

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss

TIFFANY DAVIS,
Appellant,

V.

DOCKET NO. D1-08-203

DEPARTMENT OF CORRECTION,
Appointing Authority

Appellant's Representative:

Kandice Boyd
1116 Liberty Street
Springfield, MA 01104

Respondent's Attorney:

Amy Hughes, Administrative Prosecutor
Massachusetts Department of Correction
Division of Human Resources
One Industries Drive
P.O. Box 946
Norfolk, MA 02056
508-850-7849

Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31 § 43, the Appellant, Tiffany Davis (hereinafter "Davis" or "Appellant") is appealing the decision of the Department of Correction (hereinafter "DOC," "Department," or "Appointing Authority") on August 11, 2008, to terminate her from her position as a Correction Officer I. The appeal was timely filed. A hearing was held on December 8, 2008, at the Civil Service Commission. Since

there was no request for a public hearing pursuant to G. L. c. 31 § 41 and §43, the hearing was declared private. Both parties submitted post-hearing proposed decisions.

FINDINGS OF FACT:

Thirty (30) Exhibits were entered into evidence at the hearing (Appointing Authority Exhibits 1-24, and 30; Appellant Exhibits 25-29). Based on the documents submitted and the testimony of the following witnesses:

Called by the Appointing Authority:

- Tina Goins, Then Lieutenant and now Captain, Office of Investigative Services, Department of Correction
- Lynn Bissonnette, Superintendent of MCI-Framingham

Called By the Appellant:

- Tiffany Davis; Appellant.

I make the following findings of fact:

1. The Appellant, Tiffany Davis, was a tenured civil service employee of the Massachusetts Department of Correction serving in the position of Correction Officer I. She had been employed by the DOC for approximately seven (7) years before her termination.(Testimony of Appellant)
2. Via a letter dated January 24, 2008, Appellant was charged with violating the General Policy and Rules 1, 2(b), 7(d), 8(c), and 19(c) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, as well as the Department's Information Technology Security policy, 103 DOC 751. (Exhibit 1, January 24, 2008 Notice of Charges and Hearing).

3. On February 26, 2008, in accordance with G.L. c. 31, § 41, a hearing was held by the Commissioner of Correction's designee to determine whether Appellant violated the Department's rules, regulations, or policies, as cited in the Notice of Charges and Hearing letter dated January 24, 2008. (Exhibit 2, August 11, 2008 Termination Letter)
4. After the February 26, 2008 Commissioner's hearing, Appellant was found to have engaged in the following conduct: attempting to mislead the Department's investigator regarding the extent of her contact with a former inmate; repeatedly lying to the Department's investigator during the course of the investigation into her conduct; failing to report to her Superintendent or the DOC Commissioner that she attended a meeting between a former inmate/parolee and his parole officer, that the former inmate/parolee requested that his "home plan" include moving into her residence with her, and that the request was approved; maintaining an inappropriate relationship with former inmate/parolee, ultimately marrying this former inmate/parolee; associating and consorting with a former inmate without specific approval from her Superintendent or the Commissioner; and inappropriately and repeatedly accessing information on the Department's Inmate Management System. (Exhibit 2) Accordingly, Appellant was terminated via letter dated August 11, 2008 for violating the General Policy and Rules 1, 2(b), 7(d), 8(c), and 19(c) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, as well as the Department's Information Technology Security policy, 103 DOC 751. (Exhibit 2).

5. On September 18, 1991, Inmate TA¹ was committed to the Department of Correction for second degree murder. Appellant was well aware of the circumstances of TA's conviction because they went to high school together. Specifically, the Appellant knew that TA chased down the victim in a car, enabling his coconspirator to shoot and murder the victim. (Exhibit 19; testimony of Goins and Appellant)
6. On September 20, 2006, inmate TA was paroled from MCI-Norfolk. (Exhibit 8; testimony of Goins).
7. On October 8, 2006, Appellant submitted a confidential incident report to MCI-Framingham Superintendent Lynn Bissonnette stating: "I CO T. Davis am writing this confidential to inform you that my mother's boyfriend's son TA has just been granted parole from MCI-Norfolk." This incident report did **not** notify Superintendent Bissonnette that Appellant's mother lived next door to her and that TA would be visiting. (Exhibit 5)
8. On October 10, 2006, Superintendent Bissonnette sent a memorandum to Appellant stating: "I am in receipt of your confidential report dated 10/8/06 informing me that your mother's boyfriend's son, TA, has just been granted parole from MCI-Norfolk. Please be advised I have forwarded this report to the Human Resources Division to be placed in your Personnel file." (Exhibit 6) This memorandum was merely an acknowledgment from Superintendent Bissonnette that she received Appellant's October 8, 2006 report. (Exhibit 6; Bissonnette) The memorandum did not grant CO Davis permission to associate with TA. (Testimony of Bissonnette)

¹ In order to comply with CORI regulations, the inmate at issue in this case will be referred to as TA.

