

Dep't of Correction v. Patterson

OATH Index No. 2164/09 (Oct. 1, 2009)

Termination recommended for captain who used excessive force towards an inmate and made multiple false statements about the incident, including false reports, false MEO statements, and false visitor restriction paperwork in which he claimed that the inmate's wife had perpetrated the force.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
- against -
REGINALD PATTERSON
Respondent

REPORT AND RECOMMENDATION

FAYE LEWIS, *Administrative Law Judge*

Petitioner, the Department of Correction, brought this employee disciplinary proceeding under section 75 of the Civil Service Law against respondent, Reginald Patterson, a captain at the Anna M. Kross Center ("AMKC"), alleging that on May 13, 2007, while supervising the visit search area, he improperly struck an inmate and subsequently failed to ensure that the inmate was provided prompt medical attention (specifications one and five). Further alleged is that respondent failed to report that he used force against the inmate and attempted to cover up the incident (specification three); submitted a false report concerning the incident (specification two), and made false and misleading statements when questioned pursuant to Mayor's Executive Order 16 ("MEO 16") about the incident (specification four).

At a three-day hearing, petitioner presented nine witnesses, while respondent presented four witnesses. Both parties presented documentary evidence. For the reasons set forth below, I find that the charges are sustained except for the portion of specification four that alleges that respondent gave false and misleading testimony by stating that he generated visitor restriction paperwork for the inmate's wife. I recommend that respondent's employment be terminated.

ANALYSIS

It is undisputed that on May 13, 2007, which was Mother's Day, respondent was the visit area supervisor at AMKC. Among the inmates being visited was David Alston. Shavon Alston, Mr. Alston's wife, arrived at the main visit building at 9:58 a.m., according to the visit log (Pet. Ex. 12). Mr. Alston was notified that he had a visitor at 10:15 a.m. and the visit began at some point thereafter (Pet. Ex. 17). Later, the visit was terminated. Mr. Alston was subsequently seen in the clinic with bruising to his face. The parties disagree on whether Mr. Alston's wife swung at him during the visit or whether respondent punched Mr. Alston after the visit was terminated. They also dispute whether respondent extended the visit after it was terminated.

Respondent, partly corroborated by Officer David Vallecillo, the visit officer on May 13, 2007, claims that the visit was terminated because Officer Vallecillo told him that Ms. Alston swung at her husband. After that, according to respondent, paperwork prohibiting Ms. Alston from visiting for a 30-day period was generated. In contrast, Mr. Alston asserts that the visit was terminated because time was up but that after the visit, respondent heard Mr. Alston arguing with Officer Vallecillo on the way to the search area, pulled him off the line and punched him. Mr. Alston also claims that respondent, together with Officer Vallecillo, engaged in further menacing behavior until informed that his mother-in-law worked as a correction officer at the Rose M. Singer Center ("RMSC"). After that, according to both Mr. Alston and his wife, they were permitted an extension of their visit for several hours. Mr. Alston also asserts that respondent offered to escort him personally to the clinic, so he could be seen immediately, but that he refused the offer, and said that he would write a report, leading respondent to indicate that he would have to start on his own paperwork.

In this case, both Mr. Alston, who was released from an upstate facility in April 2008, and his wife, Ms. Alston, testified. For the most part, I found them to be credible witnesses. It was striking that Mr. Alston complained about the incident to the Department of Investigation ("DOI") the very next day, and that in speaking with DOI over the telephone and in other written statements provided to investigators at about the same time, he gave very similar, consistent accounts of what had occurred. Additionally, I found Mr. Alston's account of his injuries to be corroborated by medical documentation from the clinic.

By contrast, I did not find either respondent or Officer Vallecillo to be credible. Their statements were internally inconsistent and also inconsistent with each other in material aspects.

Additionally, the documentary evidence, particularly the clinic logbook and the medical record notes, is not consistent with respondent's version of events, in which Mr. Alston was brought immediately to the clinic following termination of his visit with his wife by Officer Vallecillo. Rather, these documents are far more consistent with Mr. Alston's testimony that he went to the clinic after the extended visit with his wife.

The Alstons testified that they have been married since March 13, 2007 and have a baby son, David. Mr. Alston is 30 years old and a part-time college student who also works for the airlines (Tr. 13-14, 48, 71, 103).¹ They live together "on and off" (Tr. 103). At the time of the incident, Ms. Alston was living with her mother, a correctional officer at RMSC for about twelve years (Tr. 72, 73). Mr. Alston testified that his incarceration stemmed from a 2005 drug charge involving the sale of crack cocaine; he admitted that he had a warrant for leaving a mandated drug treatment program and was re-arrested when stopped for a traffic infraction (Tr. 17, 46, 47, 95).

Although inmate visits usually last only for an hour, Mr. Alston testified that he had spoken with a correction officer prior to the scheduled visit and believed that it would be extended (Tr. 21-22). He believed his visit began no later than 11:30 a.m. (Tr. 21). This timeframe was consistent not only with the reported notification time of 10:15 a.m., but also with the testimony of Officer Lorraine Dupal, the housing area officer that day. Officer Dupal testified that Mr. Alston probably did not leave the housing area prior to 10:45 a.m., when she left the area, because she did not note his departure in the housing area log book (Tr. II. 215). Mr. Alston testified that after he had visited with his wife for almost an hour, a correction officer told him that it was time for the visit to end (Tr. 22). Mr. Alston replied that he had received an extension and asked if he could have at least another fifteen minutes with his wife (Tr. 22). Since the extension was not in writing, the correction officer told him she was unsure of whether or not the visit could be extended (Tr. 22). Shortly thereafter, another correction officer, who Mr. Alston referred to as "the Hispanic officer," appeared and told Mr. Alston it was time to go (Tr. 23). Mr. Alston protested but when told that the visit was over kissed his wife goodbye and left the area (Tr. 23).

¹ The transcript for May 18, is referred to as Tr. I. The transcript for June 15, is referred to as Tr. II. The transcript for July 14, is referred to as Tr. III.

Ms. Alston corroborated this portion of her husband's testimony, although she testified, apparently erroneously, that she first met with her husband about 9:00 a.m. for about an hour. She also testified that she recalled her husband telling her that the visit was going to be extended and then arguing with a correction officer when it was not extended (Tr. 75).

