

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & SHELLEY WILLIAMS,
Complainants

v.

DOCKET NO. 07-SEM-03406

MASSACHUSETTS DEPARTMENT
OF CORRECTION,
Respondent

Appearances:

Chester V. Shea, Esquire for Shelley Williams
Carol A. Colby, Esquire for the Massachusetts Department of Correction

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about December 13, 2007, Complainant Shelley Williams filed a complaint with this Commission charging Respondent Department of Correction with gender discrimination and retaliation. The Investigating Commissioner initially dismissed both claims for lack of probable cause. On appeal, the Investigating Commissioner vacated the dismissal of the gender discrimination claim only, finding probable cause to credit the allegations of gender discrimination, which is the sole remaining charge before the Hearing Officer. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on January 9, 10, 11 and 12, 2012. After careful consideration of the entire record in this matter and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Respondent Massachusetts Department of Correction (“DOC”) is responsible for the care and custody of adult individuals sentenced to facilities within the Commonwealth’s correctional system. Respondent operates MCI-Concord, among other correctional institutions.

2. Complainant Shelley Williams has worked for Respondent Department of Correction since 1986. She is currently a Captain at MCI-Shirley. In August 2006, Complainant was a Lieutenant assigned to MCI-Concord where she worked the 3:00 p.m. to 11:00 p.m. shift. Complainant reported to either Captain Martin Doto or Captain Stephen Studley.

3. Respondent’s Correction Officers, Sergeants and Lieutenants are members of Unit 4 of the Massachusetts Correction Officers Federated Union (MCOFU). Captains are members of a separate union.

4. Lieutenants directly supervise Sergeants and indirectly supervise Correction Officers through the chain of command.

5. Captains Robert Tarantino, Studley, Hennessy and Doto were all employed at MCI-Concord in 2006 and 2007. They were friends with Complainant and they all socialized outside of work. (Testimony of Tarantino)

6. William Devine and Jorrna Maenpaa were the Directors of Security (DOS) at MCI-Concord in 2006. They reported to then Deputy Superintendent Gary Roden, who reported to Superintendent Peter Pepe.

7. For a six month period in 2006 and 2007, Timothy Hall was Respondent’s Acting Deputy Commissioner. (Testimony of Hall)

Respondent's Relevant Policies and Procedures¹

8. Respondent uses a computer database called the Inmate Management System (IMS). Within each facility, employees enter incident reports into IMS which can be viewed by other employees throughout the facility. Employees have the option of filing a "Confidential Incident Report," which bypasses the normal routing system and can be seen only by the superintendent. (Testimony of Roden & Tarantino)

9. At MCI-Concord, the Superintendent and Deputies meet every morning. At this meeting, all of the previous day's incident reports are reviewed and the Superintendent determines whether to conduct an investigation at the institutional level or, if the matter is significant, to refer the case to Investigative Services, which then determines whether the matter is a Category I or II. Category I cases are referred back to the institution and Category II cases remain at Investigative Services.

10. Under Respondent's Internal Affairs Unit policy, allegations of employee misconduct are considered either Category I or Category II incidents. (Ex. 4; Definitions 522.01) Category I incidents are investigated by the superintendent/division head of the correctional facility where the incident occurred and generally involve minor infractions of the rules, regulations, policies or post orders, such as inmate allegations against staff or minor incidents between staff. (Ex. 4)

11. Category II incidents generally involve major infractions of the rules, regulations, policies or post orders and are investigated by Respondent's Internal Affairs Unit. Category II incidents include matters such as criminal charges against an employee and allegations of

¹ Respondent's procedure for handling complaints has changed several times over the years. The policies referenced in this decision were in effect at the time of the events in question.

discrimination and retaliation. Pursuant to Internal Affairs Policy, the Chief of Investigative Services determines whether a complaint is considered a Category I or Category II complaint. (522.06, B.2.1; Testimony of Roden; Ex. 4)

12. Respondent's written "Policy for the Prevention and Elimination of Discrimination and Retaliation in the Workplace" calls for "zero tolerance" for discrimination, harassment and retaliation. Supervisory personnel are responsible to take all necessary steps to prevent discrimination and retaliation, and to promote and maintain a work environment free from such conduct. This policy is also referred to as "239" (103 DOC 239; Ex. 3, p.6)