9. On January 12, 2007, Appellant and TA reported to Parole Officer Richard Valenti's office. As a result of the meeting, Parole Officer Valenti contacted the DOC. (Exhibit 22, p. 2; testimony of Goins and Appellant)
10. On January 19, 2007, Captain Tina Goins spoke with PO Valenti. PO Valenti said that Appellant reported to his office on January 12, 2007 with TA. At this meeting, Appellant informed PO Valenti that she had permission from Superintendent Bissonnette to have contact with TA and she gave PO Valenti the 10/10/08 letter from Superintendent Bissonnette. PO Valenti expressed concern because the memorandum from Bissonnette did not indicate the extent of contact that Appellant was permitted to have with TA. PO Valenti also reported that he had previously observed TA at Appellant's home with her, and that TA had told him that he occasionally stayed overnight at TA's residence. PO Valenti told Captain Goins that TA reported spending the night at Appellant's residence approximately 10-12 times. (Testimony of Goins, see also Exhibits 17 and 22).
11. Appellant admitted that prior to January 25, 2007, TA spent several nights at her house. She claimed he would fall asleep at her house watching football games. (Appellant testimony, Exhibit 22, p. 11 and Exhibit 16-CD of Appellant's interview)
12. On January 23, 2007, TA requested a new home plan from CO Valenti, seeking approval to live with Appellant. (Exhibit 17)
13. On January 24, 2007, as Superintendent Bissonnette was conducting rounds, Appellant approached her and stated that she was aware that PO Valenti had contacted the DOC regarding TA's request for a new home plan. Further,

Appellant told Superintendent Bissonnette that her relationship with TA had “grown more intimate” and that TA was “the one.” (Exhibit 10; Bissonnette.)

14. On January 29, 2007, Superintendent Bissonnette received a letter from Appellant, dated January 25, 2007, which stated:

This letter is being sent to report recent changes in regards to the REASON FOR CONTACT letter I submitted October 8, 2006, reporting that TA (released on parole from MCI-Norfolk September 20, 2006) is my mother’s boyfriend. My mother resides in the next apartment of the duplex I share with her, making it necessary to report interaction with this former inmate.

The aforementioned contact has been frequent, and due to our kind & caring conversations, harmonious communication, and high level of compatibility, our contact had become constant. Having a more intimate relationship that has gone beyond friendship and is now stronger and more meaningful to the both of us, we intend for this to be the creation of a life-long bond, and have begun to discuss marriage in the near future.

In and with this letter, I am requesting permission to continue to pursue this beautiful budding relationship. This person truly honors and respects me, and I respect, admire, have always sought this in a companion/partner, and have found it with TA. Therefore, I am asking specific approval, that this part of my life begin to move forward similar to the rewarding motion I experience as a Correction Officer. (Exhibit 7)

15. On March 8, 2007, Appellant resubmitted a copy of the January 25, 2007 letter to Superintendent Bissonnette. (Exhibit 11)

16. On March 12, 2007, PO Valenti met with Appellant and TA at Appellant’s home for a home inspection (to consider whether it would be appropriate to change TA’s home plan and permit him to live at Appellant’s home). (Exhibit 17)

17. On March 14, 2007, Superintendent Bissonnette advised Appellant that she could not approve her request. Moreover, Superintendent Bissonnette explained:

As you know, the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction (“Blue Book”) prohibit

employees from associating with, accompanying, corresponding or consorting with an inmate or former inmate, except for a chance meeting, without specific approval of the employee's Superintendent, Department Head, or Commissioner. Rule 8(c). The Blue Book further requires that all employees treat inmates impartially and not grant them special privileges. Rule 8(c). This language was intended to ensure that employees do not become overly friendly with inmates or former inmates, bring contraband into a facility for an inmate, or share security information or confidential Department practices and policies with current or former inmates. (Exhibit 12)

