

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
RIGAUBERT AIME,
Complainants

v.

DOCKET NO. 11-BEM-02854

MASSACHUSETTS DEPARTMENT
OF CORRECTION,
Respondent

Appearances: Susan K. Howards, Esq. and Philip Weber, Esq. for Complainant Aime
James F. Kavanaugh for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On October 31, 2011, Complainant, Rigaubert Aime, filed the instant complaint with the Commission alleging numerous acts of retaliation by Respondent, Department of Correction, for his having filed an earlier complaint of discrimination against Respondent with this Commission on March 1, 2011.¹ Complainant, who was employed as a Correction Officer at Respondent's Lemuel Shattuck Hospital Correction Unit in Boston, alleged the following acts of retaliation: (1) Respondent's delay in investigating an incident that occurred in June of 2010, for which Complainant was ultimately disciplined; (2) two incidents that occurred on March 8, 2011, when Complainant believed he was being forced to attend an investigative interview of the June 2010 incident without benefit of union representation, and the subsequent receipt of discipline for

¹ The March 11, 2011 Complainant was dismissed by the Investigating Commissioner on November 27, 2013 for Lack of Probable Cause.

being insubordinate to the Deputy Superintendent of the facility on that same day; (3) an incident that occurred on May 29, 2011 regarding forced overtime in which Complainant asserts he was treated adversely by a Lieutenant; (4) a two-day suspension served on October 18 and 19, 2011, for failing to timely report his observation of two fellow correction officers who were allegedly sleeping while on duty; and (5) his involuntary transfer by the Superintendent to another Department of Correction facility on July 27, 2011. Respondent denies that its actions surrounding any of the above incidents were motivated by retaliation for Complainant's charge of discrimination.

The Investigating Commissioner found probable cause to credit the allegations of the complaint and efforts at conciliation were unsuccessful. The matter was certified for a Hearing and the matter was heard by the undersigned hearing officer over the course of seven days in January, February, March and April of 2016.² Complainant testified on his behalf and called two additional witnesses. The Respondent called twelve witnesses on its behalf. The parties filed post-hearing briefs on August 29, 2016. Having considered the 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. Complainant, Rigaubert Aime, is an African American male who has been employed by Respondent as a Correction Officer I for over twenty years. At the time of the hearing he worked at a Department Facility in Roslindale, MA known as the Boston Pre-Release Center.

² A portion of certain testimony on two of the hearing dates was re-constructed from the notes of the Hearing Officer due to problems with the digital recorder. A summary of the testimony in narrative form was reviewed and approved by both parties as an accurate account of the testimony.

Prior to July 27, 2011, Complainant worked at the Lemuel Shattuck Hospital Correctional Unit (LSHCU) in Boston. (Testimony of Complainant)

2. Respondent, Department of Correction, is an agency of the Commonwealth of Massachusetts, responsible for the care and custody of individuals sentenced to any of the facilities within the Commonwealth's correctional system. Respondent controls and manages a distinct unit within the Lemuel Shattuck Hospital in Boston known as the Lemuel Shattuck Hospital Correctional Unit. (LSHCU). The two specific areas of LSHCU where inmates receive medical care are identified as 8 North and the Outpatient Department (OPD). (Testimony of Driscoll)

3. The Superintendent of LSHCU at all times relevant to the instant charges was Raymond Marchilli. Directly below the Superintendent was Deputy Superintendent, Anne Manning. Below the Deputy Superintendent in the chain of command was Administrative Captain, Donna Driscoll, who began her employment with the Department in 1986 and was made Captain in 2007. The facility also employed several Correction Officer III's who serve as Lieutenants, Correction Officer II's who serve as sergeants and Correction Officer I's. (Testimony of Marchilli, Manning, Driscoll)

4. Respondent is a paramilitary organization that operates with a "chain of command" structure. Each employee is assigned a rank within the organizational structure and all matters are to be addressed within the chain of command through one's immediate supervisor. (Testimony of Complainant, Driscoll, Jeghers) Any time a Correction Officer is given an order or instruction by an individual who is superior in rank, the Officer is obligated to comply with that order, except in limited circumstances. Failure to abide by an order from a superior officer is a violation of Department policy and such failure may result in discipline of the subordinate

officer. (Testimony of Adams and Jeghers) There was ample credible testimony that when a Correction Officer of a subordinate rank fails to comply with an order or directive of a superior officer, the entire operation and structure of the organization is undermined, creating circumstances that may lead to dissension and a chaotic and undisciplined work environment. (Testimony of Manning, Driscoll, Jeghers)

