

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

MARIA ARAUJO,
Appellant

v.

CASE NO: D1-11-271

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Brian Rogal, Esq.
Rogal & Donnellan, P.C.
100 River Ridge Drive
Norwood, MA 02062

Appearance for Respondent:

Heidi D. Handler, Counsel
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Commissioner:

Paul M. Stein

DECISION

The Appellant, Maria Araujo, acting pursuant to G.L. c. 31, §43, duly appealed to the Civil Service Commission (Commission) from the decision of the Massachusetts Department of Correction (DOC), Appointing Authority, terminating her employment as a Correction Officer I (CO-I) for misconduct in associating with a former inmate, DL. The Commission held six (6) days of evidentiary hearings, which were digitally recorded, on January 31, 2012, February 7, 8, 9 & 28, 2012, and March 14, 2012. As no request was made for a public hearing, the hearing was declared private. Witnesses were sequestered. The DOC called ten (10) witnesses and Ms. Araujo called three (3) witnesses and testified on her own behalf. Thirty-five (35) exhibits were introduced at the hearing and an additional five (5) post-hearing exhibits were marked in evidence. Both parties submitted proposed decisions to the Commission on June 8, 2012.

FINDINGS OF FACT

Based on the Exhibits, the testimony of the witnesses (DOC Boston Pre-Release Center Superintendent Tanja Gray, DOC Superintendent's Investigator Sergeant Scott Black, DOC Internal Affairs Unit Sergeant Donald Perry, DOC Correction Officer Roderick Pareilla & Stephenson King, Parole Officer Mary Aguilar, former DOC inmate DL, civilians David L, Jonathan L, Mark Mc, Matt S, Anthony B & Ricky A, and the Appellant) and inferences reasonably drawn from the evidence as I find credible, I make the findings of fact set forth below.

The Appellant

1. The Appellant, Maria Araujo, a female Cape Verdean, was a tenured civil service employee of the DOC who was appointed to the position of Correction Officer (CO-I) on October 4, 1998. She resides in Norwood, MA. (*Exhs.2 & 5[p.183];Testimony of Appellant*)

2. Ms. Araujo worked at the Boston Pre-Release Center (BPRC) from November 27, 2005 until her termination on August 18, 2011. The BPRC is a minimum security facility. Correctional staff are not required to pass through metal detectors to enter the facility and may exit the facility to access their vehicles on breaks. (*Testimony of Sup't Gray, Sgt. Perry & Appellant*)

3. In 2002, Ms. Araujo received two written letters of reprimand, one for being out of uniform and another for insolence, profanity and threatening remarks to a supervisor. (*Exhs. 5 [p.182] & 14*)

4. In 2003, Ms. Araujo was discharged for alleged refusal to comply with direct orders to submit to a search for contraband (a tape recorder) she was believed to be bringing into the BPRC. Her discharge was overturned by the Commission and she was reinstated on November 27, 2004. Until the incident that resulted in the present appeal, the DOC had imposed no further

discipline against her. (*Exh.5 [p.182]; Administrative Notice [Araujo v. Department of Correction, CSC No., D-03-186, 17 MCSR 59 & 114 (2004)]*)

5. On or about November 22, 2010, Ms. Araujo was informed that she had been accused of an improper relationship with an inmate named M.R, based on an anonymous report received in October 2010. On December 15, 2010, after investigation, the DOC determined that those allegations were unfounded and closed the investigation. (*Exhs.15 & P.H.Ex.40 [Recorded Interview of Mark M]; Testimony of Appellant*)

The DOC Witnesses

6. Tanja Gray became the Superintendent of the BPRC in January 2009. She began her career at DOC in 1982 and, prior to her assignment to the BPRC, had served as a superintendent at various other DOC facilities. (*Testimony of Sup't Gray*)

7. Donald Perry is a DOC Sergeant (CO-II) assigned to the Internal Affairs Unit of the DOC. He headed the internal affairs investigation of the charges that resulted in Ms. Araujo's termination involved in this appeal. (*Testimony of Sgt. Perry & Appellant*)

8. Scott Black is a DOC Sergeant employed as a Superintendent's Investigator at MCI Cedar Junction. Sgt. Black assisted Sgt. Perry in the investigation of the charges against Ms. Araujo. (*Testimony of Appellant, Sgts. Perry & Black*)

9. Roderick Parilla is a DOC Correction Officer who worked the 3pm to 11pm shift at the BPRC center while Ms. Araujo also worked there. (*Testimony of Appellant & CO Parilla*)

10. Stephenson King is a DOC Correction Officer who worked with Ms. Araujo at the BPRC and served as Ms. Araujo's union representative during two of her interviews conducted as part of the investigation of the charges against her. (*P.H.Exh.40; Testimony of Appellant & CO King*)

The Third-Party Witnesses

11. DL is a former DOC inmate who was on parole at the time of the Commission hearing. He grew up in Marshfield MA. While attending college, he developed a drug addiction that led to his conviction for drug trafficking and incarceration in DOC custody from April 27, 2005 to March 29, 2010, when he was released on parole. For the last year of this incarceration, DL was housed at the BPRC and lived on the second floor of the unit. (*Testimony of Appellant & DL*)

12. Initially after his release in 2010, DL lived in Marshfield with his mother and two brothers, David L, with whom he had a somewhat distant relationship, and Jonathan L, with whom he had kept up a good relationship. In the fall of 2010, DL moved into a house owned by Mark Mc in Everett. DL was returned to DOC at MCI Cedar Junction on February 4, 2011 for using drugs in violation of the terms of his parole. He was released again on parole in August 2011 and returned to work at Gem Auto Parts in Dorchester, MA, where he had been placed while at BPRC. He continues to be subject to strict drug testing. (*Exh.5 [p.270]; Testimony of DL, David L & Johnathan L, Mark Mc, Aguilar*)

