STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

RENEE SNEITZER, Appellant, and STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.	)	CASE NOS. 102064 & 102132

DECISION AND ORDER

This case is before the Public Employment Relations Board (PERB or Board) on the State's petition for review of a proposed decision and order issued by an administrative law judge (ALJ) following an evidentiary hearing on Renee Sneitzer's Iowa Code section 8A.415(2) State employee disciplinary action appeal. Sneitzer filed her appeals challenging the State's imposition of a ten-day suspension (Case No. 102064) and subsequent termination of her employment (Case No. 102132) as an administrative law judge for the Iowa Department of Corrections (DOC), Iowa Medical and Classification Center. In its imposition of a suspension, the State alleged Sneitzer failed to follow supervisory directives and violated a DOC policy when processing an inmate discipline report. Thereafter, the State terminated her employment alleging Sneitzer failed to follow supervisory directives. In her proposed decision, the ALJ concluded the

State had not established just cause supported its ten-day suspension or its termination of Sneitzer's employment.

The State filed a voluntary brief prior to oral arguments. Attorney Charles Gribble presented oral argument to the Board on Sneitzer's behalf and attorney Anthea Hoth presented argument on the State's behalf.

Pursuant to Iowa Code section 17A.15(3), on appeal from an ALJ's proposed decision, we possess all powers that we would have possessed had we elected, pursuant to PERB rule 621—2.1(20), to preside at the evidentiary hearing in the place of the ALJ. Pursuant to PERB rules 621—11.8(8A,20) and 621—9.5(17A,20), on this petition for review we have utilized the record as submitted to the ALJ.

Based upon our review of this record, as well as the parties' oral arguments, we adopt the ALJ's findings of fact and we adopt the ALJ's conclusions. We concur with the ALJ's determinations and conclusions that the State failed to establish just cause supported its ten-day suspension imposed on Sneitzer and failed to establish just cause supported its termination of Sneitzer's employment.

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. We adopt the ALJ's factual findings as our own.

CONCLUSIONS OF LAW

We agree with the ALJ's determinations and conclusions as set out in Appendix A and adopt them as our own.

Accordingly, we enter the following:

ORDER

The State of Iowa, Iowa Department of Corrections, Iowa Medical Classification Center, shall reinstate Renee Sneitzer to her former position (if the position still exists, and if not, to a substantially equivalent position), with back pay and benefits, less interim earnings; restore her benefits accounts to reflect accumulation she would have received but for the ten-day suspension and discharge; make appropriate adjustments to her personnel records and take all other actions necessary to restore her to the position she would have been in had she not been subject to a ten-day suspension and termination of employment.

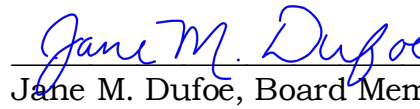
The cost of reporting and of the agency-requested transcripts in the amount of $2,213.45 are assessed against the appellee, the State of Iowa, Iowa Department of Corrections, pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9(20). A bill of costs will be issued to the State in accordance with PERB subrule 11.9(3).

This decision constitutes final agency action.

DATED at Des Moines, Iowa, this 15th day of April, 2022.

PUBLIC EMPLOYMENT RELATIONS BOARD

Erik M. Helland, Chair



Jane M. Dufoe, Board Member

Original filed EDMS.

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

RENEE SNEITZER, Appellant, and STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.	CASE NO. 102064
RENEE SNEITZER, Appellant, and STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.	CASE NO. 102132

PROPOSED DECISION AND ORDER

Appellant Renee Sneitzer filed the above-captioned state employee disciplinary action appeals with the Public Employment Relations Board (PERB) pursuant to Iowa Code section 8A.415(2)(*b*) and PERB subrule 621—11.2(2). Sneitzer was employed by the Iowa Department of Corrections (DOC) as an administrative law judge (ALJ) at the Iowa Medical and Classification Center (IMCC). On July 14, 2017, the DOC disciplined Sneitzer with a ten-day suspension for failure to follow supervisory directives and violating a DOC policy when processing an inmate discipline report. The DOC subsequently terminated Sneitzer's employment on August 28, 2017, for failure to follow supervisory directives. Sneitzer appealed the ten-day suspension to PERB on September 11, 2017 (case number 102064) and appealed her termination on December 6, 2017

(case number 102132), contending the disciplinary actions imposed are not supported by just cause. By Ruling and Order dated January 14, 2019, the undersigned consolidated the appeals.