5. Respondent has a rule book distributed to all employees, entitled Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, also referred to as the "Blue Book." Any employee who fails to comply with the Department rules and regulations is subject to discipline. (Jt. Ex. 1; Ex. C-20) Respondent has a practice of progressive discipline, meaning that with each subsequent disciplinary event, the Respondent imposes more severe discipline. The progression of discipline typically goes from a warning, to suspension, and ultimately termination. (Joint Ex. 1; Testimony of Marchilli, Driscoll)

6. Respondent has an Internal Affairs Unit policy which sets out the procedure for investigating workplace incidents or allegations of misconduct. (Ex. R-12) Matters may be investigated within a Department facility by employees assigned to that facility, who are trained to conduct investigations, or by Respondent's Internal Affairs Unit (IAU), also known as the Office of Investigative Services. IAU is a separate investigative unit not affiliated with any Department facility. (Testimony of Marchilli, Driscoll, Adams; Ex. R-12) Investigations are categorized as Category I or Category II depending upon the severity of the allegations of misconduct. The IAU conducts only Category II investigations which involve more severe conduct. (Testimony of Marchilli, Driscoll, Adams) An internal investigation is typically initiated by a Confidential Incident Report submitted to the facility superintendent or division head who refers the matter to IAU. IAU reviews the allegations and determines whether the

investigation will be a Category I or II and whether the facility will investigate the matter in-house. (Marchilli, Driscoll, Adams, testimony; Ex. R-12)

7. Complainant was involved in a dispute on June 25, 2010 with LSHCU Shift Commander, Lt. Michael Jeghers. The circumstances of the underlying dispute are not the subject of this complaint and were not addressed at the Hearing. Complainant's sole allegation surrounding this incident is the inordinate amount of time the Department took to investigate and reach a resolution of the matter. He claims this delay was deliberate and was retaliation for his having filed an MCAD complaint in March of 2011. After IAU determined the investigation was to be a Category I, handled internally at the facility, LSHCU Superintendent Marchilli assigned the matter to Lieutenant Douglas Adams to investigate. One of the job titles Lt. Adams held at the LSHCU facility in 2010 and 2011 was Superintendent's Special Investigator. At the time he was assigned to investigate the matter, Lt. Adams had handled hundreds of investigations for Respondent. Complainant claims that Supt. Marchilli and Lt. Adams intentionally delayed the investigation to retaliate against him. (Ex. R-2; Complainant and Adams testimony)

8. Lt. Adams was assigned the investigation of the June 2010 incident on July 1, 2010. Handling investigations was just one of Adams' many duties at LSHCU as he held several job titles. He testified that LSHCU staffing was at a "bare bones" level during this time period. (Adams testimony) Adams also testified that scheduling investigative interviews with employees was difficult because of varying schedules particularly during the summer months when employees typically took vacations. Complainant had various sick and vacation days from August through December of 2010. Complainant's first interview was scheduled to occur on December 21, 2010, but Complainant did not report to work on that day, stating that he was sick. Thereafter, Complainant was absent for the months of January and February 2011 due to sick

leave, presumably due to stress and other mental health issues. (Complainant testimony)

Complainant was scheduled to be interviewed on March 8, 2011 shortly after his return from leave, but that interview did not occur for reasons discussed below.

9. Lt. Adams provided Complainant one week advance verbal notice of the scheduled March 8, 2011 interview. By law, as a member of the Massachusetts Correction Officers Federated Union (MCOFU), Complainant was entitled to have union representative present with him at any investigative interview that might result in disciplinary action. (Adams testimony, Mograss testimony) It is the responsibility of the employee to secure union representation and it is the Union's responsibility to represent its members. Union stewards are obligated to protect their members' interests, including representing MCOFU members, even if that means representing an employee on their own time. (Mograss, Henderson, Marchilli & Wells testimony)

10. Complainant requested Correction Officer Robert Henderson, who was a union steward, accompany him to the interview, which was scheduled for 6:00 a.m., during Complainant's 11:00 p.m. to 7:00 a.m. shift. Henderson advised Lt. Adams that he would not attend that interview because it was not during Henderson's regularly scheduled shift which was 9:00 a.m. to 5:00 p.m. Henderson requested that Supt. Marchilli pay him overtime to attend the interview during his off-duty hours, but Marchilli denied his request.³ Henderson did not advise Complainant that he would not attend the interview. (Adams, Henderson testimony) When Complainant was summoned to attend his interview he asked for permission to contact CO Henderson but was unsuccessful. Lt. Adams gave Complainant the option to request a different

³ There was testimony by MCOFU President, Jon Mograss, that as a matter of past practice, overtime had been paid to union representatives who appeared outside their regularly scheduled shift, but there is no evidence that Marchilli denied representation to Complainant for retaliatory reasons, particularly where Complainant had yet to file his first MCAD discrimination complaint.

