

**STATE OF IOWA**  
**BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD**

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JOHN C. WILLIAMS,	)	Case No. 10-MA-01
Appellant,	)	
	)	
v.	)	
	)	
STATE OF IOWA (DEPARTMENT OF	)	
CORRECTIONS),	)	
Appellee,	)	

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PUBLIC EMPLOYMENT  
RELATIONS BOARD

**DECISION ON REVIEW**

This case is before the Public Employment Relations Board (PERB or Board) upon Appellant John C. Williams’s petition, filed pursuant to PERB rule 621—11.8, which seeks the Board’s review of a Proposed Decision and Order issued by a PERB administrative law judge (ALJ) on February 16, 2012. In her Proposed Decision and Order, the ALJ concluded that the State of Iowa had established just cause for its termination of Williams’s employment with the Department of Corrections on August 28, 2009, and that his appeal from the prior, adverse ruling of the Iowa Department of Administrative Services, filed pursuant to Iowa Code section 8A.415(2), should be dismissed.

Pursuant to PERB rule 621—11.8 and subrule 621—9.2(3), the Board has heard the case upon the record submitted before the ALJ. Counsel for the parties, Thomas Hobart for Williams and Karen Kienast for the State, presented their oral arguments to the Board on August 28, 2012. Prior to oral arguments, the parties filed briefs outlining their respective positions.

On review, the Board possesses all powers which it would have possessed had it elected, pursuant to PERB rule 621—2.1, to preside at the evidentiary hearing in the place of the ALJ. Based upon its review of the record before the ALJ, as well as the parties' briefs and oral arguments, the Board agrees with the ALJ's Proposed Decision and Order and makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

The ALJ's findings of fact, as set forth in the Proposed Decision and Order attached as "Appendix A," are fully supported by the record. The Board adopts the ALJ's factual findings as our own and they are, by this reference incorporated herein and made a part hereof as though fully set forth.

### **CONCLUSIONS OF LAW**

The ALJ's conclusions of law, as set out in Appendix A, are correct, and the Board adopts them as its own. They are, by this reference incorporated herein and made a part hereof as though fully set forth, with the following additions and clarifications:

1. On appeal, Williams argues that the DOC did not have just cause to terminate him because no evidence of unsolicited sexual advances was presented. DOC Policy Number AD-PR-18 subsection III.K.2.a states that sexual harassment may include "unsolicited sexual advances by a person toward another person who has clearly communicated the desire not to be the subject of those advances."

Despite Williams's argument, the record is replete with examples supporting of unsolicited sexual advances. The gifts, cards, and emails speak for themselves and evidence sexual innuendo and a desire for a relationship beyond one normal of a supervisor-employee or even of a platonic friendship. There is no evidence that Freidhof requested or solicited the gifts and sexual innuendos. While Williams did testify that Freidhof reciprocated in gift-giving, no corroborating evidence was presented and it is clear from the ALJ's proposed decision that she did not find Williams's testimony credible. The Board does not have sufficient reason to disturb the credibility determination of the ALJ, who presided at the evidentiary hearing in this matter and observed the testimony and demeanor of the witnesses, or the ALJ's conclusions which are supported by that determination.

Moreover, there is evidence that Freidhof did inform Williams she did not welcome his advances. For example, in the days leading to Valentine's Day 2006, Freidhof responded to William's question regarding if she would be receiving anything for Valentine's Day by stating that she does not celebrate it as it is against her religion. Williams then stated that he was "unaware that women had religion when [sic] came to holidays involving gifts." Freidhof responded that she would rather people be nice to her all year long rather than receiving a gift. Despite the clear implications of this correspondence, Williams continued to bestow gifts upon Freidhof for the next year.

2. Williams also argues that there is no evidence that Freidhof received preferential treatment based upon submission to sexual advances,

and therefore, the DOC did not have just cause for his termination. In addition to the provision stated above, DOC Policy Number AD-PR-18 subsection III.K.2.b states that sexual harassment may include “giving preferential treatment because of submission to sexual advances.”

In the final paragraph of the ALJ’s findings of fact, it is found that

Assuming Freidhof was disrespectful, defiant, and challenging in her emails, there is no evidence in the record that Williams ever spoke to her with regards to the tone of her previous emails. It was not until after Williams’ gifts, sexual suggestions, and “Scooter” references to Freidhof ceased that he perceived her emails as disrespectful, defiant, and challenging and characterized her as being insubordinate.

Williams did testify that he had counseled Freidhof, but the record lacks specificity as to when the alleged counseling sessions occurred. Based on what can be gleaned from the email correspondence between the two, there is ample evidence in the record supporting a factual finding that Williams took no issue with the tone of Freidhof’s emails until after Williams’ gifts, sexual suggestions, and ‘Scooter’ references to Freidhof ceased. Additionally, as stated above, the ALJ did not find Williams credible, and thus his contention that he had counseled Freidhof was discounted. Again, the Board has no sufficient reason to disturb the ALJ’s credibility determination or the conclusions based thereon.