13. Matt S is a childhood friend of DL's and knew his brothers, but Matt S did not associate with either of DL's brothers while they were growing up. (*Testimony of Matt S, DL, David L & Jonathan L*)

14. Mark Mc (nickname "Macca") and Matt S met through working for the same company, Anheuser Bush. Mark Mc took in DL as his roommate and home sponsor for parole purposes in the fall of 2010. Mark Mc met DL's brothers only once when they came to pick up DL in Everett during the 2010 holiday season. (*Testimony of Sgt. Perry, Aguiar, Matt S, Mark Mc, Jonathan L & David L*)

15. Mary Aguilar is a parole officer in the Quincy office of the Massachusetts Department of Probation with five years of service at the time of the Commission hearing. Her experience in law enforcement also included service as a military police officer and several years as the Deputy Superintendent of Plymouth County House of Correction. DL was assigned to her in October, 2010, when DL moved to Everett, within her assigned area. (*Testimony of Aguilar, DL*)

16. Anthony B is Ms. Araujo's fiancée. They do not cohabit. He is a Cape Verdean citizen who has been living in the United States since 2008 under a Tourist Visa. At the time of the Commission hearing he was not gainfully employed or attending school. He relied on his parents as his main source of current financial support. (*Testimony of Appellant & Anthony B*)

17. Ricky A is Ms. Araujo's son through a prior relationship. (*Testimony of Appellant & Ricky A*)

The Appellant's Contacts with DL at BPRC

18. During the time period involved in this matter, Ms. Araujo worked the 3:00 pm to 11:00 pm shift, with Thursdays and Fridays off. Her usual duty assignment was on the second floor, where she often worked alone, or as one of two officers working the control center. (*Exh.5[pp.191-267]; Testimony of Appellant & Sup't Gray*)

19. In the course of her duties, Ms. Araujo came to know DL. Ms. Araujo was the one correction officer who was "nice" to DL and he pointed her out to his brother (Jonathan L) and his mother (Claire), when they visited DL at the BPRC. Ms. Araujo and DL would engage in small talk and she was "nice" to him. The evidence did not establish, however, that the relationship between DL and Ms. Araujo crossed the line into unprofessional behavior while he was an inmate at BPRC. (*Ex.5, pp. 16-17,36; P.H.Exh.40 [Recorded interviews of DL & Jonathan L]; Testimony of Appellant, DL, Jonathan L*)

The Appellant's Contacts with DL After His Release from BPRC

20. At some time in the spring of 2010 after DL was released on parole, Ms. Araujo and DL exchanged messages through Ms. Araujo's Facebook account, which she then maintained under the screen name "Mia Blue" and later changed to "Maria Blue." During recorded interviews, Ms. Araujo confirmed that she had once maintained such a website and her union representative stated that it was "common knowledge" that she went by such a nickname. The evidence is not conclusive as to which party initiated the contact. Although they did not "friend" each other, at some point, DL suggested that they meet and Ms. Araujo agreed. (*Exh.5, pp.18, 66 & 80; P.H.Exh.40 [Recorded Interviews of DL, Matt S & Appellant]; Testimony of Appellant, Matt S & DL*)

21. Thereafter, Ms. Araujo and DL began meeting on a regular basis on her days off. They followed a routine in which Ms. Araujo would drive to Marshfield, pick up DL in her car (initially a Jeep Cherokee which she replaced in August 2010 with an Acura) and return him home. DL told his brothers and mother that the person he was seeing was the friendly "prison guard" from BPRC, whom he called "Mia". They all believed this showed poor judgment on his part. (*Exh.5, pp. 28-30; P.H Exh.40 [Recorded Interviews of David L & Jonathan L]; Testimony of DL, David L and Jonathan L*)

22. On one occasion, in late spring or early summer, DL did invite Ms. Araujo into the house in Marshfield. While he showered, she spoke briefly to his brothers and went out to the back porch where she had another conversation with his mother, Claire. ((*Exh.5, pp. 28-30; P.H Exh.40 [Recorded Interviews of David L & Jonathan L]; Testimony of DL, David L and Jonathan L*)

23. On another occasion, Ms. Araujo and DL met Matt S, Matt S's girlfriend and her mother, and Mark Mc at Matt S's house. Ms. Araujo drove the six individuals in her Jeep into the Boston North End where they dropped off the other two women. Ms. Araujo, DL, Matt S and Mark Mc went to the "Greatest Bar" to eat and watch Game 7 of the Bruins-Flyers playoffs.¹ This was the first time Mark Mc. met Ms. Araujo and learned that she was a jail guard DL had known from prison who worked in "Roslindale" and previously had worked in Concord. (*Exh.5, pp. 13 & 26; P.H.Exh.40 [Recorded Interviews of Mark Mc & Matt S]; Testimony of DL, Mark Mc & Matt S*)

24. Ms. Araujo underwent foot surgery on June 3, 2010 and was out of work on a pre-approved medical leave through July 16, 2010. During this period, she was housebound for the most part and her fiancée (Antonio Barros) visited her frequently. DL did not see her as regularly during this period. (*Exh.27; Testimony of Appellant, DL, A. Barros*)