CO to serve as his representative, but Complainant rejected this option, whereupon Adams informed Complainant that he was going to proceed with the interview. Complainant refused to answer any questions or to otherwise participate in the interview. As a result, Adams became angry and raised his voice and the interview was terminated by Deputy Superintendent Manning whose office was nearby. Complainant testified that Adams yelled at him in an abusive manner. I credit Complainant's testimony that Adams raised his voice to him. (Complainant, Henderson, Marchilli & Adams testimony)

11. Deputy Superintendent Ann Manning was aware of the investigative interview Adams had scheduled with Complainant for March 8, 2011, and determined that this would be a convenient time to speak to Complainant concerning two other matters. She intended to give Complainant a copy of a letter of reprimand for conduct that had occurred in December of 2009, which had been issued in January 2011 while Complainant was on leave. Deputy Superintendent Manning had informed Complainant of the reprimand via telephone while he was out on leave and advised him a copy would be mailed to him. When Complainant returned from his extended sick leave, he asserted he had never received the letter of reprimand. Manning also intended to discuss with Complainant a Confidential Incident Report filed by the Shift Commander Lt. Hawkins on February 28, 2011, alleging that Complainant had hung up the phone on Hawkins, had questioned his direction and had ignored him several times when Hawkins asked how things were going on his post.⁴ Manning intended only to remind Complainant that Hawkins was the shift commander, that his directives must be followed and that Complainant could not ignore his

⁴ Complainant had a history of conflict with Lt. Hawkins, who was the principal subject of Complainant's allegations in his initial MCAD complaint filed on March 1, 2011. By most accounts, Hawkins was a difficult and unpleasant person who was disliked by many CO's. (Heeks testimony, Driscoll testimony) Complainant asserted that he refused to respond to Hawkins' question of "how are you doing?" because he believed it was a personal question that did not require a response, as opposed to a question about how the shift was going. I do not find this assertion credible.

inquiries. (Manning testimony; Jt. Exs. 20, 29; Ex. R-7) Manning testified that this meeting was not disciplinary in nature and she did not intend to impose any discipline. I credit her testimony.

12. Deputy Manning's office was located near Lt. Adams' office and on the morning of March 8th, she heard Adams raise his voice and ask Complainant several times if he was refusing to be interviewed. She proceeded to Adams' office and informed them both that the interview would not proceed and that Complainant need not participate. She then informed Complainant that she needed to speak to him about another matter and directed him to her office. Complainant did not respond to Manning and walked past her shaking his head to indicate "no." Manning twice more directed Complainant to proceed to her office but he continued to walk away from her and did not respond verbally. This conduct occurred in the presence of Lt. Adams and Capt. Donna Driscoll. (Manning, Driscoll, Adams testimony) Manning again advised Complainant that she was responsible for managing LSHCU and that she needed to speak with him. He responded that he did not have a union representative. Manning told him that the meeting did not concern discipline and he therefore did not need, and was not entitled to, union representation. Capt. Driscoll repeated that the meeting was not disciplinary in nature. (Manning, Driscoll testimony; Jt. Ex. 28, Exs. R-10, R-13) Both Manning and Driscoll testified that an employee is not entitled to union representation in every meeting with supervisory personnel. Their practice when conducting meetings with correctional staff is to inform the employee before the meeting begins that the employee should seek to have a union representative present during the meeting if discipline is contemplated or likely to result. Notwithstanding that no discipline was contemplated, Manning allowed Complainant to contact a union steward and Correction Officer Kenny Beers, appeared as a union representative for him. (Manning, Driscoll testimony; Jt. Ex. 7; Ex. R-13)