Pursuant to notice, a closed evidentiary hearing on the merits of the consolidated appeals was held before me on July 1 and July 2, 2019, in Des Moines, Iowa. Sneitzer was represented by Charles Gribble and Christopher Stewart. The State was represented by Alla Mintzer Zaprudsky, Nathan Reckman and Anthea Hoth. Both parties submitted post-hearing briefs on August 30, 2019.

Based upon the entirety of the record, and having reviewed and considered the parties' arguments, I find the DOC did not have just cause to discipline Sneitzer with a ten-day suspension or terminate her employment.

FINDINGS OF FACT

The DOC operates nine prisons across the State that house approximately 8,600 inmates. It has an annual operating budget of $386 million and employs about 3,600 employees. The DOC also operates 23 community-based corrections (CBC) residential facilities across the State. The CBC facilities house inmates who are released from prison on work release. The DOC supervises approximately 30,000 individuals on release.

Sneitzer started her employment as an ALJ with the DOC in April 2007. Her assigned work location was at IMCC in Coralville, Iowa. DOC's general counsel and inspector general Michael Savala hired Sneitzer and was her direct supervisor for the duration of Sneitzer's employment. Savala's work location is at DOC's central office in Des Moines, Iowa.

The part of DOC operations most pertinent to Sneitzer's appeals is the inmate discipline system which handles rule infractions committed by inmates under DOC custody and supervision. Sneitzer's primary job as an ALJ was to process assigned inmate discipline reports. Savala has overall responsibility over the inmate discipline system and supervises the ALJs assigned to process the reports. The DOC employs five ALJs, all of whom are licensed attorneys. The ALJs work independently and do not have daily contact with Savala. However, Savala makes himself available as a resource to the ALJs by email and phone, and expects them to contact him when they have issues or need assistance.

The ALJs work collaboratively and assist each other during backlogs or covering during an ALJ's absence from work. Three of the five ALJs, including Sneitzer, were physically located at one of the DOC institutions. One ALJ was assigned to Newton Correctional Facility (NCF), another ALJ was assigned to Iowa State Penitentiary (ISP) and Sneitzer was assigned to IMCC. The remaining two ALJs worked out of DOC's central office in Des Moines. Regardless of the ALJ's physical location, all ALJs reported to Savala. The individual institutions had no supervisory authority over the ALJs. This supervisory hierarchy was implemented to ensure the ALJs remained independent from the institutions in reaching their decisions on inmate discipline matters. In the performance of their duties, the ALJs regularly worked with other employees at the institutions who have a role in the inmate discipline system.

The ALJ workload assignments periodically rotated between discipline reports at the institutions and CBC facilities, and rendering decisions on sex

offender treatment program (SOTP) requirements. IMCC was Sneitzer's regular assignment during her tenure. Additionally, she served as a backup ALJ to other institutions and CBC facilities when needed, and issued decisions pertaining to SOTP matters. Backup ALJs were generally needed to help process spikes in reports at an institution or when another ALJ was on leave. At all times relevant to the instant appeals, Sneitzer was the primary ALJ assigned to process inmate discipline reports at IMCC and the CBC facilities.

An inmate discipline report is initiated when a rule infraction is committed by an inmate or a CBC resident. An ALJ's role is just one component of the inmate discipline system. The inmate discipline system also involves the correctional staff who write the initial discipline report, investigators who collect evidence pertaining to the alleged incident and, following the ALJ's disposition, records and classification staff who update the inmate's custody classification and tentative discharge date based on the ALJ's decision. All information pertaining to inmate discipline reports is electronically maintained by a database called the Iowa Corrections Offender Network (ICON).

Timely processing of inmate discipline reports is paramount to the orderly operation of the inmate discipline system. New discipline reports are constantly initiated and can quickly create a backlog if not timely processed. On average, the DOC initiates about 1,000 inmate discipline reports every month. Timely disposition of reports is also critical in accomplishing the goal of the inmate discipline system, which is to change inmate behavior by swift imposition of sanctions to convey that unacceptable actions have consequences. Per DOC policy

IO-RD-03, *Major Discipline Report Procedures*, as in effect at the time, an ALJ was required to hear a discipline report, or continue it for good cause, within seven days of the disciplinary notice. The ALJ had to render a decision as soon as practicable following the hearing.