13. Respondent also maintains written "Rules and Regulations Governing All Employees of the Massachusetts Department of Correction," also known as the "Blue Book," that govern such matters as employees' respecting one another. (Ex. 10)

14. Under the Investigative Services Procedures and the anti-discrimination policy, the Superintendent of each facility is required to refer cases alleging discrimination or retaliation to investigative services. (Testimony of Roden)

Events of August 28 and thereafter

15. On August 28, 2006, Audrey Bowersox, a rookie Correction Officer, was assigned to the "J-7" gate at MCI-Concord where she became engaged in a 20 minute conversation with Cpt. Martin Doto. According to Complainant, it was unusual for a Captain and a Correction Officer to engage in a lengthy conversation. Bowersox testified that shortly after Doto left the area, Complainant approached her in the presence of three other correction officers and said to her, "You turned Marty into a lesbian." Bowersox asked her what she meant and Complainant repeated the remark. (Bowersox testimony; Ex. 1; Investigation Interviews) Complainant

denied making this statement to Bowersox. Complainant testified that one of the other correction officers present remarked that Bowersox “flipped Marty” and that Complainant responded, “Marty is already a lesbian.” I credit Bowersox’s version of events.

16. Bowersox testified that she was “taken aback,” by the remark and asked Complainant whether she was expected to brush off the Captain when he engaged her in conversation. Complainant responded, “Well, maybe if you tell him one of your ‘girl stories,’ he’d walk away.” Bowersox testified that in the weeks before August 28, Complainant referred to her as “sour box.” I credit her testimony.

17. After the incident Complainant directed the officers to their duties and returned to her office. (Testimony of Complainant)

18. Several hours after the incident, Complainant called Bowersox on the telephone and asked her if she was angry with Complainant as a result of their conversation. Bowersox told Complainant that she was disappointed and embarrassed. (Testimony of Bowersox) Bowersox then called union stewards Shaun Cremin and Phil Matthews and informed them about the incident. She was upset and they advised her to go home.

19. On September 11, 2006, at the request of steward Shaun Cremin, William Devine, a Director of Security, met with Bowersox, Cremin and Matthews. Bowersox described the incidents with Complainant and told Devine that she wanted to resolve the matter informally, with the goal that Complainant cease any such behavior. Devine filed a confidential incident report summarizing the meeting (Bowersox testimony; Ex. 1) Devine testified credibly that under Respondent’s “239” policy, all acts of alleged discrimination must be reported and investigated. Once the matter was brought to the attention of the Superintendent, he was

required to submit a referral to Respondent's Office of Investigative Services, notwithstanding Bowersox's wish to resolve the matter informally. (Testimony of Roden & Devine; Ex. 3). Superintendent Pepe submitted the referral to the Internal Affairs Unit pursuant to Respondent's Internal Affairs Unit Policy (Ex. 1, Investigative Report)

20. On September 12, 2006 Deputy Superintendent Ronan called Complainant into his office for a brief meeting. He told her that an allegation of discrimination had been made against her and that she was entitled to representation at the meeting. Complainant declined representation from a member of MCOFU, because the union was bringing the charge against her. She instead asked to have Captain Studley present. Ronan would not allow Studley to be her representative because he was her potential supervisor and not a member of her union. However he gave permission to have Captain Doto present despite the fact that Doto was also Complainant's supervisor and not in her union.

21. Complainant testified that when she questioned Roden's logic in allowing Doto but not Studley to represent her, he became angry. At the meeting, Roden told Complainant about the allegations of misconduct against her and that a referral was filed that might result in an investigation. Roden instructed Complainant to continue to treat Bowersox in a professional manner. The meeting was informational and not part of the investigation. Also present were Director of Security Jorna Maenpaa and Affirmative Action Officer/ Treasurer Debra Leeman. (Testimony of Ronan & Complainant)

22. Shortly after the meeting, Complainant told Studley what had happened. The following day, Studley and Tarantino stopped Leeman in the hall and inquired about the

investigatory procedure. (C-1) Shortly thereafter, Devine called Studley into his office and told him not to interfere with the investigation.

23. On September 12, 2006, then Chief of Investigative Services Joel Berner assigned the matter to Internal Affairs Unit Correction Program Officer Christine Dodd, who conducted an investigation.

