off the payroll for five hundred sixty-four and one-half (564.50) hours, which equates to being off the payroll for approximately seventy-one (71) days of work. The DOC submitted documentary evidence corroborating this testimony. (Id.)
32. Mr. Levesque also testified that from January 1, 2005 through July 31, 2005, the Appellant was off payroll for approximately eighty-one (81) days and actually worked only fifty-four (54) days. Again, DOC documentation supports this credible testimony. (Id.)
33. Mr. Levesque demonstrated an extensive and successful tenure in the DOC and I found him to be knowledgeable of all the subject matter discussed at the Commission hearing. He maintained a professional demeanor and was unhesitant and responsive when answering questions and appeared to bear no ill-will towards the Appellant. Indeed, he testified that he asked the Appellant for a phone call record or some other proof that the Appellant had called in sick on October 31, 2004. He told the Appellant that if he could produce such proof, then he (Mr. Levesque) would "make the no show/no call part go away." Mr. Levesque twice asked the Appellant for proof

34. OCCC Captain Paul Gordon (hereafter Captain Gordon) conducted a Fact-Finding Hearing on November 11, 2004 on the Appellant's alleged failure to notify the institution of his absence from duty on October 30, 2004. At the hearing, the Appellant told Captain Gordon that he called Outer Control directly on the day of his absence and believed that he spoke with a Lieutenant Denault when he called in. Later that day, Capt. Gordon spoke with Lieutenant Denault who informed him that he knew for a fact that he did not get a call from the Appellant on that day. Captain Gordon checked with all employees who were working in Outer Control at the time and found nothing to support the Appellant's contention that he made a sick call. Captain Gordon reported the results of the hearing to Acting Superintendent Bernard Brady (hereafter "Mr. Brady"). (AA's Exhibit 1)
35. On March 21, 2005, DOC Deputy Director of Employee Relations, Dennis Cullen (hereinafter "Mr. Cullen") conducted a disciplinary hearing on behalf of DOC Commissioner Kathleen M. Dennehy (hereafter "Comm. Dennehy") to consider the recommendation of Mr. Brady that appropriate disciplinary action be taken against the Appellant. Present at the hearing, in addition to Mr. Cullen and the Appellant, were MCOFU Stewards Matt Leary and Ted Larriveau. Mr. Cullen found that there was no evidence to support that the Appellant had called in sick on October 30, 2004, that he had no sick time on the books and that he was off payroll every month. Based

36. By letter dated August 5, 2005, Commissioner Dennehy informed the Appellant that while his "no call, no show" incident on October 30, 2004 was being considered, it was discovered that his attendance had deteriorated to the point where he rarely reported to work at all. The DOC investigation had revealed that he was continually off payroll, with rare exception, and on unexcused leave without pay. Accordingly, Commissioner Dennehy designated Mr. Cullen to conduct a disciplinary hearing on August 25, 2005 to consider the matter and report his findings to her. (AA's Exhibit 1)
37. When he was told by the MCOFU Grievance Coordinator, Richard Allain (hereinafter "Mr. Allain"), that the Appellant would not be attending, Mr. Cullen rescheduled the August 25, 2005 hearing for August 31, 2005. The Appellant, although properly noticed, also failed to attend the rescheduled hearing. (AA's Exhibit 1 and Testimony of Appellant)
38. The Appellant testified that his shoulder injury was deteriorating and he was under a doctor's care in August 2005. When asked by this hearing officer why he didn't attend the second disciplinary hearing on August 31, 2005, the Appellant's answers, ranging from union advice to medical disability, were unresponsive and unconvincing. The Appellant finally settled on the claim that he called the Outer Control to report that he would not be in attendance, similar to the manner in which he would call in sick to work. I did not find the Appellant's testimony on this topic to

39. The Appellant was also asked why he did not simply call Mr. Cullen regarding his non-attendance at the disciplinary hearing. Again, the Appellant was unresponsive in his answers, folding his arms and then stating that he would have no idea how to contact Mr. Cullen. This answer strained credulity in light of the fact that Mr. Cullen's office telephone number is displayed clearly on the hearing notice letterhead which the Appellant testified to receiving. (Testimony of Appellant)
40. The Appellant submitted two physician's slips into the record of this hearing covering the time period from July 10, 2005 through September 2, 2005. DOC objected to the submission of these documents (APP's Exhibits 5 and 6) as they had not yet seen them. The documents were accepted as evidence. When asked why he did not give these, and others for 2005 (APP's Exhibit 1), to Mr. Allain so they could be submitted to the August 31, 2005 hearing, the Appellant explained that he always held onto his medical documents and submitted them after he returned to work from a period of absence. In this instance, he was terminated before he had a chance to return to work. Again, I found the Appellant unresponsive to the question and further note that he acknowledged that the notes fail to specify his shoulder ailment. The notes only refer to an illness or medical condition "of a confidential nature." (Testimony of Appellant)
41. On September 15, 2005, DOC sent the Appellant a letter terminating him from his

