

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

DAVID CIBOR,
Appellant

v.

D-15-150

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
David Cibor

Appearance for Respondent:

Joseph Santoro
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

DECISION

On July 23, 2015, the Appellant, David Cibor (Lt. Cibor), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Department of Correction (DOC) to suspend him from his position of Correction Officer / Chef for one (1) day.

On August 11, 2015, I held a pre-hearing conference at the offices of the Commission, which was attended by Lt. Cibor, a DOC representative and counsel for DOC. There is no dispute regarding the facts relevant to deciding this appeal.

Lt. Cibor has been employed by DOC since 1987. He has served in the civil service position of Correction Officer / Chef since 2008, a supervisory position at the Northeastern Correctional Center.

Prior to the incident in question, Lt. Cibor received a letter of reprimand in January 2014 regarding irregularities with ordered food. Specifically, Lt. Cibor ordered food for a special menu to coincide with his anniversary date as an employee at DOC. In January 2015, Lt. Cibor received another letter of reprimand for “unprofessional attitude.”

On February 11, 2015, as Lt. Cibor was leaving the kitchen to attend a medical appointment, he was told by one (1) of his employees that the Department of Public Health (DPH) was on-site to conduct an unannounced inspection. In response, Lt. Cibor stated, “why the fuck should I care?” and left for his medical appointment. Lt. Cibor does not dispute making this statement and acknowledges that he was “irritated” that day because DOC had notified him that he would need a physician’s note to excuse his absence.

Later that day, when the Shift Commander asked Lt. Cibor’s employee if he (the employee), had informed Lt. Cibor about the inspection, the employee informed the Shift Commander of the verbal exchange referenced above. An investigation ensued and DOC, taking into consideration Lt. Cibor’s recent discipline for “unprofessional attitude”, issued him a one (1)-day suspension. Specifically, DOC found that Lt. Cibor violated DOC rules related to standards of correctional service and interpersonal relationships among employees. This appeal ensued.

As stated above, there is no dispute regarding the facts relevant to deciding this appeal. Rather, Lt. Cibor, while acknowledging that he made the remark in question,

argues that profanity is commonplace in the kitchen and DOC may be “busting his chops” because he is a union steward.

DOC, as part of the pre-hearing conference, referenced another DOC employee who was recently disciplined for using profanity and pointed to the undisputed fact that Lt. Cibor is a supervisor and that the comments were made in an open area in which inmates gather.

G.L. c. 31, § 43 provides in part:

“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.”

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 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

It is undisputed that Lt. Cibor received a written reprimand on January 30, 2014 and another written reprimand on January 21, 2015. Less than a month later, after one (1) of his employees notified him of an unannounced inspection by the Department of Public Health, he told his employee “what the fuck do I care?”

Inherent in the duties of a supervisor is the responsibility to lead by example and

motivate employees. Lt. Cibor did neither that day with his flippant response and DOC was justified in issuing him a one (1)-day suspension, particularly given the recent written reprimands he received, including one for his unprofessional attitude. Even if Mr. Cibor was able to show that profanity was commonplace in the kitchen and/or that others were not disciplined for the same behavior, it would not change my opinion regarding this modest, and appropriate discipline. Therefore, a full evidentiary hearing is not necessary here. (See Zachary v. Dep't of Correction, Suffolk Sup. Ct., C.A. No. 07-3197 (2008) (upholding Commission decision to affirm a 5-day suspension based on information received at pre-hearing conference without a full hearing.)

Lt. Cibor's appeal under Docket No. D-15-150 is hereby **denied**.

Civil Service Commission

Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on August 20, 2015.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:
David Cibor (Appellant)
Joseph Santoro (for Respondent)