25. At some point in the summer of 2010, DL relapsed into using drugs. Although he was subject to random drug testing, he would avoid being caught by using only after he learned that his "color" had not come up – which meant he had to report for a drug test. His family suspected he was using, as did Matt S, and it was one of the reasons DL was forced to move away from Marshfield. (*Exh.5, p. 32; P.H.Exh.40 [Recorded Interviews with DL & Aguilar]; Testimony of DL, David L, Jonathan L & Aguilar*)

26. After DL moved in with Mark Mc in Everett, the routine changed. Ms. Araujo began to visit DL nearly every week in Everett. They spent most of their time in Everett in DL's room on the second floor. She rarely spoke with Mark Mc other than in brief greetings. He did overhear them arguing about what he took to be Ms. Araujo's displeasure with DL's failure to abstain

¹ I take administrative notice that the Boston Bruins' 2009-10 hockey season came to an end on May 14, 2010, when the Philadelphia Flyers came from behind to beat the Bruins 4-3 in Game Seven of the Division finals. I also take notice that the date of this playoff game was a Friday, one of Ms. Araujo's regularly scheduled days off.

from drugs. (*Exh.5, p.13; P.H.Exh.40 [Recorded Interview with Mark Mc]; Testimony of DL, Mark Mc & Matt S*)

27. The relationship between Ms. Araujo and DL, although somewhat stormy at times, soured permanently on or about January 27, 2011. In the early morning hours of that day, Mark Mc had purchased a device called Trap Call on-line for the purpose of identifying the source of annoying phone calls that had been coming into him (as well as to Matt S) over a period of several months. This device identified the caller's phone number to be a number in Dedham xxx-xxx-0457. He prepared a log of 15 such calls received from 12:34 AM through 10:31 AM that morning. (*Exh.5, pp.14, 19, 76-79;*) *Recorded Interviews with DL, Mark Mc & Matt S; Testimony of DL, Mark Mc & Matt S*)

28. Mark Mc left the phone log on his living room table where DL spotted it. He recognized the telephone number as the one he said Ms. Araujo then used to communicate with him and which he kept in his cell phone contact list. Ms. Araujo normally had Thursdays off, but had worked an overtime shift that day from about 3:00 PM to 8:15 PM. She arrived at Everett shortly thereafter and an argument with DL ensued, which Mark Mc overheard. Ms. Araujo denied being the source of the prank phone calls and told DL "you wouldn't be standing in front of me right now if I didn't want you to be" and "now you guys have a f—ing problem from me". (*Exh.5, pp.14-15, 18-20 & 258; Investigative Packet Exh.13 [Photos taken from DL's cell phone]; Recorded Interviews with DL, Mark Mc, Matt S; Testimony of DL, Mark Mc & Matt S*)

29. At approximately 11:37 PM on January 27, 2011, DL's Parole Officer, Mary Aguilar, received a phone call on her work cell phone from an anonymous caller using a "private" line who said she was in "law enforcement" but wanted to remain anonymous. It is now undisputed that the caller was Ms. Araujo. Ms. Aguilar made detailed contemporaneous notes of this

conversation. Ms. Araujo told Ms. Aguilar that she knew that one of his parolees was living at 22 “Oak St.” [actually 22 Oakes St] Apt 3 in Everett where he was using and dealing drugs, along with others. She provided an accurate description of the gray Nissan Maxima that DL had recently purchased, as well as the license plate number, along with information about another former inmate. (*Exh.5, pp.16,27-28,30-31*), *Exh.12*; *P.H.Exh.40[Recorded Interviews of Appellant and Aguilar]*; *Testimony of Appellant & Aguilar*)

30. The next day, January 28, 2011, Mary Aguilar received a second anonymous phone call from the same person who had called the night before. The caller provided Ms. Aguilar with the name of DLs home sponsor – Mark Mc – DL’s correct cell phone number, and the phone number of two other DOC parolees (*Exh.5,p.31*; *Exh.12*; *P.H.Exh.40 [Recorded Interview of Aguilar]*; *Testimony of Aguilar*)

31. On January 28, 2011, after taking a surveillance trip to Mark Mc’s residence which yielded no information, Mary Aguilar attempted to contact DL to order him to report for a drug test. DL evaded her and did not report until February 1, 2011, at which time he tested positive for drugs. He was immediately taken into custody and transported to MCI Cedar Junction where he was incarcerated. (*Exh.5, p.32*; *P.H.Exh.40[Recorded Interview of Aguilar]*; *Testimony of Aguilar*)

32. DL had designated Mark Mc as the person to take custody of his car and personal property confiscated from him upon his arrest. Mary Aguilar called Mark Mc, and informed him that DL was being returned to custody and that he should pick up his car and belongings. Mark Mc said: “So I will just tell you everything” and volunteered that DL and his girlfriend, Mia, had just had a big fight about harassing phone calls that she was making to Mark M. and another friend, Matt S. He said she was a Correction Officer who formerly worked at MCI Concord and

now worked at Roslindale. Mark Mc repeated this information when he met Mary Aguilar on February 4 to pick up DL's personal belongings, accompanied by Matt S who drove DL's car home. (*Exh.5, pp. 9 & 32; Exh.12A; P.H.Exh.40[Recorded Interviews of Mark Mc & Aguilar]; Testimony of Mark Mc & Aguilar*)

33. Meanwhile, on February 1, 2011, while on the ride with DL to MCI Cedar Junction with Mary Aguilar and another Parole Officer, Aguilar asked DL to tell him the name of his girlfriend. Initially, he was evasive, but when Mary Aguilar asked him: "What is Mia's last name?" he said: "Blue". (*Exh.5,p.32; P.H.Exh.40 [Recorded Interview of Aguilar]; Testimony of Aguilar & Mark Mc*)