By Williams’s own admission, the gifts given to Freidhof, which were often accompanied by some sexual innuendo, monetarily exceeded the value of the gifts given to his other subordinates. Moreover, after Freidhof was no longer subjected to Williams’s sexual innuendo and lavish gifts, she experienced increasing scrutiny of the tone of her emails. All of these findings

support the conclusion that Freidhof did receive preferential treatment from Williams for submitting to his sexual advances.

3. Williams states that the ALJ found that “[t]he only basis upon which termination was based was the alleged sexual harassment of Keri [sic] Freidhof.” The Proposed Decision and Order is completely devoid of any such finding or conclusion. It is uncontroverted that the termination letter dated August 25, 2009, outlined seven different alleged DOC policies violations. Of those seven policies, the ALJ concluded there was insufficient proof for only one: Williams’s alleged failure to cooperate with the investigation. Warden Craig did testify that the circumstances surrounding the issuance of Freidhof’s reprimand were insufficient to terminate Williams. This is not to say, though, that the improperly issued reprimand could not be considered as a relevant factor in determining the appropriate level of discipline for Williams. When viewing the events in their totality, the improperly issued reprimand, unprofessional conduct, sexual harassment, and intimidating and threatening behavior, coupled with Williams’s failure to recognize how or even consider that his behavior was inappropriate, supported the ALJ’s conclusion that termination was appropriate discipline under the circumstances.

5. The Board has reviewed, considered, and rejected all other arguments made by Williams on appeal.

Having adopted the ALJ’s findings and conclusions with above noted additions and clarifications, it follows that the Board concurs in the result reached by the ALJ.

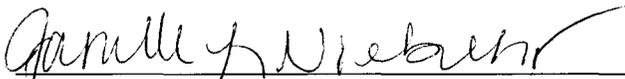
**ORDER**

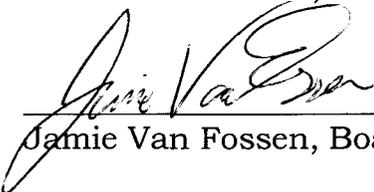
John C. Williams's state employee disciplinary appeal is hereby  
DISMISSED.

Dated at Des Moines, Iowa this 5th day of October, 2012.

**PUBLIC EMPLOYMENT RELATIONS BOARD**

By:   
James R. Riordan, Chair

  
Janelle L. Niebuhr, Board Member

  
Jamie Van Fossen, Board Member

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**Appendix A**

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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JOHN C. WILLIAMS,	)	
Appellant,	)	
	)	
and	)	CASE NO. 10-MA-01
	)	
STATE OF IOWA (DEPARTMENT OF	)	
CORRECTIONS),	)	
Appellee.	)	

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PROPOSED DECISION AND ORDER

Appellant John C. Williams has filed a state employee disciplinary action appeal with the Public Employment Relations Board (PERB), alleging that the termination of his employment with the State's Department of Corrections at the Iowa Medical and Classification Center on August 28, 2009, was without just cause within the meaning of Iowa Code section 8A.415(2).

Pursuant to notice, a closed evidentiary hearing on the appeal was held before the administrative law judge on September 14-15, 2010. John C. Williams was represented by his attorney, Thomas D. Hobart and the State by Karen Kienast. Both parties filed post-hearing briefs, the last of which was the State's reply brief, filed on November 12, 2010.

FINDINGS OF FACT

Williams began employment with the State in 1991 as a staff nurse at the Iowa Medical Classification Center (IMCC). In 2003, he received a promotion to nursing supervisor I (NSI). Williams received his second promotion in 2007 to

nursing supervisor II (NSII). Jan Drury, health care administrator for IMCC, supervised Williams.

In October 2008, Williams was a candidate for nursing supervisor director (NSD). After the selected candidate turned down the position, he consented to be the acting NSD while IMCC attempted once again to fill the position. As a NSII and as the acting NSD, Williams supervised NSIs. Kerri Freidhof, Barbara Claman, Julie Jones, and Madonna White worked as NSIs during this time and supervised staff nurses. A second round of NSD interviews took place in November and December 2008. Before the NSD position was formally filled, the warden passed away. Thereafter, in January 2009, the central office administrator for nursing, Chris Gesie, and the acting warden (Deputy Warden Greg Ort) authorized Drury to initiate arrangements for Williams to receive extra duty pay. However, due to the State's spending restrictions in effect at that time, Williams never received compensation for this appointment.

The State hired Dan Craig as warden of IMCC in March 2009. Sometime after the warden's arrival, Williams was relieved of his acting appointment. In May, Warden Craig and Gesie decided to post the NSD position. Williams was surprised when he learned of the posting because he believed that the position had been left vacant due to lack of funding and that IMCC would formally appoint him to the position when money became available. On May 26, 2009, the warden and Drury met with Williams and suggested ways to improve his candidacy for NSD. They also discussed the compensation he never received for his acting duties.