18. TA moved into Appellant's residence and remained there for about a week in early April 2007. (Appellant testimony; Exhibit 22, p. 9, 11 and Exhibit 16- CD of Appellant's interview).
19. From June 30, 2007 through July 6, 2007, Appellant and TA traveled in Appellant's 2005 Lexus to TA's family reunion in North Carolina. The Appellant drove because TA did not own a car.(Exhibit 17, testimony of Goins & Appellant)
20. Via letter dated July 25, 2007, for the same reasons outlined in Superintendent Bissonnette's March 14, 2007 letter, Acting DOC Commissioner James Bender denied Appellant's request to continue her relationship with TA while she was employed by the DOC. (Exhibit 14.)
21. On August 6, 2007, Appellant married TA. (testimony of Appellant)
22. On August 28, 2007, Captain Goins interviewed Appellant. During this interview, Appellant was evasive and less than forthcoming when answering Captain Goins's questions. (testimony of Goins, Exhibit 22, p. 7-11, Exhibit 16- CD of Appellant's interview). For example, when asked to describe her relationship with TA from the time she asked for permission to maintain a relationship with TA until her receipt of Acting Commissioner Bender's letter, Appellant simply stated, "we still remained close." Further, when Captain Goins

- asked her if she continued her relationship with TA, she stated, "...I guess, if that's what you want to call it, but—we just remained close." Captain Goins then asked Appellant if she maintained an intimate relationship with TA. In response, Appellant simply stated, "I maintained a relationship with him, yes." Shortly thereafter, Appellant requested a caucus to meet with her Union representative. Upon resuming the interview, Appellant stated, "I would like to add that on August 6, I did marry TA." (Exhibit 22, p. 9; Exhibit 16, Goins, Appellant)
23. The first time Appellant reported her August 6, 2007 marriage to TA was during her August 28, 2007 interview with Captain Goins. The Appellant testified that her explanation for the omission and her evasiveness in that interview and indeed preceding it, was that she was "nervous", in a "defense mode" and "emotional" and that she was deliberately "trying to keep her answers short". (Testimony of Appellant)
24. During her August 28, 2007 interview with Captain Goins, Appellant told Captain Goins that Superintendent Bissonnette told her on January 24, 2007 that her relationship with TA was not a big deal. (Exhibit 22, p. 8, Exhibit 16) This was a lie. Superintendent Bissonnette absolutely did not tell Appellant that is relationship was "not a big deal." (Bissonnette, Exhibit 22, p. 18)
25. During her August 28, 2007 interview with Captain Goins, Appellant told Captain Goins that she had "just recently" learned that TA was her mother's boyfriend's son. (Exhibit 22, p. 7). This was a lie. Appellant stated that her mother and TA's father had been boyfriend and girlfriend for 30 years and that she had been a friend of TA's since junior high. In light of this information, it is not believable

- that Appellant had “just recently” learned that her mother’s boyfriend was TA’s. Moreover, later in the August 28, 2007 interview, Appellant stated that she learned TA was her mother’s boyfriend’s son two (2) or three (3) years ago.
26. During Appellant’s August 28, 2007 interview with Captain Goins, she lied when she stated that she had only been to the parole office once. (Exhibit 22, p. 10) In fact, during her September 27, 2007 interview, Appellant then admitted that she had been to the parole office twice. (Exhibit 22, p. 14)
27. Appellant never reported her contact with the Parole Division to Superintendent Bissonnette or the DOC Commissioner. (Exhibit 22, p. 28)
28. In February 2004, Appellant viewed TA’s data screen when he was housed at MCI-Norfolk. Further, while Appellant was assigned to MCI-Framingham (a female institution), she also accessed approximately 46 male inmates and viewed a total of approximately 117 screens. (Exhibit 18.)
29. The Appellant admitted in testimony that she had accessed inmates’ confidential information and that she knew it was wrong and offered the excuse that she did it to “pass the time” and that “other officers also did it.” But she offered no evidence of other officers or of similarly situated officers who were not terminated for their conduct. (Testimony of Appellant)
30. The Appellant testified in a facile and cavalier manner, seemingly with the intent of diminishing the charges against her. Her belated admissions of the truth were due to the fact that the DOC had already documented her prior inconsistencies and omissions. Her demeanor was that of a smug person, smiling while trying to evade or explain answers rather than answering them directly. For example, she