The DOC Investigation

34. On February 4, 2011, Mary Aguilar contacted the DOC to report the information she had received about DL's relationship with the person DL called "Mia Blue". Sgt. Perry from DOC Internal Affairs, along with Sgt. Black, the Superintendent's investigator assigned to MCI Cedar Junction, began an investigation. Based on certain of the reported facts concerning this person, as conveyed by Mary Aguilar, DL and Mark Mc, namely, that she had an "ethnic" accent, owned a Jeep Cherokee but now owned an Acura (that DL knew she had purchased at a specific dealer in Revere), lived in Norwood, and had worked in Concord and Roslindale, Sgt. Perry quickly focused attention on Ms. Araujo, whose profile fit the facts they had been given. During an interview of DL by Sgt. Black on February 4, 2011, DL identified Ms. Araujo as his ex-girlfriend. On February 7, 2011, Mark Mc positively identified Ms. Araujo out of a photo array shown to him by Sgt. Perry. (*Exh.5,pp.2-5,12,75; Exhs.20, 39 (Confidential); P.H.Exh.40 [Recorded Interview with Mark Mc]; Testimony of Sgt. Perry, Sgt. Black, DL, Mark Mc*)

35. During the the DOC investigation, Sgt. Perry obtained permission to examine DL's cell phone and took pictures of entries that he found on the phone, including numerous calls and text messages between DL and the xxx-xxx-4057 number shown on the contact list as associated with "Mia". (Exh.5,p.21-22; *Investigative Packet, Exh.13; Testimony of Sgt. Perry & DL*)

36. In addition to Mark Mc, Matt S and Jonathan L positively identified Ms. Araujo from a photo array as DL's girlfriend "Mia".(Exh.5, pp.12, 75, 33 & 37; P.H.Exh.40 [*Recorded Interviews of Matt S & Jonathan L*]; *Testimony of Matt S & Jonathan L*)

37. Ms. Araujo was interviewed by Sgt. Perry on two separate occasions during the DOC investigation – February 8, 2011 and April 7, 2011 – with Sgt. Black in attendance as well as Ms. Araujo's union representative on each occasion. (P.H.Exh.40[*Recorded Interviews of Appellant*])

38. During the February 8, 2011 interview, Ms. Araujo made the following statements:

- a. She had just changed her cell phone provider a few days earlier from Sprint to T-Mobile because Sprint was "charging too much". She also said she changed cell phones a lot because she got a lot of harassing calls.
- b. When asked about her contacts with DL, she first said that he had contacted her on Facebook and "the guy wouldn't leave me alone" and said he wanted help with his drug problem and she said she couldn't help him. A few minutes later she said he was "never threatening" and was "just being friendly". At the end of the interview she said that he had called her a couple of weeks ago and she told him: "What do you want with me, leave me alone" and she believed her "life was in danger."
- c. She admitted to making a late-night call to Mary Aguilar on January 27, 2013. She said she looked up Mary Aguilar's number in the phone book or on whitepages.com. When asked if she reported to Mary Aguilar that DL was selling

drugs from his Everett residence she replied: “Yes, I did” and said: “If I see something wrong I have the right to report it.” She later said that “people on the street” whose names she did not know, told her that DL “was the man”. She said she mentioned no one else’s name to Mary Aguilar.

- d. She admitted to having seen DL at a bar in Boston by chance. He came up and said “hello” and she said “hello” and “that was it.”

(P.H.Exh.40 [Recorded Interviews of Appellant])

39. During the April 7, 2011 interview, Ms. Araujo said the following:

- a. She said DL wanted her to help “find a treatment center for him” and was “calling me on my cell phone” and “stalking her everywhere I go”. Apropos of nothing in particular, she said she “reacted without thinking” and “don’t know what I did.” She repeatedly stated that her “life was in danger” and she had “the right to protect myself” and “didn’t want to end up dead.”
- b. When asked how her fingerprints could wind up on air fresheners in DL’s apartment (not a true statement by the investigator), she said she did once buy air fresheners and left them in her car and they were stolen along with other groceries.

(P.H.Exh.40 [Recorded Interviews of Appellant])

40. After the initial interview had concluded, Ms. Araujo returned with two documents that she said she had slipped under the door of BPRC Superintendent Gray’s office. Both documents were signed by Ms. Araujo and hand-dated 12/4/10.

- a. One of the documents was a note “To whom it may concern” stating that she had lost her Sprint cell phone and wanted it turned off because she “kept getting harassed and threatening phone calls” and was “afraid for my life.”

- b. The second document was addressed to Superintendent Gray and stated that DL was “calling my home threatening and harassing me. . . .I asked him why and he just stated it’s for no reason . . . [H]e kept calling me a black bitch. I told him I did nothing to him and why would he call me a black bitch, he said he hates co’s we are all stupid co’s . . . “

(Exh.5, pp., 174-175; *P.H.Exh.40 [Recorded Interviews of Appellant]*)

41. Sgt. Perry followed up with Supt. Gray about the two documents he had just been given. Supt. Gray had no recollection of having seen either one. She recalled never having learned that Ms. Araujo was being harassed or threatened by DL. (*Exh.5, p.51; Testimony of Supt. Gray*)

42. Supt. Gray had a good working relationship with Ms. Araujo. Reports are sometimes left under her door, but other, generally more reliable, ways existed through which a CO could report problems, especially those that warranted the Superintendent’s immediate attention, including leaving the report in the box outside the Superintendent’s office or, more typically, documenting the situation confidentially to the Superintendent through the DOC computerized system. There were no such reports by Ms. Araujo. (*Exhs.16 & 19; Testimony of Supt. Gray, Appellant*)

43. Between the dates of her first and second DOC interview, Ms. Araujo made two reports of harassment to the Norwood Police.