Mr. Alston testified that as he and the Hispanic officer walked from the visit floor to the strip search area, they continued to discuss his earlier request for the extension. Mr. Alston was standing on the line for the magnetometer when respondent approached and asked him what the "noise was" (Tr. 24). Mr. Alston replied that there was no noise, he was "just talking" to the officer (Tr. 24). Respondent then told Mr. Alston that he had "nothing to say" and should "get off the mf'ing line" (Tr. 24). Mr. Alston complied. At this point, according to Mr. Alston, all of the other inmates had passed through the magnetometer, and the only people in the area were the correction officers in the nearby visit floor "bubble" (Tr. 65). Respondent had a windbreaker on and began to unzip it, while "staring [him] down" (Tr. 25, 48). Mr. Alston, afraid that something was wrong, said, "at least can I have my boots before you beat me up?" (Tr. 25, 48). This was a reference to his still wearing slippers from the visit (Tr. 25). At this, respondent "smirked," said, "oh, you want your shoes?," and then hit Mr. Alston once with his right hand, in Mr. Alston's left eye (Tr. 25). Respondent was wearing a ring, which cut under his eye (Tr. 63). As a result of the blow, the back of Mr. Alston's head hit the wall behind him and he fell down (Tr. 25-26). He also bit his tongue, which was bleeding (Tr. 51). Respondent and the Hispanic correction officer then placed Mr. Alston in an "isolation room."

According to Mr. Alston, respondent and the officer left him alone for several minutes, but then returned carrying a nightstick and a can of chemical spray in their hands (Tr. 26). Mr. Alston was initially unclear who was carrying what. Then he testified that the officer was holding the mace and picked up the baton, before respondent told him, or "shot him a look" to put down the baton (Tr. 63). Before they actually entered the room, Mr. Alston complained that he did not know what he had done and warned the officers that his mother worked at "Rosie's" (RMSC) (Tr. 26). Respondent asked Mr. Alston who his mother was and he replied that his mother-in-law was Lisa Brown (Tr. 26). Respondent then left the room for a minute and went into the visit floor "bubble," returning with a "big smile on his face," and saying that he knew his mother and why hadn't Mr. Alston told him (Tr. 27). He apologized for hitting Mr. Alston and asked if he would like to continue his visit with his wife (Tr. 27). When Mr. Alston assented,

respondent dispatched a guard to get Mr. Alston's wife. Within fifteen minutes later Mr. Alston was back with his wife (Tr. 27, 60). The visit continued for four to five hours (Tr. 27). They sat at a one of three tables in an area close to the control room. Mr. Alston and his wife were the only ones there (Tr. 27, 61). While they were talking, his eye swelled and hurt. He was embarrassed and crying, but his wife did not ask anyone to provide medical attention for him (Tr. 28, 50). Eventually she left the visit floor to go to work so the visit ended. Mr. Alston also left the floor, escorted by respondent, who asked if he was hungry (Tr. 28, 29). Mr. Alston declined food and returned to his housing area (Tr. 29).

Consistent with her husband's testimony, Ms. Alston testified that about five minutes after she left the visit area, before she could retrieve her identification and get on line for the bus, an officer approached her and said that she could resume her visit with her husband (Tr. 75, 76, 88). According to Ms. Alston, upon her return to the visit area, respondent greeted her and asked who her mother was (Tr. 77). Ms. Alston then identified her mother (Tr. 77). Respondent told Ms. Alston not to be "alarmed," or display any reaction, because her husband had gone through the "interview process" (Tr. 77). Ms. Alston then went into the visiting hall to meet her husband (Tr. 78). She was "kind of horrified" by how swollen his face was (Tr. 78). There was a cut above his eye and also blood in his eye (Tr. 98). He was emotional and crying, and told her that "one of the white shirts" had attacked him and he had used her mother's name (Tr. 79). While not identifying respondent as the assailant, Mr. Alston said that he got punched in the face, that his head hit the wall hard, that he slid down and grabbed his face, that "they" "threw" him into another room, and that he then saw two other officers coming in, one with a club and one with mace, and used her mother's name before they actually did anything (Tr. 92).

Ms. Alston testified that she did not call for help or take any other action because respondent had warned her not to and she was "scared" (Tr. 79, 80). Ms. Alston was not sure how long the visit lasted, but stated "it felt like forever" (Tr. 79). She gave varying estimates of the time that their visit ended, ranging from close to 3:00 p.m. to 4:00 p.m. (Tr. 80, 91). She also testified that she left the facility sometime between 4:00 p.m. and 5:00 p.m. (Tr. 98, 102). She recalled not getting to work until about 7:00 p.m. (Tr. 80). The buses were still running when she left the facility, and there were perhaps 15 people waiting ahead of her (Tr. 102, 103). When

she left, there were maybe 15 people still in front of her (Tr. 103). Ms. Alston testified that she told her mother about the incident but her mother did not want to be involved (Tr. 93).²

Mr. Alston testified that once he returned to the housing area, he spoke with his housing officer and asked to go to the infirmary (Tr. 29). Five to ten minutes later, respondent appeared and offered to escort him to the infirmary, so Mr. Alston would not have to wait “three to four hours” and could be seen right away (Tr. 30). Mr. Alston declined respondent’s offer and said that he intended to write a report, at which point respondent replied that he would have to start on his own “paperwork” (Tr. 30). Mr. Alston testified that when he was called down to the clinic he waited for hours before being seen (Tr. 30-31). While he waited he filled out an inmate incident report and submitted it to Captain Juwad (Tr. 32). He was told that the clinic did not have a copier and he could not have a copy (Tr. 33). At the clinic respondent was given a prescription for Motrin. He was not given an ice pack because the clinic was out of them. He testified that by then, the “entire left side” of his face was “numb,” and his eye was swollen and painful (Tr. 31, 32). Mr. Alston testified that when he saw the doctor, he said that respondent had struck him and that he fallen, had hit the back of his head, bitten his tongue and hurt his mouth (Tr. 51, 52). After being treated, Mr. Alston returned to his cell (Tr. 33). He testified that he was unable to eat or sleep, because the pain was so bad, and that his eyes were so sensitive to light that he had to remain in the dark for the next four or five days (Tr. 33). He was referred to a psychologist, who gave him a sleeping medication (Tr. 35).

Both Mr. Alston and his wife testified that his wife continued to visit him at AMKC after May 13, 2007, until he was transferred to an upstate institution (Tr. 40-41, 81-82). Mr. Alston testified that he was never given a form informing him that her visits had been denied (Tr. 40). The visit log confirms their testimony, indicating that Ms. Alston made nine visits after May 13, 2007, beginning on May 16, 2007, and continuing through June 2, 2007. The visits were closely spaced together: May 15, 18, 19, 24, 25, 27, and 30, and June 1 and 2 (Pet. Ex. 12).