At the time of her termination, Sneitzer had the second longest tenure of the five ALJs. During a ten-year period, from April 2007 to April 2017, Sneitzer processed over 12,700 inmate reports at the institutions. From April 2007 to April 2017, Sneitzer also processed over 6,100 CBC discipline reports. From January to August 2017, while assigned as the primary ALJ for CBC reports, Sneitzer processed over 2,000 CBC discipline reports in that 8-month period. These statistics do not include the SOTP decisions Sneitzer rendered during this time period.

The inmate discipline system handles inmate rule infractions at the DOC institutions and the CBC facilities. However, an ALJ's role differs when processing inmate discipline reports for incarcerated individuals, referred to as "hearing decisions," compared to processing CBC discipline reports, referred to as "paper reviews."

For incarcerated individuals, the disciplinary notice that initiated the report and the investigatory findings are sent through ICON to an ALJ to conduct a due process hearing with the inmate. The ALJ reviews the evidence, evaluates whether proper procedures were followed, and ultimately determines whether the facts and evidence support finding the inmate guilty of the alleged rule infraction. The ALJ then determines the appropriate penalty for the infraction, which can include

placement in lockup status, loss of privileges, or any other sanction deemed appropriate. For "major" rule infractions, an ALJ can order loss of "earned time." Under Iowa law, every inmate serving a prison sentence earns 1.2 days off their sentence for every day of good conduct while incarcerated. Only an ALJ can take away an inmate's earned time as a sanction. An inmate has a right to appeal the ALJ's decision to the institution's warden. The warden's decision constitutes final agency action which the inmate can subsequently contest in court as a post-conviction relief (PCR) action.

For CBC inmate discipline reports, the CBC facility conducts the due process hearing and determines whether the inmate is guilty of the alleged rule infraction. The CBC can order any sanction except taking away earned time. Once the CBC determines guilt, the information is sent to an ALJ through ICON to review whether earned time will be forfeited. As such, the ALJ only conducts a "paper review" of the record to determine whether forfeiture of earned time is warranted.

The CBC discipline reports are sorted in ICON on two separate lists depending on the seriousness of the resident's infraction. The first list is the *Pending WR/OWI Transfer Classification Reviews* list. This list is of residents who were arrested for committing a serious offense and placed in a county jail. The DOC is required to reimburse the county $50/day for housing CBC residents. The resident remains in jail until the ALJ determines whether earned time will be forfeited. Due to its fiscal impact, processing this list is a priority for the DOC. Once an ALJ's review is complete, the DOC's classification and transfer staff determine whether to revoke the inmate's work release and coordinate the transfer out of

county jail, either back to the CBC facility or back to prison. The second CBC list an ALJ reviews is the *Residential ALJ Process Scheduling* list. This list contains all other inmate discipline reports that did not result in the resident's arrest.

I. *Sneitzer's Employment and Work Performance History*

Prior to Sneitzer's employment with the DOC, she worked as a licensed attorney for 17 years in the areas of criminal prosecution and general private practice.

During her ten years of employment with the DOC, Sneitzer's performance evaluations were overwhelmingly positive. From her first evaluation in October 2007 to her October 2015 evaluation, Sneitzer's overall performance was consistently rated as exceeding expectations. Sneitzer had no corrective coaching or disciplinary actions during the first nine years of her employment with the DOC.

In addition to her regular duties in processing inmate discipline reports, Sneitzer periodically had additional responsibilities such as statewide training for DOC and CBC staff on due process requirements. To assist the ALJs in collaboration and efficiency, Sneitzer also created a shared "ALJ Calendar." The ALJs were required to note their absences on the shared calendar and indicate whether they needed coverage during their absence. Savala had access to the ALJ calendar. Savala expected the ALJs to coordinate backup coverage among themselves, but periodically determined coverage assignments or stepped in to process reports himself. As new discipline reports were constantly coming in, backup assistance was critical to avoid backlogs.