- a. On February 22, 2011, she brought some notes to the Norwood Police Station that she said were slipped under her door about 3:00 am that morning. One read: “WE KNOW WHERE YOU LIVE blAck biTch” and the other: “You are dead bitch we know you put our buddy back in Prison we are going to cOme after yOU.” Ms. Araujo said she “had no idea who could have left the note.” (*Exh5, pp 87-91; Testimony of Appellant*)

- b. On March 5, 2011, Ms. Araujo reported to the Norwood Police that her identity was stolen and a T-Mobile Account had been created under her name. (*Exh.33ID*)
- c. On March 23, 2011, Norwood Police responded to a report of suspicious activity by Ms. Araujo who reported a white male and white female had come to her door purporting to have business relating to her mortgage. She did not recognize the pair but got the license plate of the car they drove. (*Exh.29*)

44. At the Commission hearing, Ms. Araujo and her fiancée contradicted her prior version of that event. As to the Greatest Bar encounter, she said she and her fiancée happened to be in the area in October 2010 and so they stopped in for something to eat. She also made a point of claiming to eat only organic food and, apparently, did not eat much, if anything at the Greatest Bar. She said that it was her fiancée who pointed out that there were some guys who appeared to be laughing her and she told him one of them was a former inmate who had come out of prison “a couple of months ago.”. There was no mention of any conversation with DL. (*Exh.28; Testimony of Appellant & A. Barros*)

45. At the Commission hearing, Ms. Araujo also provided testimony that contradicted her interview statements, claiming that it was after the encounter with DL at the Greatest Bar that DL initiated a contact with her on Facebook, telling her “I know where you live at”. They exchanged a few more messages after which Ms. Araujo said he should leave her alone. This incident is what she said prompted her to inquire of the Quincy Parole Office and got Mary Aguilar’s contact information so that she had the information handy for future reference. (*Testimony of Appellant*)

46. As to the January 27, 2011 incident, she initially testified that she received a Facebook message on her cell phone from DL calling her a “black bitch” a day or two earlier. After

agreeing that she had just testified that she had lost her cell phone in December and had not yet replaced it for two months, she changed her testimony and said she saw the message on her laptop. She claimed she had a late night dinner with her fiancée (Antonio Barros) at the Wicked Restaurant, after which she drove to a pay phone in Dedham and called Mary Aguilar, whose number she had on hand, gave her name, and complained about being harassed by DL. Ms. Araujo denied mentioning anything about anyone else selling drugs or giving any other information and denied calling back the next day. (*Exh.28; Testimony of Appellant & A. Barros*)

47. Mr. Barros had a contradictory version of the events of January 27, 2011. According to him, Ms. Araujo had shut down all her Facebook pages around the end of 2010. On January 27, 2011, they had left the Wicked Restaurant and, while Ms. Araujo was driving away, she got a call on her cell phone that made her “so angry” and she hung up. He asked who it was and she said: “It’s Dan.” They then proceeded to the pay phone where Ms. Araujo made the call to Mary Aguilar. (*Testimony of A. Barros*)

Tattoos and T-Mobile Phone Records

48. DL had told Sgt. Perry that Ms. Araujo had numerous tattoos but could specifically recall only one, a tattoo of a badge and handcuffs just over her buttocks. When Sgt. Perry asked Ms. Araujo how DL could have known that she had such a tattoo, she stated that she wore low-cut jeans that would show her tattoo and she specifically remembered wearing such low cut jeans the night of her chance encounter of DL at the Greatest Bar. (*Exh.5, pp.20 27; Testimony of DL*)

49. At the Commission hearing, Ms. Araujo produced photographs which the parties stipulated to represent tattoos then present on her body, including a butterfly in the center of her back just above the buttocks, a heart on her right ankle a rose on her right buttocks and the words

“Love Police” high in her right thigh just below her crotch. (*Chalks A through D; Testimony of Appellant, R. Barros & A. Barros*)

50. The parties also presented considerable evidence concerning the T-Mobile cell phone account associated with the number xxx-xxx-4057, including copies of records subpoenaed from T-Mobile including a log showing incoming and outgoing phone calls and text messages associated with that phone number, the vast majority of which happened to involve calls to DL’s cell phone as well as calls to DL’s place of employment (Gem Auto Parts), DL’s friends, other former DOC inmates and Ms. Araujo’s sister. The documents contained a record that the account was opened on 11/22/2010 in the name of a Maria (no last name) whose DOB was the same as that of Maria Araujo, and the phone number on the account appears to have been changed from xxx-xxx-0457 to xxx-xxx-1816 on January 27, 2011. (*Exh.5, pp.92-93, Investigative Packet Exh.28; Exh.21; Testimony of Appellant, Sgt. Perry, CO Parilla, DL, Matt S, Mark Mc*)

51. Other evidence obtained from T-Mobile and other documents produced by Ms. Araujo were introduced to show that the account number on the cell phone account record was missing a digit and was not a “valid” T-Mobile account, and that a number search showed the account as belonging to a Dedham customer named “Cui Weng.” (*Exhs. 23, 26, 30, 31, 32, P.H.Exhs.30A, 31A through 31C; Testimony of Appellant*)