In late June/early July, one of the NSIs, Freidhof, sent a series of emails (not of record) to Williams regarding problems associated with a new tardy policy instituted by Warden Craig. The policy had been implemented in an inconsistent manner by IMCC departments and Freidhof and Williams disagreed on how to enforce it. Williams believed Freidhof was insubordinate when she sent the emails because he viewed their tone as disrespectful and defiant. Williams contended Freidhof had a history of sending disrespectful and challenging emails. Williams described their content as “[they] [were] more about my, what she felt I was doing wrong type of situation.” Although Williams testified that he had previously counseled Freidhof regarding her emails and told her that they were inappropriate and disrespectful (in content), there is no evidence that supports this testimony. Williams discussed Freidhof’s emails with the other NIs, Jones and Claman, to get their opinions. Williams told Jones that he intended to issue a written reprimand to Freidhof.

On July 9, 2009, Williams telephoned Freidhof and requested that she meet with him on July 10, 2009, but he would not tell her the meeting’s purpose when asked. When he telephoned her again on July 10, 2009, to set the meeting, she requested Drury’s presence at the meeting. After she again requested the purpose for the meeting, Williams responded that he was issuing a written reprimand to her. That same morning, Williams met with the warden and discussed several subjects, including the tardy policy and Williams’ intent to issue a written reprimand to Freidhof for her emails on this subject. The warden told Williams that disciplinary action of an employee was inappropriate if the

problem was related to the inconsistent implementation of the policy. The warden directed Williams to talk to Drury and believed that, prior to any action being taken, they would speak again. The warden believed that, by this discussion, he had prohibited Williams from issuing the reprimand to Freidhof. At the same time, Williams did not believe the warden had prohibited his issuance of the reprimand, but had directed Williams to first consult with Drury.

Williams met with Drury later that day and informed her of his intent to issue a written reprimand to Freidhof. Williams did not share the emails with Drury, but talked generally about their content. Williams demanded Drury's support or a written directive from her that prohibited his issuance of the reprimand. Drury knew of Williams' meeting with the warden and because she assumed the warden had given his approval for the reprimand, Drury gave her support to Williams.

Subsequently, Williams and Drury met with Freidhof. Williams began the meeting with the written reprimand in-hand. Freidhof did not have an opportunity to have a peer representative present or the opportunity to explain the emails. Williams did not cite work rules that she allegedly violated and he did not complete an investigative report. Williams did not conduct an investigation because he felt that the emails spoke for themselves. At the meeting, Freidhof asked Drury if she supported Williams' decision and Drury nodded her head affirmatively in response. Freidhof refused to sign the reprimand and filed a grievance concerning the discipline that same day. Later that day, Drury informed the warden of Williams' issuance of the written reprimand and

Freidhof's grievance. The warden believed that Williams had contradicted his directive regarding the reprimand.

On July 15, 2009, the warden ordered an investigation of the incident and placed Williams on paid leave pending the outcome. That same day, Ort and Drury interviewed Williams about his failure to conduct an investigation before issuing the written reprimand and his prior discussions with the warden, Drury, Freidhof, and Freidhof's peers, Claman and Jones, about the reprimand.<sup>1</sup> They interviewed him again the next day. Ort also talked with Drury and Freidhof to get their versions of what transpired in the meeting when Williams issued the reprimand.

On July 22, 2009, Ort and Ty Doermann interviewed Williams a third time. Both men believed Williams smelled of alcohol. At the end of the interview, Ort relayed their concern of Williams' performance as a supervisor and requested Williams to undergo a psychological evaluation and an alcohol assessment to which Williams agreed. From his evaluation on August 6, 2009, Dr. Philip Ascheman, Ph.D., concluded that Williams did not have a psychological issue. Ascheman opined that Williams would have ongoing difficulties in a supervisory position that were unlikely to improve due to his limited insight.

On August 12, 2009, Gesie and Drury conducted individual interviews of the NSIs, Freidhof, Jones, and Claman. Claman stated that she believed Williams did a good job. In her interview, Freidhof stated that she felt intimidated and harassed by Williams. As a staff nurse, she recalled that she

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<sup>1</sup> Williams was represented in each of his interviews.

knew not to make Williams mad or he would change her schedule. Freidhof told them of a phone message left by Williams, suggesting she model backless medical gowns and they take pictures. Freidhof provided past emails and cards she had saved from Williams. Ort and Drury believed these items reflected a history of sexual harassment by Williams.

Ort and Drury interviewed Williams for a final time on August 25, 2009, regarding his previous gifts and email correspondence with Freidhof. By letter of August 28, 2009, Deputy Warden Ort informed Williams of his immediate termination from employment with IMCC for the following:

DOC Policy AD-PR-02 establishes information contained in an employee personnel file that is confidential. . . When John Williams told Nurse Supervisor I Julie Jones that he was going to issue a written reprimand to Nurse Supervisor I Kerri Freidhof that confidentiality was violated.

DOC Policy AD-PR-13, Employee Investigations, Section B states that there will be an investigative interview. . . . he admits he had the written reprimand prepared prior to the meeting. . . Jan and Kerri state that he began the meeting with the reprimand in hand and quoted from it as he talked. . . The purpose of an investigative interview is defeated if the disciplinary decision is made prior to the interview and if the document is already prepared.

DOC Policy AD-PR-11, Employee Work Rules, Section H-6 which states an employee shall obey a supervisor's lawful order. . . . He failed to follow the direction of the Warden and his supervisor.