interjected the excuse “it wasn’t planned”, when asked about various encounters with TA. She volunteered the excuse that TA only slept over at her house when he fell asleep watching football on TV. She described her post incarceration relationship with TA in vague or guarded chronological terms, such as: “remained close and maintained a relationship”, “becoming closer” and “becoming increasingly closer”. I believe that the Appellant deliberately tried to avoid stating a date or time certain, in which she became romantically involved with TA. This deliberate vagueness is very evident in her January 25, 2007 letter to Bissonnette. She states in that letter “...and due to our kind & caring conversations, harmonious communication and high level of compatibility, our contact has become constant”. She admitted that TA helped her draft this letter. This hearing officer found her answers to his questions to be evasive. She admitted being “nosey” but denied doing any checking in advance of TA’s parole date even while she knew that he would very likely be going to her mother’s house next door, due to his father’s long-term relationship with her mother. I find the Appellant not to be a credible witness. (Evidence, testimony, testimony and demeanor of Appellant, Exhibit 7)

31. The two witnesses for the DOC: Tina Goins and Lynn Bissonnette were professional and appropriate in all aspects of their demeanor, presentation and testimony. They were direct, unhesitant and responsive in their answers. They maintained eye contact and their body language was consistent with straight-forward answers. They did not expand or extend their answers for greater effect, even if they would reasonably expect their answers to go unrefuted or rebutted.

If unsure of the detail of an answer they asked to review a document, to refresh their memory. I find that they are both credible and reliable witnesses. (Evidence, testimony, testimony and demeanor of Goins and Bissonnette)

Relevant DOC Rules and Policies:

32. General Policy I of the Book states, in part, “Nothing in any part of these rules and regulations shall be construed to relieve an employee of his/her...constant obligation to render good judgment [and] full and prompt obedience to...all orders not repugnant to rules, regulations or policy issued by the Commissioner...or by [his] authority.” (Exhibit 3, Blue Book)
33. Rule 1 of the Blue Book 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 and be circumspect in personal relationships regarding the company they keep and places they frequent.” (Exhibit 3)
34. Rule 2(b) of the Blue Book states, “Report promptly in writing to your Superintendent, DOC Department Head, or their designee, any change of events regarding your...marital status, and any involvement with law-enforcement officials pertaining to any investigation.” (Exhibit 3)
35. Rule 7(d) of the Blue Book states, “Employees should not ...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 3)
36. Rule 8(c) of the Blue Book states, “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.... 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 3)
37. Rule 19(c) of the Blue Book states, “Since the sphere of activity within an institution or the Department of Correction may on occasion encompass incidents that require thorough investigation and inquiry, you must respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate...or yourself.” (Exhibit 3)

38. The Department's Information Technology Security policy, 103 DOC 751 states, in part:

Any person, group, or custodian accessing Department of Correction information must recognize his/her responsibility to preserve the security and confidentiality of said information. Such information shall be used only for conducting official business for the Department of Correction. Staff shall utilize such information only in accordance to all applicable provisions of Federal and State statutes and Department of Correction policies, including statutes and policies governing the use and dissemination of Criminal Offender Record Information (CORI), Evaluative Information, medical record information, substance abuse information and personal data. More specifically, users are prohibited from using their profiles to view data files that are not necessary to the conduct of their normal business, commensurate with their position and role within the organization. Furthermore, staff shall not query data... to satisfy their own interest or curiosity....The unauthorized querying, printing or sharing of data or information shall constitute a violation of the employee rules and regulations, and may result in disciplinary action.

103 DOC 751.03 (Exhibit 4)

CONCLUSION:

The role of the Civil Service 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." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300,304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when 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." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v.

Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). 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); School Committee of Brockton v. Civil Service Commission, 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 reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an appellant, the Commission shall affirm the action of the appointing authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

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 v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

APPELLANT MAINTAINED A RELATIONSHIP WITH A FORMER
INMATE WITHOUT SPECIFIC APPROVAL FROM HER SUPERINTENDENT OR
THE COMMISSIONER.