Savala did not conduct an annual performance review with Sneitzer in October 2016, although she was still employed during this time. Savala was advised by the Department of Administrative Services (DAS) to hold off on Sneitzer's evaluation because she had not exhausted her appeal rights of disciplinary actions she received prior to October 2016.

Beginning in 2012, Sneitzer had personal and family issues that required her to take leave under the Family and Medical Leave Act (FMLA). Most of the FMLA leave she utilized was on an intermittent basis.

Sneitzer was first required to take FMLA in 2012 for her daughter who is diagnosed autistic and twice-exceptional. In January 2012, Sneitzer's daughter was raped. She was 15 years old at the time. The rape caused a great deal of ongoing medical issues, as well as civil and criminal litigation. Sneitzer has been approved for intermittent FMLA for her daughter's care since 2012. When Sneitzer first informed the DOC of the incident, Sneitzer was told to prioritize taking care of her family. The DOC authorized Sneitzer to work remotely. Sneitzer was provided with a laptop, a camera for video hearings, and VPN remote access to DOC networks. These accommodations enabled Sneitzer to continue working while caring for her daughter's needs. She was able to hold hearings remotely and access all ICON information to issue her decisions. Due to her ongoing FMLA obligations, Sneitzer was the only ALJ authorized to work remotely.

Although Sneitzer was granted full flexibility to work remotely, she still at times worked on-site at IMCC. The record does not reveal that she had any restrictions on the hours she worked. Instead, Sneitzer kept track of her work

hours and reported them to the DOC. In her 2013, 2014, and 2015 evaluations, Sneitzer specifically commended the support she received from the DOC in response to her need to take FMLA. She stated that the "IT support, flexible and accommodation schedule, and outstanding supervisory support" she received was the only way she was able to balance her FMLA responsibilities with work. In her October 2013 and October 2014 evaluations, Sneitzer indicated she had a backlog in processing her assigned CBC discipline reports as a result of FMLA leave she was required to take for her daughter. Sneitzer was not subject to any disciplinary actions for this backlog. She received an overall rating of "exceeds expectations" in the October 2013 and 2014 evaluations.

Sometime in 2015, Savala received complaints regarding Sneitzer's timeliness in processing inmate discipline reports. He received complaints about backlogs at IMCC, Sneitzer's regular assignment. Savala also received complaints from the Fort Dodge Correctional Facility (FDCF) where Sneitzer had heard discipline reports as a backup to another ALJ but had not issued a decision yet. FDCF attempted to contact Sneitzer but reported to Savala that they could not reach her. The institution expressed frustration to Savala that no decision had been rendered and indicated the delay was impacting the institution's ability to properly house, manage, and classify inmates. When an inmate commits a major rule infraction, such as assaulting another offender, the inmate is immediately placed in lockup. Lockup status is punitive for the inmate as it keeps an inmate in a segregated cell without any privileges. Each prison has limited lockup cells. Savala received complaints that some inmates awaiting a decision were in lockup,

which was impacting the institution's limited lockup space and keeping the inmates in punitive status.

Savala contacted Sneitzer and relayed the complaints he received from the institutions. As Sneitzer was still working remotely, their primary method of communication was by phone, and some by email. Savala informed her that the backlog needed to be addressed. Sneitzer indicated that she would address the backlog and get caught up. Savala did not make any changes to Sneitzer's flexibility on her work hours or authorization to work remotely.

Savala memorialized the timeliness issue in Sneitzer's October 2015 performance evaluation. He noted, in part:

> [Sneitzer] has regularly been called away to address personal and family issues that resulted in offender discipline hearing backlogs and delays in getting disciplinary decisions issued. Since the DOC only has five ALJ's, and no dedicated back-up for Renee, this backlog impacts institutional operations for classification, housing, treatment, and programming.
>
> [Sneitzer] needs to work on collaborating/communicating with supervisor and other ALJ's on status of her being called away from her job duties by way of email and the ALJ calendar, so that necessary coverage can be put into place.

In response to the evaluation comment, Sneitzer acknowledged a backlog in CBC reports and hearing decisions as a result of having to attend to her daughter's care. Sneitzer added that she maintains communication with staff and management as she continues to work remotely. She also indicated that she "created the collaborative ALJ schedule for all ALJs and my supervisor to use to allow for better communication and collaboration."