DOC Policy AD-PR-11, Employee Work Rules, Section E-7 which states an employee shall cooperate fully and truthfully in oral statements, official documents, inquiries, investigations, and/or hearings. . . During the interviews John was difficult to answer questions. Some of his statements were not truthful.

DOC Policy AD-PR-11, Employee Work Rules, Section E-1 which states an employee shall conduct themselves in a professional manner that creates and maintains respect for the IDOC and the individuals served.

DOC Policy AD-PR-11, Employee Work Rules, Section H-2 which states an employee shall not threaten, intimidate, or make false or malicious statements concerning fellow employees or those we serve.

DOC Policy AD-PR-18, Affirmative Action, Discrimination, Sexual Harassment. Keri Freidhof did not file a formal harassment complaint under this policy. . . Keri brought forth documentation and statements that indicate a founded case of sexual harassment and hostile work environment. The documents demonstrate that John Williams made use of innuendo, use of the term “scooter”, applying Vicks vapo rub, nude sunbathing, the cards, giving gifts, etc. in a manner that meets the definition of sexual harassment.

Williams did not have a record of formal discipline and all of his evaluations had been “meets” or “exceeds” expectations.

Williams’ termination is purportedly based in part upon the State’s finding that his gifts and correspondence to Freidhof violated DOC policies. Freidhof began employment as a staff nurse for IMCC in 2004 when Williams was a NSI and supervised her. Her email correspondence with Williams in 2004 was the same type of banter that Williams later characterized as disrespectful, defiant, and challenging and for which she was disciplined in 2009.<sup>2</sup>

In early June 2004 emails, she asked Williams about writing an incident report. Their subsequent emails provided in part:

(Williams)

You should understand that inmates sometimes embellish their reports of what actually occurred making it sound cataclysmic when very little occurred. So don’t be writing reports without personal knowledge of the facts it can be embarrassing.

(Freidhof)

. . . I guess Dan will be the one that is embarrassed when he says something to the wrong person someday and they actually do

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<sup>2</sup> All of the emails contained herein are as spelled and presented [SIC].

something about it. I was just trying to help, but I guess you don't feel that it is important and look at it as if I am just trying to cause trouble.

(Williams)

You are wrong and have no understanding of what has already been done!

In late August 2004, Williams sent the following email to 15 staff members, "With all the previous notice of all the DR being gone how did nursing end up making appointments for Psychiatry Wednesday." Freidhof's response back to Williams provided:

Hi:

Maybe when you said that the doctors weren't going to be here, some people took it as just the medical doctors. Some people don't refer to the psychiatrists as just "doctors." There have been times when we have been told that the doctors weren't going to be here, but it didn't include psych. Just a thought.....

Williams' responded, "Don't make excuses for people being lazy or just plain unconscious."

Williams' gifts and correspondence, which allegedly constitute sexual harassment, spanned late 2005 to mid-2007. In December 2005, Williams gave a gold necklace, with an attached price tag of \$200, and a red scarf to Freidhof for Christmas. At the time, Williams was a NSI and Freidhof was a staff nurse. In February 2006 email correspondence, the two discussed Valentine Day's gifts and Freidhof wrote in part, "I don't celebrate Valentine's Day. It is against my religion."

During the period of Williams' gift-giving to Freidhof, their email banter continued. In an early May 2006 email to Williams, Freidhof justified her time she spent on peer education. Their subsequent communications provided:

(Williams)

Please refrain from all the unnecessary “cheerleading”, . . . This is a prison first.

(Freidhof)

. . . it is nice to keep the guys in check. They are given/allowed a lot of unsupervised freedom while involved in this project and you’ll be the first one to gripe if they use it unwisely. . . .But enough of my “cheerleading”. One thing that it can always count on to remain consistent is your lack of support.....

(Williams)

You get the same support others do; . . .

(Freidhof)

I don’t think my education classes should take precedence over anyone elses. I just think that if we are going to commit to doing education classes (which the institution is suppose to do) then we should be allowed to do them right. . . .

(Williams)

You entitled to your opinion no matter how convoluted; the fact remains there will be time you won’t be doing class just because you care other duties will take priority and as before you seem incapable of accepting a decision and moving on.

On September 25, 2006, Freidhof’s email to Williams provided:

**FYI:** You may notice an increase in the time that the peer educators are spending in health services. The “peer education” inmate work assignment is becoming **full-time** now. . . .

Williams responded, “This to shall pass.”

For Christmas 2006, Williams gave a Vermont Teddy Bear with pearl earrings and a necklace to Freidhof. The gift card contained a handwritten note, “For One Who Gives pleasure to the mind and the spirit,” and a typed note, “To a work in progress J.W.” The accompanying Christmas card was addressed to

“Scooter” and provided, “Something for fun something for you may you remain a bright spot in the days ahead.” Freidhof returned the jewelry allegedly due to an allergic reaction.

By email dated February 14, 2007, Williams informed Freidhof that he bought two Valentine Day gifts for her:

Since I’m becoming addicted to you, I got you a gift for V-day, remember one is for fun just between you and I. The other can be returned if you like but I made sure it is not subject to your toxic bod.