13. The meeting then proceeded with the Deputy Superintendent, Captain Driscoll, Complainant, and his union representative. Manning began the meeting by informing Complainant that his failure to respond to her repeated requests to speak with him in her office was insubordinate and would be reported to Supt. Marchilli. Complainant became angry, denied any insubordinate behavior, and challenged Deputy Manning by stating, "It will be your word against mine." At that point, CO Beers requested a break in the meeting, which was granted. Complainant and CO Beers returned whereupon Complainant apologized to Manning for his earlier conduct, stating that he did not mean any disrespect, that he always found Manning to be "very nice," and that she treated him fairly. (Manning, Driscoll testimony; Jt. Ex. 7, Ex. R-13) Manning then gave Complainant a copy of the Letter of Reprimand issued some two months earlier, of which he already was aware. She then discussed Lt. Hawkins February 28, 2011 Confidential Incident Report. She told Complainant he could not refuse to respond to operational inquiries from the Shift Commander, that such conduct raised serious security concerns, and that treating a fellow officer with civility and respect was required by Blue Book Rules 6(a) and 6(b). (Manning testimony; Jt. Exs. 1, 7, 20, 28, 29)

14. Deputy Manning reported Complainant's insubordinate behavior to Superintendent Marchilli on March 8, 2011 in a Confidential Incident Report. Manning testified that she was "flabbergasted" by Complainant's conduct on March 8th and stated that prior to the incident, she had never had a similar experience with any other Correction Officer. She explained that Respondent is a paramilitary organization and emphasized that authority must be respected. She added that ignoring directives from a superior officer could jeopardize a Correction Officer's own safety and that of his fellow employees. (Manning testimony) Manning testified that she had no knowledge of Complainant's discrimination complaint at that time and denied that her

actions in reporting the March 8, 2011 incident were intended to retaliate against Complainant for his protected activity of filing such complaint. On March 29, 2011, Supt. Marchilli issued a one-day suspension to the Complainant for his insubordinate conduct in failing to respond and to acknowledge Deputy Manning's directives on March 8, 2011.⁵ (Jt. Ex. 16)

15. Following the March 8, 2011 incidents, Complainant took sick days on March 9th and 10th, and a personal day on March 13th, 2011, purportedly for stress resulting from events of March 8th. The interview with Adams was rescheduled for March 15, 2011, and again did not occur. Complainant was ultimately interviewed by Adams in connection with the June 2010 incident on March 29, 2011. Adams conducted seven interviews in connection with the June 2010 matter beginning on September 23, 2010 and ending on April 22, 2011. (Adams testimony, Jt. Ex.-27; Exs. R-2, R-3, R-7, R-9)

16. Once the interviews were complete, Adams reviewed the documentation he had compiled, listened to audio tapes of the interviews, drafted the investigative packet and submitted his report to Supt. Marchilli for his review on August 4, 2011. Adams testified that based on his experience, the time from assignment of the investigation to submission of his final investigative report was average. (Adams testimony; Ex. R-2) Adams also testified that during the investigation, he was not aware of the fact that Complainant had filed a claim of discrimination at MCAD and he denied that he intentionally delayed the completion of the investigation. I credit his testimony that he did not intentionally delay his investigation and find that his efforts were hampered in large part by Complainant's extended absence from work from late December 2010 until early March 2011.

⁵ The Complainant appealed this suspension to the Civil Service Commission, which vacated the one-day suspension based on a finding that Deputy Manning's meeting with Complainant was disciplinary, because she intended to give him a copy of the previously issued disciplinary letter, a position the Department disagrees with. The Civil Service Commission decision does not address retaliation for protected activity and has no bearing on the issue before me. (See Jt. Ex. 19)

17. Supt. Marchilli reviewed the investigative packet and issued a recommendation on September 19, 2011, requesting that a disciplinary hearing be held to address Complainant's conduct in June 2010.⁶ (Ex. R-20) Marchilli testified that given his many pressing duties and obligations as Superintendent of LSHCU, six weeks was not a lengthy period of time for him to have completed the review. (Marchilli testimony) Supt. Marchilli denied that he intentionally delayed completion of the investigation into the June 2010 incident and I credit this testimony.