Although there are some discrepancies, Mr. Alston and Ms. Alston’s testimony is consistent in the most essential details: the initial visit, the ending of the initial visit following

² There was no documentary corroboration of the time that Ms. Alston left the facility. Investigator Wileen Taveras, who later conducted a use of force investigation for the Department, testified that she went to the jail to attempt to locate the visitor card for Ms. Alston. This card is given to all visitors when they leave the facility, and usually returned to the facility when the visitors leave. In this case, however, Investigator Taveras testified that the card could not be located and that she observed a stash of visitor cards kept inside a clear, plastic trash bag, filled all the way to the top, inside what appeared to be a bathroom (Tr. 178). She also testified that the facility keeps a visit log which shows a sign-in time but not a departure time (Tr. 179-80).

some disagreement between Mr. Alston and a correction officer about whether the visit time would be extended, and then, the continuation of the initial visit for several hours, until three or four p.m., at which time Mr. Alston had a cut below his eye, visible swelling of his eye, and complained of pain and of being punched by one of the “white shirts,” prior to invoking the name of Ms. Alston’s mother and her job at RMSC to ward off any further force.

Moreover, the medical record corroborates respondent’s testimony about his injuries, both immediate and more long-term. Dr. Aslam Kadri, who examined respondent on May 13, 2007, wrote in his section of the “injury to inmate” report that Mr. Alston had “intraorbital swelling” to his left eye, and he ordered as treatment, motrin, cold compresses, and an X-ray of the eye (Pet. Ex. 10). This report indicates that Mr. Alston reported for medical attention at 8:00 p.m. Dr. Kadri dated the form May 13, 2007, at 8:15 p.m. (Pet. Ex. 10). His progress notes, dated 8:20 p.m. on May 13, also indicated intraorbital swelling and trauma to the left orbit (Pet. Ex. 1). Moreover, in a second “injury to inmate” report, completed June 5, 2007, as well as progress reports written on June 5, at 12:45 a.m., Christine Mercier, RPA, noted that Mr. Alston had been brought to the clinic for evaluation of his May 13, 2007 injury and that he alleged that he had been punched in the left eye by “DOC staff” on May 13, 2007, and complained of blurred vision and pain to his left lower molar, as well as a headache. Ms. Mercier noted the “resolving bruise” below his left eye, as well as “no obvious injury” in the oral cavity. X-rays that had been taken on May 15, 2007 found no fracture. Respondent was referred to optometry and the dentist (Pet. Ex. 1, Pet. Ex. 9). Mr. Alston’s medical record also indicates that at mental health visits, starting May 15, 2007, he complained he was depressed and had insomnia because he had been assaulted by a captain on May 13, 2007 (Pet. Ex. 1 at 75-76, 81). A “mental health intake form” identified as “problems” “drug use” and “mood,” and noted that psychiatric and clinical treatment was necessary to stabilize his mood. It also contained a DSM IV (Diagnostic and Statistical Manual of Mental Disorders) diagnostic code indicating, “R/O PTSD,” rule out post-traumatic stress disorder.

Mr. Alston also made several contemporaneous or near-contemporaneous reports concerning the incident. He testified that on the morning of May 14, 2007, he called the Inspector General’s office to report the incident (Tr. 34). Unsatisfied with their response, he telephoned again and was told that the incident was on file (Tr. 34). The DOI intake log corroborates his testimony. It shows that at 11:02 a.m., on May 14, 2007, Mr. Alston reported

that he was pulled off the line after visiting his wife and punched in the eye for no reason, and that respondent then extended his visit in an attempt to “bribe him” not to report the incident. (Pet. Ex. 25). At 12:46 p.m., respondent called back and said that his head hurt very badly, that he had asked to go to medical but had been refused, and that he had given a voluntary inmate report to Captain Jawad, who had in turn given it to respondent (Pet. Ex. 25; Tr. II. 206). Ms. Alston subsequently advised her husband’s Legal Aid attorney of the incident. Legal Aid filed a complaint on his behalf and also initiated a lawsuit (Tr. 83, 109). The Department began an investigation, which was assigned to Investigator Martinez, who took a written statement from Mr. Alston as well as five digital photographs (Tr. 109; Pet. Exs. 20a-20e). The use of force investigation was subsequently reassigned to Investigator Taveras (Tr. 108). The photographs show some type of mark or discoloration under Mr. Alston’s left eye (Pet. Ex. 20a, 20d).

In the written statement (“Inmate voluntary statement”), obtained by Investigator Martinez on June 4, 2007, Mr. Alston asserted that respondent pulled him off the inmate line after hearing him argue with “Officer V” about having been promised extra time with his wife. Mr. Alston began to tell respondent what his name was. He asserted that respondent interrupted, saying, “I don’t care what the fuck your name is,” and then punched him once to the left eye. This knocked him back, causing him to hit the back of his head and bite the inside of his mouth. He wrote that he was then placed in a visiting booth. Officer “V” was positioned in front of the door holding a can of mace. Respondent said something along the lines of, “I’m gonna give you two minutes to give me a reason not to fuck you up.” Mr. Alston replied that his mother-in-law, Lisa Brown, worked at “Rosie’s” (RMSC). Respondent said he knew her, asked why Mr. Alston had not said that, and offered him more visiting time with his wife. His wife was then located, escorted back to the area, and permitted to visit with him until about 5:30 p.m. Mr. Alston wrote that he returned to his housing area and about three hours later went to the clinic, where he was given Motrin. He wrote that he gave a written statement to Captain Jawad, but no photographs were taken, and that respondent offered to write up papers that an unknown inmate had hit him and to otherwise take care of him (Pet. Ex. 3).

Mr. Alston gave another voluntary statement, to a Captain Fulton, also on June 4, 2007, in which he gave essentially the same account, except stated that after respondent pulled him off the line and told him that he did not “give a fuck” who he was and to shut up, he told respondent not to beat him up in his flip-flops. Respondent then asked if he wanted to get his sneakers, and

punched him in his face. He also wrote that after the extended visit with his wife, respondent offered to “take care” of him if Mr. Alston did not say that respondent assaulted him (Pet. Ex. 24).

Additionally, on July 27, 2007, during a telephone interview conducted by Investigator Gooding, Mr. Alston reiterated his account of what transpired on May 13, 2007. His statement, which was taped (Pet. Ex. 26), was detailed and consistent in all material respects with his prior written statements.