In Sneitzer's October 2015 evaluation, Savala also recognized Sneitzer's positive work performance. He indicated Sneitzer did "an excellent job" processing CBC reports. Savala further commended Sneitzer for not having her decisions challenged in court, noting that Sneitzer had "consistently not had PCR actions filed against her ALJ rulings and has resulted in a savings of staff time and resources for both the DOC and the Attorney General's office."[1] The October 2015 evaluation was the first instance during Sneitzer's tenure that her overall performance rating changed from "exceeds expectations" to "meets expectations."

In late 2015 and early 2016, Sneitzer had to take additional FMLA leave for herself, as well as continuing to handle her daughter's care. In October 2015, Sneitzer had foot/ankle surgery. The post-surgery recovery required Sneitzer to wear a cast and avoid placing weight on the foot for eight weeks, followed by physical therapy. Sneitzer continued to work remotely, while using intermittent FMLA leave as needed. Sneitzer anticipated she would need intermittent FMLA for herself until March 2016. However, in that same month, Sneitzer was required to undergo an emergency hysterectomy. This extended Sneitzer's FMLA leave, but she still continued working remotely while recovering.

The delays in Sneitzer's processing of inmate discipline reports persisted into 2016. Savala continued communicating with Sneitzer regarding the need to get the backlog addressed. He was sensitive to her medical and family issues, and

[1] The Attorney General's (AG's) Office handles any litigation filed against the DOC, including PCR actions filed by inmates.

continued to give her time to get caught up. Savala made no changes at that time to Sneitzer's ability to work remotely.

In late May 2016, the DOC received notification from the Office of Ombudsman regarding inmate complaints about Sneitzer's untimely processing of their discipline reports.[2] Inmates routinely complain to the Ombudsman regarding DOC operations. Thus, it is common for the Ombudsman to send a letter to the DOC director outlining issues of concern and recurrence, and have a meeting to discuss those issues. However, this was the first instance of the Ombudsman's Office expressing concern specifically about an ALJ's performance. On May 24 and 25, 2016, the Ombudsman sent notification to the DOC that its office substantiated complaints filed by two inmates. The inmates did not receive an ALJ hearing or notice of a continuance within seven days of the discipline report as required by policy. Sneitzer was responsible for processing these specific inmate discipline reports. She was included in the email communication from the Ombudsman.

The Ombudsman met with the DOC in late June 2016. Among other topics, Sneitzer's delay in processing inmate discipline reports was discussed. The Ombudsman indicated its office received "numerous complaints" about delayed disciplinary hearings and disregard of policy provisions regarding documentation of

[2] The Ombudsman's Office is an independent state agency charged with monitoring state, county and local governments regarding fraud, waste, abuse, and following proper procedures. The Ombudsman has a designated person to oversee the DOC. Inmates can send complaints to the Ombudsman regarding any concerns or complaints they have under DOC custody. Upon receipt of a complaint, the Ombudsman can investigate, obtain any documents it requests from the DOC, and ultimately determine whether to substantiate an inmate complaint. The Ombudsman is required to notify the DOC whenever they substantiate an inmate complaint.

continuances. In some instances, the Ombudsman learned that IMCC was releasing inmates from segregation who had spent 30 days in segregation without completed hearing decisions. The Ombudsman also indicated its statistics showed that a "significant number" of Sneitzer's hearing decisions were modified on appeal at IMCC, which led its office to question Sneitzer's "effectiveness and competence."

In response to the complaints and unremedied backlog in discipline reports, Savala determined that Sneitzer had to be brought back to IMCC to conduct her work. It became apparent to Savala that Sneitzer was no longer completing her work in a timely manner at home. Savala had a discussion with Sneitzer regarding his intent to bring her back on-site. Sneitzer indicated she felt stronger following her foot surgery but would need to continue physical therapy. By 2016, Sneitzer's daughter was stable and enrolled in a therapeutic boarding school. Sneitzer was still her legal guardian and had a continued need for intermittent FMLA to participate in her daughter's care. Sneitzer's first day back at IMCC was May 30, 2016. Savala informed Sneitzer he was drafting a letter to outline his expectations for her on-site return to IMCC.