18. On September 28, 2011, Complainant received a two-day suspension, that he also alleges is evidence of retaliation. The two-day suspension was in connection with conduct that occurred in February and March of 2011 that was unrelated to the Adams investigation. It arose out of a separate investigation of Complainant's allegations of disparate treatment by his Shift Commander, Lt. Hawkins detailed in two Confidential Incident Reports filed by Complainant on March 15, 2011, after he had been spoken to by Manning for his refusal to respond to Lt Hawkins.⁷ In those reports Complainant alleged disparate treatment by Lt. Hawkins. He stated that while Lt. Hawkins "wrote [Complainant] up" for not acknowledging him on February 28, 2011, Hawkins failed to report that on March 8th he had observed two Correction Officers sleeping on their shift on 8 North and that he had shaken them awake. Complainant also alleged that Hawkins failed to "write up" these two officers for violation of the Department's rules. (Complainant testimony; Jt. Exs. 4 and 5).

19. Respondent maintains security cameras throughout LSHCU, including cameras of the 8 North corridor. Videos of the footage captured on security cameras remains on the hard drive for approximately fourteen days. (Testimony of Manning, Driscoll, Marchilli) Upon receipt of Complainant's March 15, 2011 Confidential Incident Report, Deputy Manning

⁶ A Hearing was held on the December 22, 2011 to determine the appropriate level of discipline and on February 12, 2012, a three-day suspension was imposed on Complainant. (Jt. Ex. 17)

⁷ Complainant was not disciplined for his refusal to respond to a superior officer.

reviewed the March 8, 2011 video footage of 8 North, since Complainant's allegation of officers sleeping at their post was a serious violation of Department rules and she needed to confirm if this had indeed occurred. Manning testified that in her review of the video footage, she did not observe any Correction Officers sleeping, but did observe Hawkins pat an officer on the back, in what appeared to be an "atta boy."⁸ Despite Manning's belief that Complainant's allegations were false, after reviewing the video, she took no further action in the matter. She did not take steps to preserve the video footage because she did not know that further investigation of this matter would ensue as a result of Complainant's allegations.⁹ (Manning testimony) I found Manning to be a very credible witness and I credit her testimony surrounding this incident.

20. Upon receipt of Complainant's March 15, 2011 Incident Reports, Supt. Marchilli determined that the allegations of two Correction Officers sleeping at their posts was serious, and referred the matter to IAU by submitting an Investigative Services Intake Form. Captain Harold Wilkes, then a Lieutenant and an IAU investigator was assigned to investigate Complainant's allegations. Captain Wilkes testified that he had been employed by Respondent for 28 years, the majority of that time as an investigator. Wilkes, who is African American, had no affiliation with LSHCU, but had handled other investigations at the facility wherein allegations of discrimination had been raised. He conducted several interviews, including with Complainant, Lt. Hawkins, the two CO's who were alleged to have been sleeping, and then Sgt. now Lt. William Heeks. (See Ex. R-6)

⁸ Complainant had alleged that the CO's were sleeping so deeply that Hawkins had to physically shake them to wake them up.

⁹ Manning did not participate in the Wilkes investigation and did not know who initiated it. She did not believe she ever read the Wilkes' report.

21. Complainant expanded his allegations during the investigative interview to include a claim that Hawkins had questioned him about why he had not voted for Hawkins as union steward. Complainant asserted that he had previously raised this issue with Capt. Driscoll. Capt. Driscoll recalled complaints by some CO's that Hawkins had assigned them to a "punishment post" on 8 North when he learned they didn't vote for him for steward.¹⁰ Despite the fact that no CO ever filed a formal incident report about this, Driscoll spoke to Hawkins about it, and essentially determined that the allegations had little merit, since union elections for steward are by secret ballot and there is no post on 8 North that is considered a "punishment post." Driscoll recalled that Complainant had other issues with Hawkins regarding telephone usage and television viewing while on shift, but never filed any incident reports as he was directed to do or filed reports with vague allegations.¹¹ Driscoll nonetheless addressed these issues with Hawkins and heard no further complaints from Complainant. (Driscoll testimony; Ex. R-6)

22. Lt. Hawkins' assertion that Complainant had failed to respond to his question regarding how things were going was corroborated by Correction Officer Craven who was present during the exchange. Craven testified that Complainant's refusal to respond was uncomfortable and that he found it "weird," that Complainant would ignore a question from a supervising officer even if he believed it not to be directly related to work. Complainant admitted that he refused to answer Hawkins until Hawkins specifically asked about the shift because Complainant did not believe he was required to answer a personal inquiry, such as

¹⁰ As noted earlier, Hawkins was generally disliked by a number of CO's for reasons related to a prior incident unrelated to this matter. He was not generally viewed as congenial. Driscoll testified he did not engage in social pleasantries and did not appear to be a happy person.