The clinic logbook indicates that respondent’s “time in” the clinic was 1950 hours, or 7:50 p.m., and that he left the clinic at 2025, or 8:25 p.m. (Pet. Ex. 16a). This is consistent with the notation by Dr. Kadri in his injury to inmate report that respondent was seen at 8:00 p.m. However, the numbers “1” and “9” in the logbook are written in darker ink than the “5” and the “0” and it is clear that the number “9” was written over a previous entry. The previous entry is not fully legible, but what can be seen -- in particular, a loop at the bottom and a line at the top -- suggests that the previous number may have been a “5.” Officer Mario Egalite, the clinic officer on May 13, 2007, testified that he made the entry of “clinic officer” next to the entry for Mr. Alston. When asked to look at the 1950 entry, he said that the “50” was his handwriting, but that he did not believe he had written the “1” or the “9” because he always adheres to the policy that if a correction is made in the log, he must draw a line through the initial entry and then write the change (Tr. II 193, 199-200). The irregularities of the “time in” logbook entry suggests that Mr. Alston was, in fact, at the clinic much earlier than 7:50 p.m., which is consistent with his testimony that he waited for hours at the clinic after his wife left, before being treated.

There were some portions of Mr. Alston’s testimony where he did not seem entirely candid, relating to his own prior drug use. On cross-examination, Mr. Alston denied going into a 12-day methadone program to wean him off of heroin, or ever taking methadone (Tr. 53. 58). This was contradicted by his inmate medical record, which contains an “after care letter,” dated April 22, 2007, indicating that he was on a methadone 12-day detoxification program (Pet. Ex. 1). Consistent with methadone treatment, his inmate mental health assessment indicated that Mr. Alston admitted having used marijuana, alcohol, cocaine, and heroin (Pet. Ex. 1). Mr. Alston also testified that in the past he had switched his urine sample for a drug test in order to get into a program instead of going to jail (Tr. 53). He admitted lying to the court about this in order to get into the program, because he needed the “structure” of a program, “to learn to respect people and

see what these drugs that I was selling did to them” (Tr. 56). Although this explanation about the need for structure seemed genuine, it also appeared that Mr. Alston also had a drug problem that required treatment. More candidly, Mr. Alston admitted that when he was arrested by the police, he gave them an alias, using the last name of his father, whom he had never met, because he knew there was a warrant out for his arrest (Tr. 57). He admitted, “I didn’t want to go to jail, so I lied” (Tr. 58).

Respondent gave a quite different explanation than Mr. Alston of what transpired on May 13, 2007. He testified that he has been with the Department since 1996. His posts have included the intelligence unit, the Emergency Service Unit, and the Mayor’s Office of Emergency Management (Tr. III 203). He became a captain in December 2004; since that time he has been continuously assigned to AMKC. Since 2005 his steady post has been the Visit Supervisor (Tr. III 204). Respondent testified that on May 13, 2007, Officer Vallecillo told him that Mr. Alston’s visitor, Ms. Alston, had swung at him. Officer Vallecillo did not say that Ms. Alston actually punched her husband (Tr. III 221). After receiving this report, he went to the search area and spoke briefly with Mr. Alston. Respondent then told Officer Vallecillo to generate an injury to inmate report and take Mr. Alston to the clinic. He testified that he spoke with Ms. Alston very briefly and told her that her behavior was not tolerated and that she was going to be restricted from visiting Riker’s Island. Ms. Alston told him that she was related to Lisa Brown but he did not know who that was. He testified that he then generated a denial or restriction of visit form for Ms. Alston (Tr. III 206, 207-09, 212, 219). The “denial/restriction of visit information sheet” restricted Ms. Alston from visiting “all facilities” for thirty days, from May 13, 2007, through June 13, 2007, because of “unruly behavior” on her part (Resp. Ex. B). Respondent wrote in the accompanying “limitation of visiting privileges” form that, at approximately 2:30 p.m., Officer Vallecillo saw inmate Alston and Sharon Alston engaged “in a physical altercation with each other” and escorted Ms. Alston off the visit floor (Pet. Ex. 2 at 3; Resp. Ex. B at 3).

Respondent testified that at no time did he strike Mr. Alston, or threaten to spray Mr. Alston with a chemical agent. Nor did he witness any other staff member strike Mr. Alston or threaten to use a chemical agent (Tr. II 205, 206, 213). Respondent acknowledged that he previously pled guilty to using a vehicle without authorization and agreed to forfeit 30 vacation

days, but asserted that he was not really guilty and pled guilty only because the pending disciplinary charges were holding up his promotion (Tr. III 213, 232-33).

The "limitation of visiting privileges" form contains a space for the visitor's signature; in that space Officer Roberta Hicks, who worked the visit post that day, wrote "refused to sign." Officer Hicks signed the form as a witness, dating it May 13, 2:50 p.m. (Resp. Ex. B; Tr. III 171-72). She testified that she was helping to prepare these forms at the respondent's behest, and asked Ms. Alston to wait for the paperwork, but the visit bus came and Ms. Alston left (Tr. III 168-72). The "denial/restriction of visit information sheet," contains the signature of respondent, as supervisory officer, as well as the notation "NC 1006" in the section for the signature of the program deputy warden. Officer Hicks acknowledged making this notation, at the direction of respondent, to indicate the approval of Deputy Warden Nicole Clyde (Tr. III 171; Resp. Ex. B). Deputy Warden Clyde acknowledged that on the weekends, she is the highest-ranking person in the jail, and as tour commander, would sometimes give respondent permission to write her initials on the visit restriction paperwork; however, she had no recollection of this particular incident (Tr. III. 192, 193). Respondent testified that he informed Assistant Deputy Warden Clyde of what had occurred within about ten minutes of the incident (Tr. III. 222).

The "injury to inmate" report which Officer Vallecillo generated contains his statement that at approximately 2:30 p.m., Mr. Alston alleged that his wife had hit him in the face (Pet. Ex. 10). On the second page of the report, containing the "investigator's report," respondent wrote that he interviewed Mr. Alston, who "refused" to give a written statement but verbally alleged that his wife hit him in the face because she was "upset" with him. Respondent also wrote that he was unable to get a statement from Ms. Alston because Mr. Alston had not reported the incident until after his wife left the facility (Pet. Ex. 10). Respondent dated his portion of the report, June 7, 2007 (Pet. Ex. 10).