Savala issued a letter of expectations to Sneitzer on June 9, 2016. The letter outlined Savala's expectations regarding Sneitzer's work hours, location, and workload. Sneitzer was directed to complete all her work on-site at IMCC. She was no longer authorized to work remotely unless she obtained Savala's permission. Sneitzer was expected to use DOC's electronic timekeeping system "KRONOS" when clocking in and out. All hourly employees, such as Sneitzer, use KRONOS. The KRONOS time clock was located in the administration part of IMCC's building,

which is before the metal detectors and security doors separating the secured part of the prison where Sneitzer's office was located. Upon arrival to work, Sneitzer walked through the administration building, clocked in, got through security, and walk down the hall approximately 20 feet to reach her office.

Sneitzer still had limited mobility upon her return to IMCC and used a scooter to get to her office. She was set up in an office with a bathroom to limit the distance she had to travel. Sneitzer's office door had a standard glass window cutout. This allowed security to conduct a safety check even when the door was shut. However, because Sneitzer suffers from a chronic neurological condition that causes sensitivity to light, she requested the glass window be covered. The request was approved, but the DOC still had concerns about Sneitzer's safety because security staff could not see inside her office when the door was closed.

Due to Sneitzer's limited mobility, Savala arranged with IMCC to have inmates escorted to Sneitzer's office for hearings. The ALJs normally conduct hearings on the individual cellblocks where the inmates are housed, but given Sneitzer's limited mobility, the DOC determined the optimal accommodation was to bring the inmates to her office. This accommodation required that IMCC provide two correctional officers to escort the inmates to Sneitzer's office, wait by the door until the conclusion of the hearing, and escort the inmates back. The DOC also provided Sneitzer with an administrative clerk to assist her. The clerk worked for the security department, but was assigned to assist Sneitzer with various administrative tasks, such as coordinating Sneitzer's hearings; printing discipline

reports that needed to be heard; entering information in ICON; tracking and scanning evidence for hearings; and sending out Sneitzer's hearing decisions.

The June 9 letter of expectations also set parameters on Sneitzer's work hours. While working remotely, Sneitzer was not restricted in her work hours. Upon her return to IMCC, however, Savala required her to complete her work between the hours of 6 a.m. to 6 p.m. The letter of expectations stated, in pertinent part:

> **Return to Work at IMCC.** It is my expectation that you return to work Monday—Friday for an 8 hour shift at IMCC. We discussed your Physical Therapy appointments and using FMLA. With this in mind, I'm leaving you discretion to choose your 8 hour shift between the hours of 6:00am-6:00pm. Ideally, IMCC would like hearings completed by 2:00pm, as these are the hours they are best staffed for offender escorts to your office. You can use the time after 2pm for typing up hearing decisions.
>
> All of your ALJ work needs to be completed on-site at IMCC. If you need to leave for FMLA, then please notify me by e-mail, so that I am aware. Please continue submitting the necessary paperwork to REED Group as you have been doing.
>
> ***
>
> **ALJ Calendar.** I need you to start utilizing the ALJ calendar, so that I can prepare for alternate ALJ coverage at IMCC if you are not available or need assistance with coverage.

All ALJs were expected to place their absences on the calendar and indicate whether coverage was needed or not. Savala received automatic email notification of events placed or removed from the ALJ calendar. The ALJs, including Sneitzer, were not expected to place any detailed information about the reason for the absence. As noted in the letter of expectations, the directive was implemented for operational reasons. Excerpts of the ALJ calendar in evidence reveal that all ALJs

utilized the calendar. While some ALJ entries identified a block of time for the appointment (start and end time), other entries merely noted the ALJ had an appointment without identifying the time or length of the absence.

During testimony, Savala indicated that he needed to know for safety reasons if Sneitzer was on-site at IMCC. Sneitzer had limited mobility and worked in an office with a covered window. Although the office was located inside the secured area of the prison, Savala explained that certain inmates were allowed to do work around the prison and could have potentially assaulted her. Savala indicated he needed to know when Sneitzer was on-site to communicate that information to IMCC's security so that they could conduct welfare checks on her. Nothing in the record shows that safety was discussed as a reason that Sneitzer needed to note her absences on the ALJ calendar. The documented and stated reason for the directive to utilize the ALJ calendar was for operational reasons, *i.e.* timely handling of the inmate discipline reports.