24. Dodd interviewed Bowersox, Complainant, and several correction officers and reviewed incident reports. Complainant told Dodd that that such banter was common at MCI-Concord and that it was done in a joking manner. On June 12, 2007, Dodd issued a written report concluding that Complainant's comments were inappropriate and violated the "Rules and Regulations Governing All Employees of the Massachusetts Department of Correction" (Blue Book) §6(b) which states, in part:

Do not foster discontent... be particularly discreet in your interest of the personal matter of any co-worker..." and §6(d) which states in part that.... "Relations between supervising and subordinate employees should be friendly in aim yet impersonal and impartial to such a degree that no subordinate employee may justly feel [sic] themselves favored or discriminated against....Report all infractions of law, rules and orders to a higher authority.

Dodd concluded that Complainant's comments did not constitute sexual harassment under 103 DOC 239.

25. In June 2007, Dodd's report was reviewed and accepted by Deputy Chief of Internal Affairs Paul Oxford. Thereafter, Chief of the Office of Investigative Services John McLaughlin signed off on Dodd's investigation. Director of Affirmative Action Alan Fox concurred with the

investigator's findings. (Ex. 1) McLaughlin then forwarded the report to Acting Deputy Commissioner Timothy Hall, whose role was to make the final decision in Category II cases.²

26. As he did with all Category II investigations, Hall conducted an Executive Review of Dodd's investigation. Hall concurred with Dodd's finding of a Blue Book violation. Hall testified that he determined that Bowersox's version of events was credible. Even if he believed Complainant's version of events, the fact that she commented in the presence of other officers that Bowersox was going to "flip" Captain Doto and failed to take actions against subordinate officers whom she alleged made similar comments violated Respondent's 239 policy. Hall then requested a "Commissioner's Hearing" be conducted, an appeal reserved only for instances when a suspension of more than five days was possible. (Testimony of Hall; Ex. 1)

27. On December 18, 2007, a Commissioner's Hearing was held before a hearing officer. Complainant was represented by counsel and was allowed to call witnesses. Director of Security Jorrna Maenpaa represented the Respondent's position.

28. On January 30, 2008, Commissioner Harold W. Clark upheld the hearing officer's report³ and determined that Complainant violated Rule 6(b) of the Blue Book. He also determined that Complainant violated 103 DOC 239, Section 1 which states that:

It is the policy of the Department of Correction ("DOC") that all employees, including contractors and vendors, work in an environment that is free from unlawful discrimination based on race, color, age (40 and above), sex (gender), sexual orientation, ancestry, national origin, handicap (disability), criminal records (applications only), genetics, veteran or military status, or any other legally protected status (hereinafter referred to collectively as "protected classes"). Discrimination and/or harassment based on an employee's membership in a protected class will not be tolerated.

² Hall was Acting Deputy Commissioner for approximately six months in 2006 and 2007. He reviewed more than 100 investigations during that time.

³ The hearing officer's report was not a part of the record.

29. Clark found that there was substantial evidence presented to support the charge against Complainant and found just cause to suspend her for a period of one working day. (Ex. 2) Complainant appealed to the Civil Service Commission, which upheld her one-day suspension. (Testimony of Complainant)

Comparators offered by Complainant

30. On February 17, 2005, Captain Tarantino filed a Confidential Incident Report stating that a confidential informant reported that during a union meeting, a correction officer and her “followers,” who “despised” Studley and Complainant, were conspiring to have a woman call Studley’s wife and claim that he was having an affair with Complainant. Tarantino testified that no one was disciplined in response to the report. The matter did not concern allegations of discrimination or retaliation. (Ex.C-4; Testimony of Tarantino)

31. On June 26, 2005, Captain Robert Tarantino filed a confidential incident report stating that a male Sergeant refused Complainant’s telephone directive to have an officer escort a nurse from one part of the facility to another. Tarantino then met with the Sergeant, who denied refusing Complainant’s orders. The Sergeant went home sick despite Tarantino’s warning that doing so would be considered abuse of sick time. According to Tarantino, however, the Sergeant received a three day suspension. This incident occurred prior to the categorization of complaints as Category I or Category II, and there were no allegations of discrimination. (Ex. C-2; Testimony of Tarantino)

32. On September 7, 2006, Captain Tarantino filed a confidential incident report concerning an argument between a male C.O. and a male Lt., who told Tarantino that the C.O. was argumentative and disrespectful and threatened to resolve future disputes through physical

violence. Tarantino informed DOS Devine about the incident and Devine resolved the issue internally. The matter did not concern allegations of discrimination. (Ex. C-3; Testimony of Tarantino & Wright)