On July 9, 2007, respondent submitted a use of force report (Pet. Ex. 5). Therein, he stated that around 2:35 p.m. on May 13, 2007, Officer Vallecillo informed him of an "altercation" between Mr. and Ms. Alston (Pet. Ex. 5). He told Vallecillo to end the visit and escort Ms. Alston out of the visit floor area. He wrote that as Ms. Alston was leaving, he told her that her actions were unacceptable and that she apologized and said she knew better because her mother was a captain at RMSC (Pet. Ex. 5). Respondent stated that he went to the search area, where Mr. Alston told him he wanted to go to the clinic. He told Officer Vallecillo to generate

an injury report and take Mr. Alston to the clinic. He denied using any force or witnessing any force on Mr. Alston (Pet. Ex. 5). In an addendum to the report, dated June 22, 2007, respondent stated that the visit was ended due to “unruly behavior” on the part of Ms. Alston and that visit restriction paperwork had been generated (Pet. Ex. 7). Respondent also wrote that Officer Vallecillo told him that he removed Ms. Alston from the visit floor because “it appeared” that she had hit Mr. Alston in the face. He stated that he interviewed Mr. Alston about the incident and that Mr. Alston said that his wife had hit him in the face. At this point, respondent wrote, he noticed a “dark spot” under Mr. Alston’s left eye and had Officer Vallecillo generate an injury report and take him to the clinic. Finally, respondent stated that when he returned to the visit area to question Ms. Alston about the incident, she was gone (Pet. Ex. 7).

When interviewed by the Department of Investigation pursuant to Mayoral Executive Order 16 (“the MEO 16 interview”), respondent said that Officer Vallecillo had told him that there was an “altercation” between Mr. Alston and his wife. Respondent said that Officer Vallecillo thought Ms. Alston had hit her husband, although he did not specifically say that had occurred. At that point he told Officer Vallecillo to end the visit and generated denial/restriction of visit paperwork. Respondent also stated, consistent with the addendum to the use of force report, that when he saw Mr. Alston, he noticed a mark under his left eye, and that Mr. Alston said that he wanted to go to the clinic (Pet. Ex. 20, at 6, 7, 8). He asserted that after Ms. Alston was escorted off the visit floor, he told her that future visits would be denied and that she then told him that her mother worked at RMSC (Pet. Ex. 20, at 15). Finally, he denied striking inmate Alston or at any time pulling him out of the line when he returned to the visit area, and also denied ever seeing Officer Vallecillo threatening Mr. Alston with a can of chemical agent (Pet. Ex. 20, at 9, 15, 18).

Officer Vallecillo testified that he was appointed a correction officer in June 2005 and has been assigned to AMKC for approximately three years. While a probationary officer on the day in question, he has now passed his probationary period, which was deferred as a result of a personnel determination review concerning this incident (Tr. III 139, 146; Pet. Ex. 23). Officer Vallecillo testified that on May 13, at about 2:30 p.m., he saw a female visitor take a swing towards Mr. Alston’s face (Tr. III 140, 156). He asserted that, because he was approximately fifty to sixty feet away, he did not know whether the visitor actually made contact (Tr. III 140, 149). He terminated the visit and escorted the visitor to the front registration area (Tr. III 140).

He escorted Mr. Alston back to the search area and notified respondent by telephone about the incident (Tr. III 141). He did not notice any bruises on Mr. Alston at that time (Tr. III 141, 142, 153).

Officer Vallecillo denied seeing any interaction between respondent and Mr. Alston. He testified that respondent was not on the visit floor at the time of the swing. More specifically, he denied seeing respondent strike Mr. Alston, and denied spraying or threatening to spray Mr. Alston with a chemical agent (Tr. III 141-43). He testified that he did not recall whether Mr. Alston or Ms. Alston made any statements to him. He also said that he did not recall whether Mr. Alston ever told him that his mother-in-law was a DOC employee (Tr. 143). Asked whether Ms. Alston was ever placed in a booth somewhere, he said not to his knowledge, and that he did not recall. The last thing that he recalled was escorting her to the door of the registration unit (Tr. II 162).

Later that day, respondent ordered Officer Vallecillo to write up an injury to inmate report (Tr. III 160). Officer Vallecillo then noticed a “knot” or “blemish” on Mr. Alston’s eye, wrote up an injury to inmate report, and escorted Mr. Alston to the clinic (Tr. III 153, 156). He believed that he took the inmate to the clinic at some point prior to 5:00 p.m., but did not recall when (Tr. II 157). He also testified that once he escorted Mr. Alston off the floor, he “passed” him along to the search officers (Tr. III 154).

Officer Vallecillo submitted a use of force report, dated June 8, 2007, in which he stated that at approximately 2:30 p.m., on May 13, 2007, he saw a visitor take “what appeared to be a swing” at Mr. Alston, leading him to terminate the visit and escort the inmate to the search area (Pet. Ex. 6). In an addendum to the report, he clarified that he did not actually see the visitor make contact with Mr. Alston (Pet. Ex. 8).

When confronted with his statement during his MEO 16 interview on February 21, 2008, that he had conducted a strip search of respondent, Officer Vallecillo amended his testimony to indicate that, most likely, he had searched Mr. Alston (Tr. III 155). Similarly, when read a prior MEO 16 statement that he did not recall whether he escorted Ms. Alston from the floor, Officer Vallecillo testified that he did not recall whether he did so. He stressed that the incident was remote in the past (Tr. II 150; Pet. Ex. 19, at 14)).

As noted above, I found respondent’s and Officer Vallecillo’s testimony to be problematic in multiple ways.

First, respondent's testimony was not consistent with Officer Vallecillo's as to who actually terminated the visit. Officer Vallecillo insisted that he terminated the visit, on his own accord, while respondent testified that he terminated the visit after Officer Vallecillo told him that Ms. Alston had swung at her husband. Officer Vallecillo was inconsistent about whether he told respondent about the swing; he initially testified that he had, by telephone, but when confronted with a prior MEO 16 statement that he thought another officer might have notified respondent (Pet. Ex. 19, at 10), he testified that he did not recall whether he notified respondent. He insisted, however, that he terminated the visit and denied speaking to respondent beforehand (Tr. III 151).

This discrepancy is significant, for several reasons. First, Officer Vallecillo's testimony that he terminated the visit based upon his observation of Ms. Alston taking a swing in the direction of her husband was difficult to reconcile with his testimony that, as the visit officer, he has seen visitors and inmates "play fight," and his reaction has been to "tell them to calm . . . down or the visit will be done" (Tr. 152). Notably, this is similar with Officer Hicks' testimony that if she sees a visitor attempt to strike an inmate, she would ask the visitor and inmate if everything was okay, and if they say yes, permit them to continue their visit. She explains that she does so because sometimes people will say that they are "playing" (Tr. III 177).