The letter of expectations also directed Sneitzer to keep her IMCC inmate discipline hearing docket current. All ALJs were expected to keep their assigned dockets current. However, after complaints from the institutions and the Ombudsman's Office, Savala determined the expectation needed to be emphasized in the letter of expectations. At all times relevant to the ten-day suspension and termination at issue here, Sneitzer's docket was current. She timely processed her assigned inmate discipline reports and no longer had delays that precipitated the June 6, 2016, letter of expectations.

II. *Sneitzer's Disciplinary History*

Sneitzer was subject to other disciplinary actions prior to the ten-day suspension and termination of employment at issue here. About five months after her return to IMCC in May 2016, she was given a written reprimand. In total, she was subject to the following disciplinary actions:

- October 4, 2016 – Written Reprimand
- December 14, 2016 – One-Day Suspension
- April 4, 2017 – Three-Day Suspension
- May 26, 2017 – Five-Day Suspension

It is unnecessary to delve into the reasons underlying each of the disciplinary actions preceding the appeals at issue here. However, some of the issues underlying the ten-day suspension and termination were addressed as part of the prior disciplinary actions, and will be discussed where relevant to the reasons for the ten-day suspension and termination.

Sneitzer's job classification is covered by the state merit system and included in a collective bargaining unit of employees represented by AFSCME Iowa Council 61. The State and AFSCME had a negotiated collective bargaining agreement (CBA) that contained grievance procedures. At the time Sneitzer was subject to the written reprimand through the five-day suspension, Sneitzer grieved all the disciplinary actions and exhausted her appeal rights available under the CBA. Sneitzer's grievances were denied and the disciplines upheld. While Sneitzer continues to disagree with these prior disciplinary actions, for the purposes of the instant discipline appeals, the written reprimand through the five-day suspension are final. The prior disciplines will be considered as part of Sneitzer's disciplinary

history for the purposes of determining the existence of just cause for the ten-day suspension and termination of employment.

III. *Case No. 102064: Sneitzer's Ten-Day Suspension*

The DOC contends Sneitzer continued to disregard multiple supervisory directives upon her on-site return to IMCC even after the five-day suspension. The DOC conducted an investigatory interview with Sneitzer on July 7, 2017, for alleged violations of Savala's work directives and violation of policy IO-RD-03, *Major Discipline Report Procedures*. Following the investigation, the DOC concluded Sneitzer's actions warranted discipline.

A. Investigation

Savala made the decision to initiate an investigation. It is unknown when he initiated the investigation, but he provided Sneitzer with notice by email on or about July 5, 2017, that he would conduct an interview with her on July 7. This email is not in evidence. It is unknown on this record whether Savala informed Sneitzer in advance what specific alleged violations the investigatory interview would entail.

Savala was the sole investigator into Sneitzer's alleged violations. The investigation consisted of the July 7 investigatory interview with Sneitzer. Present during the interview were Sneitzer, Savala, DAS personnel officer Erick Lynes, and Jason Moats, an IMCC employee who was present as Sneitzer's peer representative. At the beginning of the interview, Sneitzer wondered why she could not have another ALJ present as her peer. She stated Savala told her that her peer had to work at IMCC, but that no other ALJ works at IMCC. Lyons

advised her that she is not entitled to a peer of her choosing and that it is also easier for the DOC to arrange for a peer if the employee works at IMCC.

Sneitzer was the only person interviewed as part of the investigation. No other employees were interviewed or otherwise consulted to verify or corroborate any of the statements, explanations, or purported practices Sneitzer asserted during her investigatory interview. Savala obtained documentary evidence, such as KRONOS timesheets, emails, and some ICON information, as part of the investigation.

It is unknown when Savala concluded his investigation. He did not in any manner memorialize his investigative findings or document his reasoning for finding that Sneitzer violated his supervisory directives and DOC policies. The record provides no indication that Savala specifically considered Sneitzer's statements, explanations, or purported practices, as part of the investigation prior to imposing discipline.