Comparators Offered by Respondent

33. On July 23, 2004 a male was suspended for five days by then Commissioner Dennehy after several staff members heard him say “Superintendent Bissonnette is a c__ t.” He was found to be in violation of the Blue Book. (Ex.6)

34. On August 3, 2004, a male of unidentified rank was suspended for ten days and required to attend diversity training for falsely claiming that he was not present when another employee else made a racially insensitive remark to a co-worker. He violated the Blue Book rule stating that employees “must respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee or yourself.” (Ex. 6)

35. On January 6, 2005 a male employee was suspended for a three-days (with two days held in abeyance for nine months), for violating the Blue Book for using profanity and making inappropriate and unprofessional comments to another employee. (Ex. 6)

36. On August 7, 2006 a male officer was suspended for thirty days (with 20 days to be served and 10 days held in abeyance for a year) for loudly stating in the Shift Commander’s office, “Unless you are black or a female you don’t get no play.” This was the employee’s second incident of making racially charged statements. He was found to have violated the Blue Book. (Ex.6)

37. On October 17, 2006, a male correction officer was found to have violated the Prevention and Elimination of Workplace Violence Policy and the Prevention and Elimination of Discrimination and Retaliation Policy and was suspended for 60 days for stating about another correction officer, “Who the f_ does that n__think he is, I’ll f__ing shoot him.” (Ex. 6)

38. On October 20, 2006, a male correction officer was suspended for three days after an investigatory review found him in violation of the Blue Book and the anti-discrimination and retaliation policy. He was alleged to have said about members of a Native American Group meeting in the presence of inmates and an outside vendor, “You wanna-be Indians. If you were real Indians, you could make it rain. I bet none of you even have 1/8th Indian blood in you. Do you want me to let these wanna-be Indians out.” He was investigated by a Captain and admitted only to making a “wanna-be” comment about the group. (Ex.6)

39. On October 31, 2006, a male Shift Commander was suspended for one day for not reporting to his superior that he’d learned of a Sergeant directing a racial slur at a contractor/employee. The shift commander was found to have violated the Blue Book and policy 239 which requires anyone with knowledge of an incident of discrimination to report it. (Ex.6)

40. On September 18, 2007, a male captain was suspended for three days for verbally harassing and acting disrespectfully toward an employee and for being untruthful in his investigatory interview. He was charged with Blue Book violations. (Ex.6)

41. On May 15, 2007 a male correction officer was suspended for five days for violating the Blue Book and the Prevention and Elimination of Discrimination and Retaliation Policy for making a disparaging statement in the presence of other correctional staff. (Ex. 6)

42. On August 20, 2007 a male correction officer was found to have violated the Blue Book and Prevention and Elimination of Discrimination and Retaliation Policy for using ethnically derogatory terms in reference to co-workers of Portuguese descent and for using inappropriate language toward the Acting Shop Supervisor and refusing the supervisor's directive. He was suspended for three days.

43. On April 16, 2008 a male manager, with a prior disciplinary record was demoted and transferred for calling a Captain a derogatory name and subsequently lying about it. (Ex. 6)

44. On November 21, 2008 a male correction officer was given a three-day suspension after calling a coworker disparaging names, throwing food at the co-worker, requiring staff to restrain him and failing to reply fully and promptly to inquiries of DOC investigators. He was found to be in violation of the Blue Book and Prevention and Elimination of Workplace Violence policy. (Ex. 6)

45. On February 13, 2008, a female correction officer was found to be in violation of the Blue Book and was suspended for two days for being verbally abusive to another female in the presence of inmates. (Ex.6)

46. On October 31, 2008, a correction officer who referred to an inmate as a "dumb ass n____" in the presence of co-workers and failed to notify officials of court appearances on an unrelated criminal matter was found to have violated the Blue Book and Prevention and Elimination of Discrimination and Retaliation Policy and was suspended for two days. (Ex.6)

47. On September 18, 2008 a male employee was terminated after an investigation and hearing concluded that over an extended period of time, he had engaged in inappropriate behavior toward subordinates, made inappropriate comments of a sexual nature to subordinates

and engaged in inappropriate physical touching with subordinates. He was found to be in violation of the Blue Book and Respondent's policies concerning Prevention and Elimination of Workplace Violence and 239. (Ex. 6)

48. On November 18, 2008, a female employee was transferred for making an inappropriate statement of a sexual nature to a Sergeant, claiming the Sgt. gave an inmate special treatment, repeatedly telling the Sgt. he lacked control over the unit and asking the Sgt. to write her up because she no longer wanted to work in her unit. At her interview with the Departmental Investigator she made unprofessional remarks concerning inmates.