There is no dispute that Appellant never received specific approval from the Superintendent or the Commissioner to associate with a former inmate. On October 8, 2006, Appellant merely notified the Department that her mother's boyfriend's son was paroled on September 20, 2006. Appellant gave no indication that her mother lived next door to her and that TA would be visiting on a regular basis. Moreover, Appellant admittedly engaged TA in conversation when she encountered him at her mother's and permitted him over her home, allowing him to sleep over on several occasions.

(Testimony of Appellant) Both Captain Goins and Superintendent Bissonnette testified that this type of contact with a former inmate is clearly forbidden by the blue book.

Appellant failed to notify the Department that she was associating with TA on a regular basis until January 24, 2007 when she approached Superintendent Bissonnette. By this time, Appellant had already met with TA's parole officer several times and TA had repeatedly spent the night at her home. Moreover, she had already crossed the line and developed a romantic relationship with TA. (Testimony of Bissonnette) Finally, despite the fact that Appellant was fully aware of her obligation to receive specific approval from the Superintendent or the Commissioner before associating with a former inmate, Appellant married TA on August 6, 2007.²

² Appellant claims that she thought she was permitted to associate with TA until she was told otherwise. Ignorance of the rule, however, is no excuse. Moreover, Appellant's claim that she did not know she needed specific approval is a lie because in her January 25, 2007 letter to Superintendent Bissonnette, she asks for "specific approval." Clearly, she would not have asked for "specific approval" if she did not know she needed it.

Accordingly, not only did Appellant's conduct demonstrate a lack of judgment in violation of the Department's General Policy, but it was also a blatant violation of Rule 8(c), which states, "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.... Your relations with inmates, their relatives or friends shall be such that you should willingly have them known to employees authorized to make inquiries." Further, Appellant most certainly did not "give dignity to [her] position and [was not] circumspect in personal relationships regarding the company" she kept, as required by Rule 1.

I. APPELLANT LIED AND WAS LESS THAN FORTHCOMING WHEN INTERVIEWED BY CAPTAIN GOINS. FURTHER, SHE FAILED TO PROMPTLY REPORT HER LAW ENFORCEMENT CONTACT AND CHANGE IN MARITAL STATUS.

As explained in detail in paragraphs 22 through 26, above, Appellant was extremely evasive when questioned by Captain Goins regarding her relationship with TA, and outright lied on several occasions. For example, despite the fact that Captain Goins repeatedly asked Appellant to describe her relationship with TA during her interview on August 28, 2007, it was not until well into the interview, after taking a caucus with her Union representative, that Appellant notified Captain Goins that she married TA on August 6, 2007. Further, she falsely stated that she had only been to the parole office once and that she "just recently" learned that TA was her mother's boyfriend's son.

Finally, by the time she requested permission from Superintendent Bissonnette to continue her relationship with TA, she had already crossed the line as she had been associating with him to such an extent that they were discussing marriage.

Rule 19(c) of the Blue Book states, “Since the sphere of activity within an institution or the Department of Correction may on occasion encompass incidents that require thorough investigation and inquiry, you must respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate...or yourself.” Appellant violated this rule during her interviews with Captain Goins and continued to be evasive when questioned by this hearing officer during the hearing.

Moreover, Appellant admittedly failed to promptly report her change in marital status as well as her contacts with the Parole Division relative to the investigation into TA’s home plan. This conduct is in violation of Blue Book Rule 2(b), which provides, “Report promptly in writing to your Superintendent, DOC Department Head, or their designee, any change of events regarding your...marital status, and any involvement with law-enforcement officials pertaining to any investigation.”

III. APPELLANT QUERIED INMATES ON THE DOC’S INMATE MANAGEMENT SYSTEM FOR NON-BUSINESS REASONS.

While Appellant was assigned to MCI-Framingham, she accessed approximately 46 male inmates and viewed a total of approximately 117 screens on the DOC’s inmate management system (“IMS”). Moreover, in February 2004, Appellant viewed TA’s IMS data screen when he was housed at MCI-Norfolk. As MCI-Framingham is an all female institution, Appellant had absolutely no legitimate business reason for accessing this information. The Appellant admitted to this practice to pass the time. (Testimony of Appellant and Goins).