I didn’t have any one to give to and since you have shared “things” I felt I should share with you, besides you like getting things. It will be small compared with the bangles you prefer but its real and should look great on you.

Located in locked #37 in the back hallway you might want to take them home to open rather than have the snagles wagging their gums at work.

One gift was a necklace with a red stone. The accompanying card had a picture of a dog on the cover and the inside of the card provided, “what I wouldn’t do to lick your earlobes.” Beneath this, Williams wrote, “Gotta start somewhere,” and wrote another note, “Scooter-One with a beautiful mind - - - and everything else.”

In a February 26, 2007 email, Williams wrote to Freidhof’s home email address:

As a concerned friend is your scooter out of power, since I do have some knowledge of minor nursing procedures I am offering my services and a large bottle of VICKS vapo rub for what ails ya, and of course I’ll be happy to help apply the right amount to the right spot as to much is not good and to little is of no use!

So just give a holler and help is on the way.

In Williams' March 2007 emails to Freidhof, he referred to her as "Scooter" or "Scoots" and to himself as "scooter-less." He wrote in his March 5, 2007, email, "Do you realize I'm scooter-less for the whole week, what do I take for withdrawals? . . ." His March 8, 2007 email provided in part, ". . . keep your scooter moving they rust when they're not used enough."

In late March 2007, after Williams sent an email to staff regarding new hires, Freidhof wrote to Williams, "Did you make this up? Maybe we need to find something more for you to do, if you have time to write fairytales . . . hee hee!" Two days later, Williams responded, "I'm thinking of taking up nude sunbathing is your yard available?"

Williams' email of March 28, 2007, provided:

Last day of tutoring will be 3/28/07 from 2:30ish until 3pmish at your local fun spot Gus', or by phone for the dead beats that don't show. Should be new information to share as I'll be the first to interview and info can be had for a small fee or numerous adult beverages at said establishment. Dress is casual really tight jeans are great but nothing will work. I like the later better, however some at Gus' are picky, nothing formal.

Have a great day and remember to feed the fish.

There were several email exchanges between the two after Freidhof was named employee of the quarter upon Williams' recommendation. The first, on April 12, 2007, provided:

(Williams)

**GOOD MORNING**

How's your scooter

Haaa!

I had to get a laugh in early as it may be the last of the day. This sharing an office thing has me worried won't I be having

unprofessional thoughts like every 11 seconds or something like that. Pervy Pete signing off.

(Freidhof)

How about you just make it mostly my office and you can just store your coat there. I am trying to help you out .....

The second exchange that same day provided:

(Williams)

Yeh Scooter! Now your number one Employee of the quarter, not bad for a ditz from West Central of who knows where. A skinny ditz at that.

(Freidhof)

Who is the ditz. Read this again, your grammar is atrocious.

On April 6, 2007, Freidhof began an exchange of emails with Williams by informing him of the staff's reaction to his scheduling and wrote, in part:

I suggest that you explain your system to everyone. Otherwise they just see it as favoring some and not others. I don't like being caught in the middle trying to explain what could be your rationale for making such decisions.

After IMCC promoted Freidhof to NSI in late April, Williams sent a card addressed to "Supervisor Freidhof," which provided on the front cover, "You Kicked Butt!" Inside, Williams wrote, "Kerri did good," and ". . . Scooter, One Great Butt Kicking the Na Sayers!" This was his last known reference to Freidhof as "Scooter." This was the same time that Williams was promoted to NSII.

In Williams' interview on August 25, 2009, he did not recall why he referred to Freidhof as "Scooter." He admitted to asking Freidhof out on a date and stated that she was not interested. At the time of his interview, he could not recall when that had occurred, but at hearing, he testified that it had been in

early 2008. Williams does not believe that his gifts, emails, and request for a date with Friedhof were inappropriate. However, during this period, Freidhof was a staff nurse supervised by Williams. Freidhof's reaction to his conduct and advances, whether positive or negative, potentially impacted her working conditions. As she stated in her interview, she knew not to make Williams mad. For unknown reasons, Williams' gifts, sexual suggestions, and references to her as "Scooter" ceased in late April 2007. Although Williams and Freidhof continued their email banter, Freidhof's emails begin referencing her belief that Williams intimidated and threatened her. In order to provide further context to the nature of their relationship, their subsequent email communications leading up to Williams' issuance of the reprimand is helpful.

By email to Freidhof in late August 2007, Williams questioned Freidhof's assignment for staff nurse, Cathy Perry. Freidhof responded:

. . . Sometimes I feel like you try to undermine our authority as supervisor 1's by overriding our assignments/decisions without even consulting us. . .

To be quite honest, sometimes I am unsure how to address your managing of things from home. I don't want to offend you, but . . . It is a person's own business what they do on their own time, but sometimes I have the distinct impression that you are giving directives after kicking back with a couple cold ones. There have been times that you have gotten very argumentative with me, loud, demanding, and on occasion somewhat threatening. (Ex: If you don't like it, I can find a line spot for you) Then the next time you see me it is like you don't even recall the situation.

• • •

In an early October 2007 string of emails, Freidhof wrote, in part, to Williams, "When we [NSIs] make arrangements to work something out, it is very undermining for you to always dismiss our decisions."