52. DL said he knew Ms. Araujo purchased the T-Mobile phone with the number xxx-xxx-0457 at a CVS in Medford in November 2010. After their fight on January 27, 2011, he tried calling Ms. Araujo at the xxx-xxx-0457 number but it was no longer in service. Ms. Araujo denied making such a purchase and denied she ever had a T-Mobile account with the number xxx-xxx-0457. (*Exhs.21 &.24; Testimony of Appellant, DL & Mark Mc*)

DOC Disciplinary Proceedings

53. On May 28, 2011, the DOC investigation concluded with a finding of probable cause that Ms. Araujo may have violated numerous DOC Rules, including General Policy, Rule 1, Rule 2(a) and (b), Rule 8(a) & (c), and Rule 19, as well as DOC policies 103 DOC 100, 103 DOC 204, 103 DOC 225 & 103 DOC 522, and Ms. Araujo was so informed. In addition, the DOC wrote to the Everett Police Department and the Norwood Police Department to inform them that information gathered during the DOC investigation suggested that Ms. Araujo may have made a false report to those authorities. (*Exhs.4, 7, 8A, 8B, 9 through 11*)

54. On or about June 9, 2010, a DOC Commissioner's hearing was scheduled to consider her violation of the aforementioned rules and policies for the following ten alleged acts of misconduct:

1. You were overly familiar and spent excessive amounts of time with inmate A during his incarceration at Boston Pre-Release Center.

2. After inmate A's release from custody, you engaged in a romantic relationship with former inmate A.

3. During the course of your relationship with former inmate A, you had contact with former inmate A's family and several other former inmates and/or parolees that were friends of former inmate A.

4. You did not report any contact you had with former inmate A, after his release from custody, to your Superintendent, DOC Department head or Commissioner of Correction.

5. You did not report any contact you had with other former inmates and/or parolees that you met through former inmate A, to your Superintendent, DOC Department head or Commissioner of Correction.

6. You made harassing phone telephone calls to former inmate A's friends, former inmate B and former inmate D.

7. On or about February 22, 2011, you filed a false report with the Norwood Police Department.

8. You had law enforcement contact and/or court appearances during your employment with the Department, which you failed to report.

9. You refused a direct order to allow yourself to be fingerprinted.

10. You were insubordinate and uncooperative when interviewed by a Departmental Investigator in connection with the above-referenced matters.

11. You were less than truthful when interviewed by a Departmental Investigator in connection with the above-referenced matters.

(Exh.3)

55. The DOC Commissioner's Hearing was conducted on June 29, 2011 before a Hearing Officer designated by the Commissioner of Correction. The Hearing Officer issued her report on July 8, 2011, finding that DOC had substantiated all of the acts of misconduct alleged against Ms. Araujo and that she violated all of the DOC rules and policies as charged. *(Exh.6)*

56. By letter dated August 19, 2011 to Ms. Araujo, the Commissioner of Correction concurred in these findings and ordered Ms. Araujo's employment with DOC terminated immediately. *(Exh.2)*

57. This appeal duly ensued *(Claim of Appeal)*

Evidence of Disparate Treatment

58. The DOC has meted out the following discipline in the past to employees who had engaged in inappropriate relationships with an inmate or former inmate.

(a) A five-day suspension and Final Warning for hiring a former inmate, making a loan to former inmate's wife in 2008. *(P.H.Exh.38, Employee 4)*

(b) Termination for inappropriate relationship with inmate, including sharing personal information, doing favors, and failing to report that inmate had a "crush" on employee in 2011. *(P.H.Exh.37, Employee 61)*

(c) Termination for inappropriate conversations with inmate and inmate's brother (a former inmate) expressing romantic interest in inmate's sister and untruthfulness in investigation in 2010. *(P.H.Exh.37, Employee 113)*

- (d) Three-day suspension for associating with a former inmate in 2011 at a restaurant and failing to report it in 2011. (*P.H.Exh.38, Employee 136*)
- (e) Termination for inappropriate relationships with two former inmates, including visiting them, providing employment references, allowing them to give employee's home address and phone as contact information, and accepting free meals at restaurant where one of them worked. (*P.H.Exh.37, Employee 182A*)
- (f) Three-day suspension for an undescribed "inappropriate" relationship with an inmate in 2008. (*P.H.Exh.38, Employee 220*)
- (g) Termination for associating with relatives of two inmates, accepting food from them and bringing food items to the inmates. (*P.H.Exh.37, Employee 239*)
- (h) Five-day suspension for associating with a former inmate, including accompanying her to a location at which she participated in a breaking and entering and being less than cooperative with the police in 2011. (*P.H.Exh.38, Employee 257*)
- (i) Two-day suspension for inappropriate relationship with an inmate, including private meetings, unauthorized access to inmate data on IMS system and intervening on inmate's behalf in disciplinary issues in 2009. (*P.H.Exh.38, Employee 303*)
- (j) Two-day suspension and Final Warning for giving inmate personal information in 2008. (*P.H.Exh.38, Employee 359*)
- (k) Five-day suspension and Last Chance Warning for engaging in a romantic relationship with an inmate, loaning him money and associating with a relative of the inmate in 2011. (*P.Exh.38, Employee 367*)

- (l) Three-day suspension and Last Chance Warning for unauthorized access to inmate data on IMS system and providing inmates with confidential information about other inmates. (*P.H.Exh.38, Employee 378*)
- (m) Termination for an inappropriate, intimate relationship with an inmate, including sexually explicit telephone calls and letters and gifts of money. (*P.H.Exh.37, Employee 410*)
- (n) Termination for engaging in a personal business transaction with an inmate. (*P.H.Exh.37, Employee 424*)
- (o) Termination for inappropriate relationship with former inmate, including living with him for a year and transporting him to visit his father (another inmate). (*P.H.Exh.37, Employee 495*)