¹¹ Complainant stated he feared further harassment and retaliation from Hawkins if he filed a report. He claimed his three-month leave was caused by emotional stress from Hawkins mistreatment of him and that Driscoll and Marchilli were aware of the antagonistic relationship with Hawkins. These allegations were the subject of the earlier complaint dismissed by MCAD after investigation and are not the subject of the instant retaliation complaint.

“how’s it going?” Hawkins informed Capt. Wilkes that Complainant had been on medical leave from November 19, 2010 until February 25, 2011, and that the night of this incident was the first time the two had worked together since November, 2010.¹² (Exs. R-6, R-7, R-22) Hawkins also reported to Wilkes that he was concerned about Complainant’s mental state as Complainant appeared to be under a great deal of stress and Hawkins believed he was experiencing personal/family problems.¹³ (R-6) Given that Complainant had been out of work for some time, it is not unusual that Hawkins might have greeted Complainant with a question about how he was doing.

23. During the investigation of Complainant’s charges, both correction officers allegedly involved in the sleeping incident denied to Capt. Wilkes that they were asleep at their posts or that Hawkins had awakened them and spoken to them about sleeping. Both these officers also denied Complainant’s allegations at the Hearing. Contrary to Complainant’s report and his testimony, Lt. Heeks also denied that he had been sent by Hawkins shortly afterward to talk to the two officers about sleeping on their posts. In addition to denying that this occurred, Lt. Heeks stated that this would not have made sense, since Hawkins had allegedly already spoken to the officers and would have dispatched him to deal with the situation only if Hawkins were unable to leave the control room. Lt. Heeks was not particularly fond of Lt. Hawkins and told Capt. Wilkes he was a micro-manager and very difficult to work with. Heeks also reported to Wilkes that Hawkins treated all staff in an unprofessional manner, including him, and made it clear when he was unhappy with someone. Lt. Heeks testified that he had a good relationship

¹² Hawkins did not testify at the public hearing. He retired from the Department in September 2011 and is believed to be living out of state. The audio tape of his interview with Capt. Wilkes was offered into evidence. (Ex. R-22) Hawkins told Wilkes that he believed Complainant was unhappy with the assignment Hawkins gave him upon his return from leave and because he had been denied a Worker’s Compensation claim for stress he was experiencing on the job. (Ex. R-6)

¹³ Complainant later apologized to a fellow CO for his conduct while at LSHCU indicating that he was not in the right state of mind and had a lot of things going on when he was assigned there. (Conroy testimony)

with Complainant and was sympathetic to his issues, and stated that he had never observed Hawkins specifically target Complainant for unfair treatment. Contrary to Complainant's assertion, he denied telling Complainant that Hawkins was trying to break him and to sabotage his performance. I found Lt. Heeks to be a very credible witness who shed significant light on the issues. (Complainant, Craven, Conroy, Heeks, testimony; Exs. R-6, R-22)

24. Ultimately, Capt. Wilkes determined that the Complainant's allegations about officers sleeping on their shift and Hawkins' failure to report this were unfounded. He also concluded that there was no support for Complainant's claim that Lt. Hawkins had targeted him or subjected him to disparate treatment. Wilkes did not find that Complainant's allegations were false, but merely unable to be substantiated. Complainant was not disciplined for filing a false report. However, Complainant was disciplined for his failure to file a timely report about CO's sleeping at their post, since he did not file his report until a week after the alleged incident. (Ex. R-6) Wilkes found that his failure to report the alleged misconduct in a timely fashion violated Department Policy and Rules.¹⁴ (Wilkes testimony, Jt. Ex. 1, Ex. R-6) Capt. Wilkes had no knowledge of Complainant's MCAD discrimination complaint, but more importantly stated that in his role as an independent investigator who was unaffiliated with LSHCU, he was a neutral party who had no interest in finding for or against Complainant. He did not discuss the matter or seek input from LSHCU management. I found Wilkes to be a credible witness. (Wilkes' & Marchilli testimony)

25. The Department's rules and regulations require correctional staff to report employees sleeping at their posts as soon as possible and not later than the end of a Correction Officer's shift. Complainant did not report his purported March 8, 2011 observation until a week later on

¹⁴ While it might seem odd that Complainant was disciplined for not promptly reporting an incident that the Department ultimately concluded did not occur, the latter conclusion does not negate the failure to follow stringent reporting requirements about observed violations of the rules.