On December 17, 2007, Freidhof's wrote Drury about her concerns:

. . . I have been logging events that have occurred because I am starting to get very worried. In one respect I hesitate to tell things because circumstances may just get worse, but on the other hand I want you to have this for future reference in case John follows through with his threats against my job. He is now in a position to complete my performance reviews . . .

Attached were her type-written notes of her visit to Williams' office earlier that day that provided in part:

. . . When I went to his office, he made the following comments "It looks like they may be getting ready to hire that educator position. You know you didn't do yourself any favors in getting that educator position by going in and complaining about me to Chris and Jan." "You know you need to think long-term when you make decisions like that, if you are planning being here long-term. I'd advise you to look at the big picture." . . .

In March 2008, Williams and Freidhof exchanged emails about breaks and Freidhof called the issue a joke. In September 2008, Freidhof wrote several emails to others regarding her role in peer education and she complained that Williams was moving it to another department or another person. By email dated November 19, 2008, to Drury, Freidhof complained of the staff's dissatisfaction with Williams scheduling and asked why Williams was in charge when it was under the job description of NSI.

By email dated December 5, 2008, to Williams and copies to Jones, White and Claman, Freidhof wrote in part:

**. . . If you are going to over ride and defeat everything we do, then just please take an active role with these people yourself to get what you want done and stop embarrassing us. Thanks.**

Later that day, Freidhof sent an email to Drury and attached yet another December 5 string of emails between herself and Williams regarding a violation worksheet. Freidhof wrote in part:

I am tired of John coming and being intimidating when we are just trying to do our jobs. The response to the previous e-mail wasn't just "good." He came in person to the office and bent over the desk, got in my face and told me I better stop with the nasty grams and that if I am not going to do what he said that he will find someone who will-infering that he will get rid of me. Now this e-mail trying to indicate that I might not be at the next meeting-continuing the threat that he might get rid of me. **How much does he have to do before something will be done about it?** Jan, the last time I brought his threatening behavior to your attention, I was told that you would meet with me about it and you never did. **You are just allowing someone to threaten and intimidate me??** (See Documentation Below) Jan, other staff have come to Julie and me about John intimidating and yelling at them and we attempted to pass this information to you and you replied that you would get with us and never did. . . . .

In an email exchange March 26-27, 2009, Freidhof and Williams argued over the evaluation of Perry and their last three emails provided:

(Williams)

Not true and you should type less

(Freidhof)

I just don't think that you share the same work ethic/values and you don't seem particularly fond of those that vary from you. If it makes you feel better to devalue those that try to go above and beyond-that only reflects on your character. If you want to give me average marks as you have said you would do in the past and now again attempted to intimidate me with today, then so be it. I accept criticism from those that have opinions I value. That would be those who have work ethics I would choose to mirror my own after.....

(Williams)

You again are out of line with your e-mail and tone I don't expt this from a person in your position.

Freidhof sent this string of emails to Drury and complained about Perry's evaluation. In response, Drury informed Freidhof that Jones would do Freidhof's evaluation and wrote, ". . . if you feel intimidated by John we need to talk. . ."

Freidhof's email response back began:

Thanks for listening. Sometimes I feel like John knows that I have a valid point when I bring up issues, but he tries to make the focus that I am in some way challenging him when I express myself and my thoughts differ from his. . .

In a late June 2009 email to Drury, Williams, Jones, and Claman, Freidhof wrote about the staff's frustration with shift trades and asked if she could work on a trade policy. Drury privately responded to Freidhof with her approval and referenced the need to divvy up duties since Williams was no longer in an acting position. Freidhof forwarded Drury's response to Williams and noted her difficulty in taking direction from Williams because he was "disgruntled" and she was receiving mixed messages from Williams and Drury. After Williams replied that he thought scheduling should be a non-supervisor task with supervisor approval, Freidhof responded:

. . . Have you switched your perceived leverage from peer education to the scheduling now? . . . In the past staff feared grieving because of retaliation or so I am told. Instead they would just consistently complain to those below you-like me. Whether it was just their perception or it was valid, they don't have to fear that anymore. . .

Freidhof's emails regarding the tardy policy followed in early July 2009 and led to the written reprimand, which was later withdrawn. The bantering tone of Freidhof's emails began in 2004. Assuming Freidhof was disrespectful, defiant, and challenging in her emails, there is no evidence in the record that Williams

ever spoke to her with regards to the tone of her previous emails. It was not until after Williams' gifts, sexual suggestions, and "Scooter" references to Freidhof ceased that he perceived her emails as disrespectful, defiant, and challenging and characterized her as being insubordinate.