III. CONCLUSIONS OF LAW

General Laws c.151B s. 4(1) prohibits discrimination in the terms and conditions of employment on account of gender. In order to establish a prima facie case of gender discrimination, Complainant must show that she is a member of a protected class, that she was subjected to adverse treatment and that similarly situated persons not of her protected class were treated differently. Abramian v. President & Fellows of Harvard College, 432 Mass 107, 116 (2000); Wheelock College v. MCAD, 371 Mass 130 (1976). Once a prima facie case is established, Respondent must articulate a legitimate non-discriminatory reason for its actions. Abramian, supra, at p. 116. If Complainant can demonstrate that the articulated reason or reasons are a pretext for discrimination and that Respondent acted with discriminatory intent, motive or state of mind, then she will prevail. Lipschitz v. Raytheon Co., 434 Mass. 493 (2001).

In this case, Complainant, who is female, was performing her position as a Lieutenant at MCI-Concord in a satisfactory manner with no prior record of discipline when, following a complaint of sexual harassment against her by a subordinate, she was ultimately determined to

have violated several of Respondent's policies and was suspended for one day.⁴ Complainant contends that she was mistreated and discriminated against on the basis of her gender throughout the investigative process.⁵

Complainant first alleges that Respondent's refusal to allow her to have Captain Studley present at a meeting with the Deputy Superintendent violated her "Weingarten" rights and that male Correction Officers were permitted to have the witness of their choice at such meetings.⁶ While union matters such as Weingarten rights are generally not within this Commission's purview, even if Complainant could establish that she was treated differently from male employees with respect to her choice of representative at a meeting, no *adverse action* resulted from the matter, as the meeting was informational only and was not disciplinary in nature. At that time, the Bowersox complaint had already been reported to the Internal Affairs Department and the investigation was out of the hands of the Supervisors at MCI-Concord. Thus Complainant has failed to establish a *prima facie* case with respect to this incident.

Complainant further alleges that Respondent administered discipline in a selective manner and discriminated against her on the basis of gender. In support of this allegation, Complainant produced evidence of reported incidents where male employees engaged in conduct that she contends was more serious than hers, where the incidents were resolved at the institutional level. One incident involved an argument between a male lieutenant and his subordinate that was resolved informally by the DOS. Another incident involved allegations by a "confidential informant" regarding a plot by union members to sabotage Capt. Studley's

⁴ At the public hearing, Complainant's counsel stated that Complainant "said what she said" to Bowersox and does not challenge her one-day suspension.

⁵ While Complainant disputes making the remark to Bowersox about "flipping the captain," she acknowledges that she did not report her subordinates for doing so and acknowledges remarking that the Captain was already a lesbian.

⁶ In her post-hearing brief, Complainant refers to an incident report showing a male was allowed a representative at an investigative hearing. This incident report was not offered into evidence and is not part of the record.

marriage. A third incident involved a correction officer refusing Complainant's orders. Tarantino testified that in that instance, the correction officer received a three-day suspension. I conclude that the incidents cited by Complainant are sufficient evidence of disparate treatment to establish a prima facie case of gender discrimination.

Once Complainant has established a prima facie case of discrimination, the burden of production shifts to Respondent to offer legitimate, non-discriminatory reasons for its conduct. Abramian, supra.; Wheelock College, supra.; Blare v. Husky Injection Molding Systems Boston, Inc., 419 Mass 437 (1995). Respondent must "produce credible evidence to show that the reason or reasons advanced were the real reasons." Lewis v. Area II Homecare, 397 Mass 761, 766-67 (1986).