The DOC also made reference to two prior Commission decisions that had upheld the DOC's termination of employees who engaged in inappropriate relationships with a former inmate. Jones v. Department of Correction, 23 MCSR 89 (2010); Davis v. Department of Correction, 22 MCSR 213 (2009) (*P.H.Exh.37*)

CONCLUSION

Summary

The DOC met its burden to establish just cause to discharge Ms. Araujo from her position as a Correction Officer. The preponderance of evidence shows that Ms. Araujo (1) engaged in an inappropriate relationship with a former DOC inmate over a period of many months; (2) she never reported this relationship to the DOC and, indeed, took steps to conceal it; and (3) was untruthful about her contacts with DL when questioned about it during the DOC investigation. While the DOC did not sustain all of the other charges presented, these three serious offenses of DOC policy and procedure sustain its decision to terminate Ms. Araujo's employment.

Applicable Legal Standards

A tenured civil service employee may be discharged for “just cause” after due notice and hearing upon written decision “which shall state fully and specifically the reasons therefore.” G.L.c.31,§41. An employee aggrieved by the decision may appeal to the Commission. G.L. c.31, §43. Under Section 43, the appointing authority carries burden to prove to the Commission by a “preponderance of the evidence” that there was “just cause” for the action taken. *Id.*. See, e.g., Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006); Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., 726 N.E.2d 417 (2000). In performing its function:

. . .the commission does not view a snapshot of what was before the appointing authority . . . the commission hears evidence and finds facts anew. . . . [after] a hearing de novo upon all material evidence and . . . not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer. . . . For the commission, the question is . . . “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.”

Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003) (quoting Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983) (emphasis added)). See also Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823; Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300, 303-05, rev.den., 428 Mass. 1102 (1997). See generally Villare v. North Reading, 8 MCSR 44, reconsidered, 8 MCSR 53 (1995) (discussing de novo fact finding by “disinterested” Commissioner in context of procedural due process).

An action is “justified” if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 304, rev.den., 426 Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482

(1928). The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003) (where live witnesses gave conflicting testimony at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing)

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, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983); The Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’ ” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of the “merit principle” which governs Civil Service Law that discipline must be remedial,

not punitive, designed to “correct inadequate performance” and “separating employees whose inadequate performance cannot be corrected.” G.L.c.31,§1.

Inappropriate Relationship with Inmate DL

The evidence did not establish that Ms. Araujo’s interactions with DL while he was an inmate at BPRC rose to the level that were inappropriate. I find that their interactions amounted to mostly small talk. In retrospect, while DL may have seen Ms. Araujo’s being “nice” to him as a come-on, I do not conclude that she intended her behavior toward him during his incarceration at BPRC to be construed that way or knew that he was attracted to her at that time.

Inappropriate Relationship with Parolee DL

The preponderance of evidence establishes that DL and Ms. Araujo were engaged in a personal relationship that involved numerous private meetings, text messaging and phone calls over a period of approximately ten months during 2010 and 2011, and that she falsely denied having such a relationship when she was asked about it during the DOC investigation. This evidence includes the credible testimony of witnesses who I find had no particular motive to shade the truth, including DL’s two brothers (who harbored no animus against Ms. Araujo for putting their brother back in prison, but, in fact, believed that is where he belonged), and Mary Aguilar, a completely disinterested law enforcement professional whose credentials and demeanor gave her testimony a particularly persuasive ring of truth. While I discount some of the testimony given by DL, Mark Mc and Matt S, I find their substantially consistent recollection of the Greatest Bar incident, and their specific knowledge about Ms. Araujo (down to the cars she drove and the dealership where she bought one of them) and their positive identification of her from the very inception of the investigation, carry the ring of truth. In contrast, Ms. Araujo’s inconsistent versions of events as well as her demeanor (especially facial expressions and

avoidance of eye-contact) discredit her testimony more than they impeach the core facts presented by the other witnesses.

For example, from the initial interview she gave to Sgt. Perry through her testimony at the Commission, Ms. Araujo shifted her positions repeatedly. She vacillated from claiming that her interactions with DL were so inconsequential that she saw no reason to report them to stating that he had been stalking her and that she believed her life was in danger. In fact, neither of these versions of events is true. She voluntarily entered into a relationship with DL and carried on that relationship under her own free will. Her versions of how and why she came to call Mary Aguilar, the limited information she claimed she provided to her, and her inconsistent memory of her cell phone history, are not only unbelievable, but discredit her denial that she had not been in DL's company, especially, in Everett. The purported corroborating testimony from her fiancée was not only unpersuasive but, actually, impeached Ms. Araujo's version of the encounter at the Greatest Bar as well as the events of January 27, 2011..

Ms. Araujo's lack of credibility also extends to her claims that she reported her problems with DL to Supt. Gray by slipping a note under the door and never following up. The evidence showed that Supt. Gray and Ms. Araujo had a generally good working relationship. I believe Supt. Gray's testimony that she received no such notice. Had Ms. Araujo been threatened, I cannot believe she would not have taken other measures to secure her well-being and I cannot believe, had Supt. Gray come to learn of such threats, Supt. Gray would not have acted immediately to address them.

I also have not placed any weight on the T-Mobile telephone records as evidence of Ms. Araujo's alleged harassing phone calls to Mark Mc and others. There is certainly substantial corroborating evidence (i.e., photos taken of DL's cell phone device) that Ms. Araujo and DL

communicated over the phone number referenced in the T-Mobile records. Given the conflicting evidence as to whether the T-Mobile records were “valid”, unanswered questions about how the records should be interpreted and how Ms. Araujo allegedly acquired the phone, and the absence of a percipient witness who could provide testimony on these matters, I do not rely on the records for their truth. It is clear to me, and I do conclude, however, based on the actual evidence in DL’s cell phone and the other credible evidence of Ms. Araujo’s alias “Mia” from several sources, that Ms. Araujo and DL did have the communications that appear on DL’s cell phone device.