It was also problematic that Officer Vallecillo testified that, although he saw Ms. Alston take a swing in the direction of her husband, he did not actually see if she made contact. Even though Officer Vallecillo may have been some distance away from the Alstons, it stands to reason that if he was able to see the beginning of the swing, he should have been able to see the end of the swing -- *i.e.*, whether Ms. Alston's fist actually made contact with Mr. Alston's face. This is particularly so because presumably Mr. Alston would have had some visible and probably even audible reaction if struck in the face by his wife. It is hard to believe that Officer Vallecillo would not have noticed such a reaction.

In any event, even giving Officer Vallecillo the very large benefit of the doubt, and assuming that he did not actually notice whether the swing connected, it is incredible that he would have actually terminated a visit without first ascertaining, as he admitted was his practice, whether the visitor and his guest were simply "play fighting." This is particularly the case because Officer Vallecillo testified that he did not see any injuries on Mr. Alston, even though he escorted him to the search area. It is hard to imagine that Officer Vallecillo, who acknowledged

not noticing any injuries to Mr. Alston, did not avail himself of the opportunity at this time to ask Mr. Alston whether his wife hit him. It is similarly difficult to fathom that Officer Vallecillo did not take the opportunity to ask Ms. Alston, whether or not he escorted her out of the area, whether she had actually punched her husband. Officer Vallecillo stressed that he terminated this visit without first consulting respondent, because the behavior was too “extreme,” but the examples he gave of such “extreme” behavior, which would lead to such independent action on his part, were of an inmate becoming “too aggressive” toward a visitor, or “sexual contact,” “things of that nature” (Tr. 152). These examples differ markedly from the purported incident between Mr. Alston and his wife.

If Officer Vallecillo was wrong or simply mistaken about who actually terminated the visit, then respondent’s testimony that he terminated the visit and initiated a 30-day visitor restriction is problematic, particularly when viewed in light of respondent’s limited steps thereafter to determine what happened and file appropriate reports. Preliminarily, it appears that respondent’s initiation of a 30-day visitor restriction violated the inmate visit procedures directive (ALJ Ex. 3), which state that “the visitation rights of an inmate with a particular visitor may be denied, revoked, or limited only when it is determined that the exercise of those rights constitutes a threat to the safety and security of visitors or the institution. This may only happen if revoking the right to contact visits alone would not reduce the threat” (ALJ Ex. 3). There is no indication on this record that respondent ever considered revoking the right to contact visits alone, or that the safety of Mr. Alston would be imperiled from non-contact visits. When respondent was asked why he did not restrict Ms. Alston to non-contact visits, he testified that he “made the decision because of the unruly behavior” (Tr. III 225).

In assessing respondent’s credibility, it is important to consider that as visit captain, he was required to take certain actions and file certain reports upon notification of an incident between a visitor and an inmate. Deputy Warden Hakin El-Qahir, who was a Programs Deputy Warden at the George R. Vierno Center (“GRVC”) for several years, including 2007, testified that, if there is an allegation that a visitor has assaulted an inmate, the visit captain would have to conduct an investigation, file an incident report, complete his portion of the injury to inmate report within 72 hours, and make notations in the visit denial logbook and either the reportable or the non-reportable logbook. Once an inmate or staff member complains that a visitor physically assaulted an inmate, the investigation should include detaining the visitor, so he or she can be

interviewed, and identifying all other witnesses, including inmates and staff, and obtaining their statements. Deputy Warden El-Qahir acknowledged that the visit directive did not require that staff get reports from inmates or staff in the event of an injury, but asserted, credibly, that the directive governing injury reports required that such statements be obtained (Tr. II 127-129, 154, 157-58). Deputy Warden of Security Mervin Batson, who was assigned to AMKC as Deputy Warden of Programs in 2007, and Assistant Deputy Warden Deon Frazier, the Integrity Control Officer at AMKC, testified, similarly, that the supervisor would have to conduct an investigation, write an incident report, and inform the tour commander of the incident. The tour commander would be responsible for calling the Central Operations Desk (“COD”). According to Deputy Warden Batson, the tour commander should ensure that the supervisor made an entry into either the non-reportable logbook or the reportable logbook, depending on whether the incident was deemed an assault and therefore “reportable” (Tr. III 129). According to Assistant Deputy Warden Frazier, the tour commander should direct the supervisor to make an entry in the non-reportable logbook (Tr. II 170-71, 189). Officer Hicks, Deputy Warden Batson, and respondent also testified that whenever a restriction or denial of a visit is made, a notation should be made in the visit denial logbook (Tr. III 134, 182, 211). The non-reportable logbook is usually kept in the tour commander’s office or the central control room, while the visit denial logbook would be kept in the visit area (Tr. II. 118, 150, 169).

Assistant Deputy Warden Clyde disagreed that an entry would have to be made in either the reportable or non-reportable logbook. She characterized as “not mandated” but only a “possibility” that the visit captain would note in the non-reportable logbook that a visitor purportedly assaulted an inmate. She explained that she would document this in a logbook only if the inmate had “significant injuries” (Tr. II 197). The proper form of documentation would be submitting the injury to inmate report. She allowed further that the 72-hour deadline for the injury to inmate report, which includes the investigating supervisor’s report, is “usually” not met, because the facility is very busy and sometimes allowances are made (Tr. II 200). She did stress, however, that there should be an incident report from the visit officer attached to the injury report. As the tour commander on a weekend, she is responsible for reviewing such injury to inmate reports before the end of her tour (Tr. II 200).

Additionally, Deputy Warden El-Qahir testified that if a visit is terminated, the visitor must be given a copy of the termination/restriction report form and should sign the form in the

space provided. The visit captain is responsible for faxing the visit restriction paperwork to the Board of Correction (“BOC”) and to COD within 24 hours. The form entitled, “denial of visit information sheet” specifies on the bottom of the page that the form is to be faxed to BOC within 24 hours (Resp. Ex. B).