## CONCLUSIONS

Iowa Code section 8A.415(2) (2007) provided, in part:

### **8A.415 Grievances and discipline resolution.**

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2. *Discipline resolution.* A merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise reduced in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. . . . If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

In the absence of a definition of "just cause," PERB has long considered the totality of circumstances and rejected an inflexible application of fixed elements in its determination of whether just cause exists. *Wiarda*, 01-MA-03 (Board 2001). Examples of factors which may be relevant to a just cause determination, depending on the circumstances, include but are not limited to: whether the employee has been given forewarning or has knowledge of the employer's rules and expected conduct; whether a sufficient and fair investigation was conducted by the employer; whether reasons for the discipline were adequately communicated to the employee; whether there is sufficient proof of the

employee's guilt of the offense; whether progressive discipline was followed, or is not applicable under the circumstances; whether the punishment imposed is proportionate to the offense; whether the employee's employment record, including years of service, performance, and disciplinary record, have been given due consideration; and whether there are other mitigating circumstances which would justify a lesser penalty. *Frost*, 07-MA-01 and 07-MA-02 (Board 2010); *Gleiser*, 09-MA-01 (Board 2010).

Williams argues that the State lacked just cause for his termination because the State conducted an unfair investigation, because he did not violate DOC policies when he issued the reprimand to Freidhof, because he did not violate DOC policies by his gifts, cards, email correspondence to Freidhof or his request for a date, and because termination was excessive under the circumstances.

#### *Sufficient and Fair Investigation*

Management's investigation was thorough and fair by its inquiry of different sources, including interviews, the psychological evaluation, and Williams' emails, gifts, and cards to Freidhof. An outside investigation was not warranted, as Williams maintains, when Ort led a comprehensive investigation and Williams makes no claim that Ort was motivated towards bias. With regard to Williams' issuance of the reprimand, Ort talked with everyone involved to get each person's version of the facts. Although Williams argued that Freidhof was biased against him in her interview, Ort and Drury also interviewed the other NSIs, Jones and Claman, the latter of whom who spoke favorably of Williams. An

investigation of the facts did not require that Freidhof give a statement under oath or file a formal complaint as contended by Williams. Additionally, Williams' emails and gifts to Freidhof provided concrete evidence of his actions with her over the years. There is no dispute that Williams authored the emails and cards and had given the gifts in question to Freidhof. Ort and Drury interviewed Williams with his representative present and gave him every opportunity to explain the emails, cards, gifts, references to "Scooter," and his relationship with Freidhof. It was of Williams' own making that he lacked recall and explanations to provide an appropriate context to these items. The investigation was fair and sufficient to garner the facts necessary for the State to make an informed decision about whether discipline should be imposed and the level of appropriate discipline.

*Insufficient Proof of Policy Violation-Cooperation with Investigation*

The proof is less than sufficient that Williams did not cooperate in the investigation and was less than truthful. He answered questions in four interviews and consented to a psychological evaluation by Dr. Ascherman. While his lack of recall and explanations may have frustrated the investigators, it is not necessarily indicative of dishonesty. Perhaps Williams was not forthcoming at times, but his participation in the interviews and submission to the questioning were consistent with DOC policy requiring full cooperation in the investigation.

*Sufficient Proof of Policy Violations-Written Reprimand*

The State had more than sufficient proof that Williams violated DOC Policies AD-PR-02, AD-PR-13, and AD-PR-11 by the manner in which he issued

the written reprimand to Freidhof. Williams' breached confidentiality of personnel he supervised when he admittedly told Jones that he was going to issue a written reprimand to Freidhof. By his own admission, he was seeking Jones' opinion and not conducting an investigation of facts as he later contends. Additionally, in seeking out the warden's support, Williams failed to follow the direction given. Assuming Williams misunderstood the warden's opinion that discipline was inappropriate, Williams did not follow the warden's other directive to discuss it with his supervisor, Drury. Rather, Williams' approach with Drury was to deliver an ultimatum and demand her support, which in no way constituted a discussion with Drury. Moreover, Williams did not follow DOC policies and procedures for disciplinary matters and conduct an investigation before determining a written reprimand was appropriate. Williams did not think an investigation was necessary because he believed Freidhof's emails spoke for themselves. When he met with her, he began with the written reprimand in-hand. Beforehand, Freidhof was not given an explanation for the written reprimand nor was she given an opportunity to have a peer representative present in the meeting nor the opportunity to explain the emails before discipline was imposed. In issuing the written reprimand, Williams violated DOC policies by breaching personnel's confidentiality, by failing to follow the warden's directive, and by failing to conduct an investigation.

*Sufficient Proof of Policy Violations-Unprofessional Conduct, Intimidation and Threats, Sexual Harassment and Hostile Work Environment*

There was more than sufficient proof that Williams engaged in unprofessional conduct and intimidated, threatened, and sexually harassed

Freidhof, thereby creating a hostile work environment in violations of DOC Policies AD-PR-11 and AD-PR-18. In totality, Williams' emails, gifts, and greeting cards were unprofessional and establish his pattern of intimidation, threats, and non-consensual sexual advances towards Freidhof, all of which adversely affected her working conditions. Pivotal is the fact that Williams supervised Freidhof from the time she began employment with IMCC in 2004. During the period of 2005-2007, his gifts and correspondence with Freidhof were unprofessional and inappropriate at a minimum. Some of his email correspondence was crude and many emails were sexually suggestive despite her lack of reciprocity. The unprofessional, inappropriate, and sexual nature of the gifts and correspondence are illustrated by the following examples.