42. The Appellant filed this appeal with the Commission on September 27, 2005.

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. Mun. Ct. of Boston, 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, 687 N.E.2d 642 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427 (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, 684 N.E.2d 620, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514, 451 N.E.2d 408 (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 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 rev.den., 426 Mass. 1102 (1997). See also Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., McIsaac v. Civil Service Comm'n, 38 Mass App.Ct. 473, 477 (1995); Watertown v. Arria, 16 Mass.App.Ct. 331, rev.den., 390 Mass. 1102 (1983).

"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 Service Comm'n, 447 Mass. 814, 823 (2006). See Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev.den., 390 Mass. 1102, 453 (1983) and cases cited.

By a preponderance of the credible evidence, DOC has sustained its burden of proving just cause to terminate the Appellant from his employment as a Correction Officer I.

DOC is a paramilitary organization and relies on strict compliance to its rules and directives by its employees. Excessive absences and tardiness by its officers leads to critical disruptions in the operation of its institutions, which are charged with maintaining the good order and security of an often hostile environment. Adjustments to staffing patterns must be made, sometimes with little notice, which can lead to unnecessary overtime expenses, morale issues due to shift holdovers and adverse facility adjustments.

Ms. Correira's credible testimony, coupled with the documentary evidence as submitted by the parties, established the time frames for which the Appellant made claims for worker's compensation designations. Those time frames did not include the time period from May 2002 through September 26, 2006. Significantly, the time period from October 31, 2004 through August 31, 2005 is the focus of the instant matter. The credible evidence adduced at the Commission's hearing demonstrates that it was during this stretch of time that the Appellant's work attendance deteriorated to the point where he virtually did not report for duty at all.

The Appellant argues that he had physician slips to cover all of his absences from duty but that those slips were neither approved nor rejected by DOC. The Appellant further asserted that these medical documents are "satisfactory" to cover his non-attendance

pursuant to the Blue Book and the applicable CBA. However, he never submitted such documents until the time of the instant hearing. Further, he did not even submit them for filing at DOC's administrative hearing prior to this proceeding. Therefore, the DOC could not determine if the Appellant's required physician's slips were "satisfactory". Indeed, the DOC could only logically conclude that the Appellant had *no* documented medical reasons for his significant number of absences. At best, the Appellant's failure to produce his medical documents until this late date is non-sensical and, at worst, that failure calls into question the veracity of those documents.

DOC exhibited enormous patience with the Appellant's adverse attendance issues well before his September 29, 1997 injury. The record of this matter is clear in that the Appellant had been disciplined several times for unsatisfactory attendance and/or medical evidence submissions *before* the worker's compensation claims began in September 1997. Significantly, the period of unsatisfactory attendance from October 2004 through his termination date was marked by the Appellant having no sick leave time available to him and no evidence of any Industrial Accident claims, leave or compensatory payments.

The Appellant's claims that his absences were excused by the DOC were unsubstantiated and unconvincing. The Appellant's testimony was unreliable when he asserted that he was on Industrial Accident leave while his unexcused, non-attendance ballooned in 2004 and 2005. 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. Dep't 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).

The Appellant's unexcused absences and tardiness throughout his career in the DOC – save for those sporadic periods of time, including post-termination, when he received worker's compensation agreements, provided DOC with justification for disciplining the Appellant.

Having determined that it was appropriate to discipline the Appellant, the Commission must determine if DOC was justified in the level of discipline imposed, which, in this case, was termination.

The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.' " Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune employees' suspensions to ensure perfect uniformity. See Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

"The 'power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.' " Falmouth v. Civil Service Comm'n, 61 Mass. App. Ct. 796, 800 (2004)

quoting Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission's findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to "substitute its judgment" for that of the appointing authority, and "cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation" E.g., Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006).

The Appellant provided no evidence of similarly situated employees that were not terminated as a result of numerous violations regarding attendance. Further, there was no evidence of any ulterior motive by DOC that would warrant the Commission modifying the penalty imposed.

For all of the reasons stated herein, the Appellant's appeal under Docket No. D-05-343 is hereby ***dismissed***.

Civil Service Commission

_____
John J. Guerin, Jr.
Hearing Officer

_____
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on July 2, 2009.

A true record. Attest:

_____
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice to:
Stephen C. Pfaff, Esq. (for Appellant)
Carol A. Colby, Esq. (for Appointing Authority)