In sum, while I do not find the testimony of the witnesses has established, by a preponderance of evidence, that DL and Ms. Araujo were, in fact, physically intimate, I do conclude that the nature of their relationship did include numerous private meetings and personal communications, some of which are sexually explicit, and that Ms. Araujo’s denial that she had such a relationship is not truthful. Thus, the DOC has established just cause to discipline Ms. Araujo for misconduct in carrying on a long-term inappropriate relationship with a former inmate without reporting it and not being forthcoming about it when it came to light. Ms. Araujo’s refusal to be fingerprinted as part of the investigation of these charges could be viewed as further indicia of her prevarication, but, in view of the possible Constitutional issue implicated in that situation, I did not consider that refusal material to the Commission’s decision here.

Contacts with and Harassment of Former Inmates

DOC did not prove that Ms. Araujo’s misconduct extended to relationships with other former inmates. DOC is clearly mistaken to the extent that these charges were based on her contacts with Mark Mc and Matt S, neither of whom had ever been incarcerated. The only other evidence of her contacts with other former inmates are some of the T-Mobile phone records and some of

the information that Ms. Araujo conveyed to Mary Aguilar. For the reasons described above, I do not credit the T-Mobile phone records for their truth and I do not find that the information provided to Mary Aguilar to be conclusive proof that Ms. Araujo actually had physical contact with the individuals mentioned during those phone calls.

False Report to Police

I conclude that Ms. Araujo's report to the authorities, especially the report to the Norwood police that she had received threatening notes may not be truthful. I cannot believe that she would have told the police she had "no idea" who was responsible for such notes, when they make clear reference to their "buddy" DL's recent incarceration and use the same racial epithets about her that she claimed DL had used against her. I cannot conclude, however, by a preponderance of the evidence, that she was, in fact, the author of the notes. It is equally plausible to me that she was not, but could not be totally truthful because it would lead to proof that she had been in contact with persons whom she denied knowing. The upshot of these police reports was not established, but it appears no action was taken on them.

Failure to Report Contact with Law Enforcement

When the DOC pulled Ms. Araujo's criminal history records as part of its investigation, it noted an entry concerning a 2002 "sealed case." Since Ms. Araujo was then a DOC Correction Officer, she had the duty to report any contact with law enforcement to the DOC. The underlying details of the matter were not clearly developed and, on this record, I cannot conclude that the DOC had just cause to discipline Ms. Araujo in 2011 for any alleged failure to make a required disclosure, if required, a decade earlier. Given the seriousness of the other charges involved, I can see no useful purpose to this type of "piling on" such a stale incident absent a compelling reason to have included it.

Modification of Penalty

G.L.c.31, Section 43 also vests the Commission with authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated with “considerable discretion” in this regard, albeit “not without bounds”, so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. E.g., Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 600 (1996) and cases cited; Falmouth v. Civil Service Comm’n, 61 Mass.App.Ct. 796, 800 (2004); Faria v. Third Bristol Div., 14 Mass.App.Ct. 985, 987 (1982) (remanded for findings to support modification)

Since the facts found do vary from those upon which DOC had determined to discharge Officer Araujo, it would be appropriate that the Commission consider whether to exercise its discretion to modify the penalty imposed. After carefully considering the matter, I conclude that a modification should not be made here.

The DOC did not prove that Ms. Araujo committed all of the acts of misconduct it alleged against her. In particular, the evidence did not establish that Ms. Araujo’s interactions with DL while he was an inmate at BPRC rose to the level that were inappropriate. (Charge 1) Similarly, the DOC failed to prove that Ms. Araujo had been in contact with friends of DL who also were inmates or former inmates (Charges 3[in part], 5 & 6), that she filed a false police report (Charge 7), or that she failed to report contact with law enforcement (Charge 8). While it is not disputed that Ms. Araujo refused the order to be fingerprinted in the course of the investigation against her, I have not considered that conduct as appropriate for discipline. (Charge 9),

Nevertheless, the DOC did establish that Ms. Araujo carried on a clandestine relationship with former inmate DL that included regular meetings and numerous telephone communications, some of which were sexually explicit. She fabricated false explanations and alibis to keep this

relationship secret and falsely denied her behavior when confronted by the DOC. She persisted in this false innocence even through the Commission hearings. While the Appellant correctly points out that not every DOC employee who has engaged in an inappropriate relationship with an inmate or former inmate has been terminated, the record of DOC's discipline of other employees clearly shows that termination is within the range of discipline that DOC has meted out in other cases, and the Commission has declined to override that determination in other prior cases. See Jones v. Department of Correction, 23 MCSR 89 (2010); Davis v. Department of Correction, 22 MCSR 213 (2009). I do not find good reason to distinguish those decisions and invoke the Commission's discretion here.

Accordingly, for the reasons stated above, the decision of the Department of Correction to discharge the Appellant, Maria Araujo, is affirmed and her appeal is hereby ***DENIED***.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis & Stein, Commissioners; McDowell, Commissioner [Absent]) on January 23, 2014.

A True Record. Attest:

Commissioner

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)(1), 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.

Notice to:
Brian Rogal, Esq. (for Appellant)
Heidi D. Handler, Esq. (for Respondent)