Williams gave her personalized gifts of a gold necklace and scarf for Christmas 2005. When he spoke of Valentines' gifts the following February, she responded, "I don't celebrate Valentine's Day. It is against my religion." That following Christmas 2006, he gave her a Teddy Bear with pearl jewelry, the latter of which she returned. In the accompanying card he had written, "For One Who Gives pleasure to the mind and the spirit." Williams gave her two presents the next Valentines' Day 2007 and by email, wrote in part, "Since I'm becoming addicted to you. . . "One gift was a red stone necklace and on the accompanying card with a picture of dog he wrote, "what I wouldn't do to lick your earlobes." There is no evidence to corroborate his testimony that she gave him gifts.

In correspondence, Williams referred to her as "Scooter" or "Scoots" and to himself as "scooter-less" in one instance. On February 26, 2007, he referred to

her scooter being out of power and offered to rub VICKS vapor rub for what ailed her. When on April 2, 2007, Williams wrote her about his unprofessional thoughts when sharing an office with her and signed it, "Pervy Pete," she rebuffed in part, "How about you just make it mostly my office and you can just store your coat there. . ." While the record is replete with other instances, these examples show the unprofessional, inappropriate, and sexual nature of his advances.

Williams' claim that the relationship was consensual during this period is disingenuous. In none of these instances is there evidence that Freidhof responded in like kind, expressed gratitude, or acquiesced in any manner. By his own testimony, Williams asked Freidhof out in early 2008, after he had given the gifts and cards and written the emails filled with sexual suggestions and she declined his offer. Freidhof's curt, critical, and sarcastic email responses back to Williams and her rejection of his offer to date are anything but demonstrative that the relationship was consensual.

Further, Williams' contention that his actions did not adversely affect her employment is without merit. First, in her interview, Freidhof stated that, as staff nurse, she knew not to make Williams mad or he would retaliate by how he scheduled her hours. She worked as a staff nurse during the period in which Williams gave personal gifts to her and made sexual suggestions to her in his communications. Williams' control of Freidhof's schedule was a condition of her employment that she perceived as being affected by her interactions with him, which naturally would have included her reactions to his sexual advances. Second, although Freidhof's email banter with Williams began in 2004 and

continued for years, he never complained about it until after he refrained from making sexual advances. As reflected by her emails, this banter carried on during 2005-2007 when Williams gave her gifts, cards, referred to her as "Scooter," and sent her sexually suggestive emails. There is no evidence that Williams characterized Freidhof's email banter as being disrespectful, defiant, and challenging or sought to discipline Freidhof for it until after she declined to date him, which affected her working conditions.

Williams' gifts, cards, and sexually suggestive emails and references to Freidhof, during the time he supervised her, were non-consensual and affected the terms and conditions of her employment. These sexual advances were unprofessional and constituted sexual harassment.

Finally, Freidhof's emails themselves are the most compelling evidence that Williams threatened and intimidated Freidhof and created a hostile work environment. In her August 2007 email, she told Williams that he had gotten very argumentative, loud, demanding, and on occasion somewhat threatening. Freidhof felt intimidated and her job threatened by Williams so much that she complained to Williams' supervisor, Drury, on more than one occasion. On December 17, 2007, Freidhof wrote to Drury that she was worried and had been logging events for Drury's reference in case Williams followed through with his threats against her job because he was in a position to complete her performance review. In her December 5, 2008, email to Drury, Freidhof complained of Williams' intimidation, getting in her face, and threatening to get rid of her. Although in her interview, Freidhof stated that Williams threatened and

intimidated her, the emails themselves are sufficient proof that she felt intimidated and threatened by him.

Williams' gifts and cards, and his email correspondence with Freidhof over the years plainly illustrate that he violated DOC policies by making non-consensual sexual advances and innuendos to Freidhof that affected the terms and conditions of her employment, which constituted sexual harassment, and by engaging in unprofessional, threatening, and intimidating behavior towards Freidhof, thereby creating a hostile working environment.

*Appropriate Punishment for Offenses*

Having found that there was a sufficient and fair investigation that yielded sufficient proof that Williams violated DOC policies by the manner in which he issued a written reprimand to Freidhof, by engaging in unprofessional conduct and sexual harassment, and by intimidating and threatening Freidhof, the question is whether termination was appropriate for the offenses and given consideration to other mitigating circumstances.

The seriousness of the offenses and Williams' failure to recognize how his behavior was inappropriate outweigh consideration for Williams' absence of prior discipline and above-average evaluations. Williams' termination from employment was not an excessive penalty for his numerous violations of DOC policies and the underlying actions. A lesser penalty allowing for his continued employment would not be appropriate. Accordingly, Williams' misconduct warranted his termination.

Having considered the entirety of the record and all of the arguments raised by the parties, whether or not specifically addressed above, the State had just cause within the meaning of section 8A.415(2) to terminate Williams's employment.

Consequently, the following is proposed:

ORDER

John C. Williams' state employee disciplinary appeal is hereby DISMISSED.

DATED at Des Moines, Iowa, this 16th day of February, 2012.

\_\_\_\_\_/s/\_\_\_\_\_  
Diana S. Richeson  
Administrative Law Judge

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