This conduct is in violation of Blue Book Rule 7(d), which states, “Employees should not ...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.” Moreover, Appellant’s conduct violated the Department’s Information Technology Security policy, 103 DOC 751, which states, in part:

Any person, group, or custodian accessing Department of Correction information must recognize his/her responsibility to preserve the security and confidentiality of said information. Such information shall be used only for conducting official business for the Department of Correction. Staff shall utilize such information only in accordance to all applicable provisions of Federal and State statutes and Department of Correction policies, including statutes and policies governing the use and dissemination of Criminal Offender Record Information (CORI), Evaluative Information, medical record information, substance abuse information and personal data. More specifically, users are prohibited from using their profiles to view data files that are not necessary to the conduct of their normal business, commensurate with their position and role within the organization. Furthermore, staff shall not query data... to satisfy their own interest or curiosity....The unauthorized querying, printing or sharing of data or information shall constitute a violation of the employee rules and regulations, and may result in disciplinary action.

IV. TERMINATION WAS THE APPROPRIATE DISCIPLINARY ACTION FOR APPELLANT’S CONDUCT.

The Department cannot permit officers who maintain romantic relationships with former inmates to remain employed by the Department because of the security risks associated with such conduct. The Department’s concern is that inmates that become overly friendly or engage in romantic relationships with former inmates could be persuaded to bring contraband into an institution or share confidential security and policy information with inmates. (Bissonnette; Exhibit 12; Exhibit 14). Moreover, in the case at bar, TA had been incarcerated with the DOC for approximately 15 years on charges of second degree murder and was on parole for less than a year when he married Appellant. Accordingly, the risk of TA having affiliations with current inmates or violating his parole and being recommitted are simply too great.

Further, it is Appellant's burden to demonstrate that she was treated differently than similarly situated employees, and she has failed to do so. She has not cited one example of another correction officer who: 1) engaged in a romantic relationship with a former inmate; 2) lied about it; and eventually 3) married the inmate---and was not terminated for this conduct. In contrast, the Department has cited several instances of employees who were terminated for similar behavior. For example: 1) CO Michael Lisbon was terminated for having contact with a former inmate and for failing to notify the DOC of his contact with law enforcement; 2) CO Joseph McVeigh was terminated for in appropriate relationship with a former inmate; 3) CO Melissa Poirier was terminated for knowingly associating with a former inmate and failing to cooperate with an investigation; and 4) CO Charlene Pucko was terminated for an inappropriate romantic relationship with an inmate. (Exhibit 30) In short, the Department has consistently terminated employees found to have engaged in romantic relationships with former inmates.

Moreover, in a very similar case, Melissa Poirier v. DOC et. al., the Federal District Court (Mass.) dismissed former CO Poirier's civil action claiming that the Department violated her constitutional right to maintain a "close, personal association" with a former inmate. Melissa Poirier v. DOC et. al., C.A. No. 06-10748-GAO, Opinion and Order (O'Toole, J.), p. 1, dated January 30, 2008 In that case, the Federal District Court opined, "it is legitimate for [the DOC] to guard against the possibility that relatively recently released inmates may seek to maintain contact with inmates who continue to be held in custody and may seek to utilize a friendship with an officer to facilitate those contacts for illicit purposes, such as the introduction of contraband." The

Court further found that these DOC rules were justified as it had a legitimate and rational basis for these rules. This *Poirier* opinion and order was further appealed to the US Court of Appeals, First Circuit (Mass.), No. 08-1290 P.01A. The First Circuit dismissed Poirier's appeal on February 27, 2009, and affirmed the Federal District Court's (Mass.) decision and order. (Cite as: 532 F.Supp.2d 275)

In addition, although Poirier did not marry the former inmate as Appellant married TA, the Court nevertheless noted that even if Poirier had been married to the former inmate, her termination still would have been appropriate. In reaching this conclusion, the Court noted that the impediment to marriage imposed by the DOC Rules merely impose on an employee "the unhappy choice of foregoing a desired relationship in order to retain her existing employment, or foregoing the employment in order to enter into the desired relationship, but they do not impose a direct bar on either choice."

Melissa Poirier v. DOC et. al, C.A. No. 06-10748-GAO at 10-11

Thus, The DOC has shown by a preponderance of the credible evidence in the record that it had reasonable justification to terminate the Appellant from employment.

For all the reasons stated above, the Appellant's appeal under Docket No. D1-08-203, is *dismissed*.

Daniel M. Henderson,
Commissioner

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

A true record. Attest

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:
Kandice Boyd
Amy Hughes, Atty