Here, respondent acknowledged that he did not generate an incident report, or ask Officer Vallecillo to write an incident report, because the incident was “not that significant” (Tr. III. 213). Nor did he reach out to anyone at SOD to see whether they wanted the visitor arrested (Tr. 214). He asserted that although he canvassed for witnesses and spoke to inmates who were in the area, everyone refused to give him a statement. He acknowledged that he did not document in writing that he canvassed the area and was refused statements, because the incident did not “warrant that type of investigation” (Tr. III 214). Respondent did not fill out his portion of the injury to inmate report until June 7, 2007, more than three weeks later. Respondent also did not make a notation in the non-reportable logbook, because this was not mandated (Tr. III 222). As a result, Deputy Warden of Security Batson testified that although he reviews both the reportable and non-reportable logbooks on Monday morning, he was unaware on Monday, May 14, 2007, that there was an allegation that a visitor had assaulted an inmate (Tr. III 128-29). Similarly, SOD informed Investigator Taveras that a denial of visit and restriction had not been processed for Ms. Alston in May, 2007 (Pet. Ex. 13).

If respondent truly believed that Ms. Alston had assaulted her husband, as his preparation of visit restriction paperwork would lead one to believe, then plainly he should have been more diligent in investigating and reporting the matter. His explanation that the incident was not that “significant” is inconsistent with his actions in terminating the visit and generating a 30-day visit restriction. At the very least, respondent should have filed an incident report, or directed Officer Vallecillo to do so, and he should have filed an injury to inmate report in a reasonably prompt manner. Indeed, even Assistant Deputy Warden Clyde, who disputed that an entry in the non-reportable logbook had to be made, confirmed that if there is a report of an inmate assault, an incident report needs to be generated. Although Officer Hicks testified that she made an entry in the visit denial logbook, to document the incident (Tr. III 82),³ that does not relieve respondent

³ Despite a request by respondent to locate and produce the visit denial logbook, petitioner could not locate it. Respondent testified that the visit denial logbook is archived when it is completed and a new book is started. Both respondent and ADW Clyde testified that archived materials are kept in several storage areas inside the

of his separate obligation with regard to the filing of incident reports and his portion of an injury to inmate report.

Respondent should have also attempted to obtain a statement from Ms. Alston. Respondent's explanation for why he had not done so was not credible. Respondent acknowledged at trial that he spoke to Ms. Alston very briefly to tell her that her visits would be restricted, at which point Ms. Alston volunteered that she was related to Lisa Brown. This is consistent with his statement in his use of force report, written July 9, 2007, that he had a brief conversation with Ms. Alston in which she apologized. Certainly, respondent could have asked at this time whether Ms. Alston actually hit her husband, a material fact purportedly unknown by Officer Vallecillo. Respondent asserted in his "injury to inmate" report, dated June 7, 2007, that he was unable to get a statement from Ms. Alston because Mr. Alston had not reported the incident until after his wife left the facility. This is nonsensical. Even if I were to credit respondent's testimony that Ms. Alston had left the facility when he returned to question her after speaking with Mr. Alston, there is no reason why respondent could not have at least attempted to obtain a statement from Ms. Alston earlier, based upon Officer Vallecillo's report of the incident.

Respondent's explanation for why he did not submit an injury to inmate report until June 7, 2007, was also unavailing. Both Dr. Kadri and Officer Vallecillo dated their portions of the report May 13, 2007 (Pet. Ex. 10). Respondent testified that he would have written his report on the date indicated, namely, June 7 (Tr. III 219). He could not explain why it took him so long to submit the report, and acknowledged that it took him "probably . . . an hour" to complete the injury to inmate report (Tr. III 215, 218). I did not find respondent's explanation that he was waiting for the results of the x-rays (Tr. III 218) to be persuasive, because respondent did not mention the results of the x-rays in his report and testified that he would not have included them (Tr. III 223-24). The injury to inmate report is due within 72 hours, and although Assistant Deputy Warden Clyde testified that sometimes allowances are made for a late filing, surely that does not mean a late filing more than three weeks after the alleged incident.

Additionally, it was striking that the visit restriction paperwork generated by respondent was missing multiple signatures. In particular, the "denial of visit report" has a space for the

building, and in trailers on the side of the building (Tr. III 195, 212). Respondent asserted that "nothing is actually kept in order" (Tr. III 212).

signature of the program deputy warden, to indicate that he has reviewed the report and determined that such denial or termination was appropriate, or to alternatively request additional investigation to determine the appropriateness of the authorization (Resp. Ex. B). Similarly, the limitation of visiting privileges form contains a space for the recommendation of the “visit ADW” and also contains a signature space for the approval of the program deputy warden, deputy warden for security, and warden (Resp. Ex. B). Here, all of these signatures are missing. The only notation made were the initials, “NC,” to indicate the approval of Assistant Deputy Warden Clyde. Even crediting respondent’s testimony that he spoke to Assistant Deputy Warden Clyde about the incident soon thereafter, the omission of the signatures of the program deputy warden, deputy warden for security, and warden, is troubling and suggests that respondent did not process the documentation as required. This would explain SOD’s statement that a denial of visit and restriction had not been processed for Ms. Alston in May, 2007, and it would also explain why Ms. Alston visited her husband nine times during the visit restriction period (Pet. Ex. 13).

In this regard, I noted Assistant Deputy Warden Clyde’s testimony that she has seen situations where a visitor denial restriction was generated and the denial/restriction form sent to SOD to be inputted to the computer, but never processed (Tr. III 201- 202). I also noted respondent’s testimony that sometime there is a backlog and that restrictions do not get entered into computer in a timely fashion (Tr. II 209-11). Respondent acknowledged, however, that, even when restrictions are not processed timely, “usually a staff member might observe” when a previously restricted visitor enters the facility (Tr. III 231). He stated during his MEO interview that although he was the visit floor supervisor, he did not recall seeing Ms. Alston after this incident (Pet. Ex. 20, at 17). This is surprising given her multiple visits to her husband in May and June, 2007.

Finally, in assessing respondent’s credibility, respondent’s claim that he directed Officer Vallecillo to escort Mr. Alston to the clinic shortly after ending the visit at 2:30 p.m., is inconsistent with the notation in Dr. Kadri’s injury to inmate report which indicated that Mr. Alston reported for medical attention at 8:00 p.m., as well as the notation in the clinic logbook indicating that Mr. Alston’s time-in the clinic was 1950 hours, or 7:50 p.m., and his time-out was 2025 hours, or 8:15 p.m. This is the case even considering the irregularity in the time-in entry at the clinic which suggests that Mr. Alston actually entered the clinic much earlier, perhaps at

1550, or 3:50 p.m., as suggested by the writing under the “9” in 1950. Asked to explain why it took Mr. Alston so long to be seen, respondent speculated that the clinic could have been overcrowded, or there could have been inmates with more pressing injuries (Tr. III 208). He also introduced into evidence the clinic area logbook for May 13, 2007 which indicated that at approximately 4:20 p.m. there was a “new admission situation” (Resp. Ex. A), which Investigator Taveras interpreted as meaning that the clinic was understaffed and that new admissions would get priority in being seen (Tr. 167). This would not explain, however, why Mr. Alston was not seen until approximately 8:00 p.m., if he was in fact escorted to the clinic shortly after 2:30 p.m. Nor would it explain the time-in notation of 1950, or even the earlier time-in notation obscured by the “9.” By contrast, Mr. Alston and his wife testified that they had an extended visit, ending, by Mr. Alston’s account, four or five hours later, and by his wife’s account, at some point after 3:00 p.m. Mr. Alston also testified that he waited at the clinic for hours before being seen. This testimony is far more consistent with the entries of Dr. Kadri, as well as the entries in the clinic logbook.