Respondent's articulated reasons for its disciplinary actions against Complainant are that its rules and regulations require correctional facilities to report all cases involving allegations of potential sexual harassment or discrimination to the Internal Affairs Department, which determines whether it should investigate the matter as a Category II incident or send it back to the institution as a Category I incident. In this case, the Internal Affairs Department determined that the incident merited investigation. Once completed, the investigation was reviewed by the Deputy Commissioner who, in this matter, determined that the Complainant's conduct had violated both "Blue Book" and anti-discrimination policies and referred the case to a Commissioner's Hearing which upheld the Deputy Commissioner's determination and resulted in the Commissioner issuing Complainant's one-day suspension.

Respondent has provided voluminous records for predominantly male correction employees demonstrating any number of males who were subjected to suspensions of similar or

greater duration for conduct involving discriminatory comments toward co-workers and subordinates. Similarly, in this case, Complainant's comments toward her rookie subordinate regarding her sexual orientation were found to have been hurtful and offensive and were clearly not viewed as a joke by Bowersox, who complained to her union because the remarks were so upsetting to her. I conclude that Respondent has articulated legitimate, non-discriminatory reasons for its treatment of Complainant throughout the investigatory and disciplinary process and has demonstrated that its treatment of similarly situated male employees is consistent with its treatment of Complainant.

Once Respondent has set forth evidence of legitimate, non-discriminatory reasons for its actions, the Complainant must show that Respondent's reasons were a pretext for unlawful discrimination. Complainant need not disprove all of the non-discriminatory reasons proffered by the employer, but need only prove that "discriminatory animus was a material and important ingredient in the decision making calculus." Chief Justice for Administration and Management of the Trial Court v. Massachusetts Commission Against Discrimination, 439 Mass. 729, 735 (2003).

As evidence of pretext, Complainant asserts that certain male employees who engaged in conduct more severe than hers were treated less harshly. She sites as examples, a male C.O. who had an argument with his superior officer; a male C.O. who refused Complainant's order to provide an escort to a nurse from one area to another and a report concerning a potential plot by some union members to tell Studley's wife that he was having an affair with Complainant. In all of the cases cited by Complainant, the matters were handled within MCI-Concord and were not referred to internal affairs for an investigation. However, in *none* of these cases was an employee accused of engaging in discriminatory conduct or sexual harassment toward a

subordinate officer. Respondent was not required to refer such incidents to the Internal Affairs Department. Thus, I conclude that because the employees cited by Complainant were ultimately not similarly situated to her, she has failed to prove that Respondent's reasons for referring her complaint to internal affairs and the ultimate discipline were a pretext for discrimination.

Complainant's argument that none of the cases cited by Respondent originated at MCI-Concord is not proof of pretext. In Complainant's case, the decision-makers at Concord were *required* to report the complaint to Internal Affairs. Even so, there was no finding of discriminatory conduct until the Acting Deputy Commissioner Hall reviewed the Internal Affairs investigation and determined that there was a violation of policy "239." There was no evidence whatsoever that Hall harbored discriminatory animus toward Complainant based on her gender. Nor is there any evidence that anyone else in Respondent's hierarchy was motivated by discriminatory intent, motive or state of mind. Lipchitz v. Ratheon Company, 434 Mass. 493, 503 (2001). Rather the evidence suggests that Respondent acted with the belief that her inappropriate conduct, particularly given her position of superior officer, merited the discipline imposed.

Further, while there was obvious discord among certain employees at MCI-Concord, there was no evidence that the discord was based on gender. The evidence at public hearing suggested that the tensions were between the lower ranking MCOFU members and higher ranking officers such as Complainant and her Captain friends, as illustrated by Complainant's refusal to have a steward from her own union represent her at a meeting with the Deputy Superintendent. It may have also stemmed from Captain Tarantino's use of a "confidential informant" as a spy at the MCOFU union meetings. Finally, Complainant asserts that the kind of comments she made to Bowersox were commonplace and done in a joking manner and that she was unfairly singled out for punishment. Even if such an atmosphere existed at MCI-

Concord, it was Bowersox's complaint that set the events in motion, and there was no evidence whatsoever that the process was applied to Complainant in a disparate or discriminatory manner related to her gender.

I therefore conclude that Respondent did not engage in unlawful gender discrimination and conclude that the complaint in this matter be dismissed.

IV. ORDER

For the reasons stated above, the complaint in this matter is hereby dismissed.

This constitutes the final decision of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal within ten days of receipt of this order and a Petition for Review within 30 days of receipt of this order.

SO ORDERED, this 11th day of July 2012

JUDITH E. KAPLAN,
Hearing Officer