In sum, considering all the evidence, I find Mr. Alston’s testimony and that of his wife to be far more credible than the testimony of respondent and Officer Vallecillo. *See Dep’t of Sanitation v. Menzies*, OATH Index No. 678/98, at 2-3 (Feb. 4, 1998), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 98-101-A (Sept. 9, 1998) (factors to be considered in determining witness credibility include witness demeanor, consistency of a witness’ testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness’ testimony comports with common sense and human experience). In particular, I noted that Mr. Alston’s testimony was corroborated by the medical record and that he reported the incident to DOI the next day, wrote several, consistent contemporaneous or near-contemporaneous reports about what had occurred, and also provided a detailed, consistent verbal statement during a telephone interview in July, 2007. By contrast, I found respondent to be evasive and inconsistent. His attempts to explain his failure to generate an incident report or instruct Officer Vallecillo to do so and to submit his portion of the injury to inmate report until more than three weeks after the incident, were confusing and not persuasive. His belated filing of the injury to inmate report was inexplicable.

Accordingly, charge one, which alleges that respondent struck inmate David Alston without cause or reason, and in violation of the use of force directive, is sustained. Charge two,

alleging that respondent submitted a use of force report that was false and misleading in that he denied using force on Mr. Alston and claimed that an officer alleged that Mr. Alston had an altercation with his wife, is also sustained. Charge three, alleging that respondent engaged in conduct unbecoming and of a nature to bring discredit to the Department, by using force against Mr. Alston and attempting to cover it up, is sustained. Charge four, alleging that respondent gave false and/or misleading MEO testimony on January 29, 2008 is sustained to the extent it alleges, in subparagraphs (a) and (b), that respondent stated that he did not strike Mr. Alston and that Mr. Alston was given immediate medical assistance. However, subparagraph (c), which alleges that respondent gave false and misleading testimony by stating that he generated a restriction of visit information sheet and a limitation of visiting privileges form, is not sustained. Respondent plainly generated these forms, although they were apparently never processed. Finally, charge five, which alleges that respondent failed to efficiently perform his duties by ensuring that Mr. Alston was given prompt medical attention, is sustained.

FINDINGS AND CONCLUSIONS

1. On May 13, 2007, respondent struck inmate David Alston without cause or reason.
2. Respondent submitted a false and/or misleading use of force allegation report regarding the incident.
3. Respondent engaged in conduct unbecoming and of nature to bring discredit upon the Department by using force against Mr. Alston and attempting to cover up the incident.
4. Respondent made false and/or misleading statements during a MEO 16 interview by denying that he struck Mr. Alston in the face and asserting that Mr. Alston was given immediate medical assistance after an alleged incident with his visitor. Petitioner did not establish, however, that respondent made a false statement by asserting that he generated visit restriction paperwork.
5. Respondent failed to efficiently perform his duties by ensuring that Mr. Alston was given prompt medical attention.

RECOMMENDATION

Having made these findings, I requested and received a copy of respondent's disciplinary abstract. It indicates that respondent is a long-term employee, having been appointed to the Department in 1996. As respondent acknowledged at trial, he has one prior instance of discipline, for conduct unbecoming in 2003, causing him to lose 30 vacation days and be transferred from the Special Operations Division.

Petitioner has requested that I recommend that respondent be terminated from employment, citing *Dep't of Correction v. Debblay*, OATH Index Nos. 2008/04, 2009/04, 2011/04 & 2012/04 (Dec. 3, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD06-02-SA (Jan. 9, 2006) (Debblay 2008/04 and Echevarria, 2011/04). Therein, Judge John Spooner recommended termination for four correction officers found to have used excessive force against an inmate and then lied about the incident in reports and MEO 16 statements. He noted that all four officers "concurred in the creation of an elaborate fiction" concerning the inmate attacking one of the officers, and held that "as a general rule, correction officers who conspire to conceal a use of improper force by making false statements should be terminated." *Debblay*, at 17. It is of some note that two of the four officers had no prior disciplinary record, and a third officer had only a command discipline. *See also Dep't of Correction v. Williams*, OATH Index No. 2215/08 & 2216/08, at 12-13 (Jan. 22, 2009) (recommending termination for impermissible force, false reporting, and false statements in MEO 16 interviews, citing *Debblay* and also noting officers' prior disciplinary records); *Dep't of Correction v. Woodson*, OATH Index Nos. 603/04 & 597/04, at 11 (July 1, 2004) (noting that force used against an inmate "was completely unjustified and . . . exacerbated by respondent's attempts to cover it up"); *cf. Dep't of Correction v. Johnson*, OATH Index No. 1639/05, (Aug. 18, 2005), *modified*, Comm'r Dec. (Oct. 27, 2005), *modified*, NYC Civ. Serv. Comm'n Item No. CD07-29-M (Mar. 14, 2007) (15-day penalty where officer, with a spotless record, pushed an inmate without causing injury and submitted a misleading report).

What is striking about this case is not only that respondent gratuitously punched an inmate, but also that he generated an elaborate ruse to cover it up. Respondent went so far as to extend Mr. Alston's visit after learning that his mother-in-law was a correction officer and to generate visitor restriction paperwork after learning that he intended to report the incident anyway. Respondent further compounded his misconduct by falsely reporting what occurred

multiple times, in his injury to inmate report, his use of force allegation report, and his MEO 16 interview. In so doing, respondent displayed an arrogance and dishonesty at odds with his responsibilities as a correction captain. I am fully aware that respondent's prior disciplinary record is limited to a 30-day suspension. However, given the circumstances of this case, the only appropriate penalty is termination of respondent's employment. I recommend, therefore, that respondent's employment with the Department be terminated.

Faye Lewis
Administrative Law Judge

October 1, 2009

SUBMITTED TO:

DORA SCHRIRO, Ph.D.
Commissioner

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