During the investigatory interview on July 7, Sneitzer asserted that Savala's repeated disciplinary investigations were harassing, discriminatory, and retaliatory. She argued that Savala was singling her out and treating her differently from the other ALJs. Sneitzer pointed out that other ALJs did not have restrictions on work hours or restricted from working more than eight hours. During the interview, Sneitzer was questioned about a specific decision she issued that was appealed as a PCR action. Part of Sneitzer's response alleged disparate treatment in the manner her PCR was being handled. Specifically, Sneitzer claimed that Savala did not investigate or discipline other ALJs for

having or losing a PCR action against their decisions, but that those were handled through a change of practice. Yet, in contrast to Savala's treatment of other ALJs, the PCR action against her decision was being handled through discipline. Savala's response to Sneitzer's assertions about discrimination, harassment, and disparate treatment was to merely disagree with them on record during the interview. Savala continued in his role as the sole investigator and decision maker even after Sneitzer's allegations of improper motivations behind the investigation.

Savala did not, as part of the investigation into Sneitzer's alleged violations, obtain any information to confirm or deny Sneitzer's assertions that other ALJs were in fact working past 6 p.m. without his advance approval, or that other ALJs were flexing their work day within the work week without his advance approval. Deposition and hearing testimony received from other DOC ALJs reveal that ALJs at the time were allowed to "flex" their work hours. This practice ceased July 1, 2018, almost a year after Sneitzer's disciplines. The ALJs did not earn overtime pay if they "flexed" their 40 hours within the same pay period. Evidence in record also demonstrates that other ALJs could and did work past 6 p.m. without having to obtain Savala's prior approval.

B. Alleged Violations Underlying the Ten-Day Suspension

Sneitzer was issued a notice of ten-day suspension dated July 14, 2017. The letter stated, in part:

> This letter is to advise you that the investigation into your alleged violations of failing to follow supervisory directives and negligent work has been completed. The investigation determined that your

> conduct violated the work rules and supervisory directive outlined below. As a result of the infractions, you are hereby subject to this written notice of alternative discipline in lieu of a suspension without pay. While this action does not reduce your pay, seniority, or other benefits, it does carry the same weight as if you had been subject to a ten day suspension.

The notice of discipline outlined five separate items that formed the basis of the disciplinary action. The first four bases outlined were for failure to follow a supervisory directive in violation of AD-PR-11, *DOC General Rules of Employee Conduct*, part H.6, requiring employees to "obey a supervisor's lawful orders." For the last item outlined in the letter, "negligence" in a hearing decision, the DOC asserted Sneitzer violated AD-PR-11 and IO-RD-03, *Major Discipline Report Procedures*, although the notice did not specify the provisions allegedly violated.

(1) Identifying CBC Lists by Full ICON Name

The first item in the disciplinary notice was regarding Sneitzer's failure to identify in her communications the full name of the CBC list she was processing. The discipline letter stated:

> This action is being taken as a result of your failure to follow my supervisory directive in referring to the *Pending WR/OWI Transfer Classification Reviews* list and the *Residential ALJ Process Scheduling* list in their full name. You have been previously disciplined for not following my supervisory directives. Your actions are a violation of the work rules of the DOC regarding the *General Rules of Employee Conduct* for not following a supervisory directive.

Starting in October 2016 Sneitzer was assigned as the primary ALJ for processing the two CBC lists – *Pending WR/OWI Transfer Classification Reviews* list and the *Residential ALJ Process Scheduling* list. When communicating with CBC staff, Sneitzer would refer to the *Pending WR/OWI Transfer Classification Reviews*

list as "the list" or her "regular list." The record reveals that other staff involved in processing this list, including Savala, have referred to it by various names, such as "the list" and "Margot's list." The DOC contends that sometime in April 2017, the CBC staff expressed confusion to Savala about Sneitzer's communications and what list she was referring to in her emails. In response to staff confusion, Savala directed Sneitzer to use the full ICON names of the lists. On April 14, 2017, Savala stated in an email to Sneitzer:

> Renee, this is a supervisory directive in referring to the lists in their full name and not in acronyms. You are expected to use the full name of the ICON lists on all future communication. The reason for this is so we have clear communication and no confusion.

This directive was communicated as part of a lengthier email chain regarding procedures for processing CBC reports that included the CBC staff.

While processing the *Pending WR/OWI Transfer Classification Reviews* list on April 19, Sneitzer emailed the CBC staff, including Savala, regarding a specific offender on her "regular list" that had been apprehended. The CBC staff responded and answered her question. Savala responded to Sneitzer on April 21 that she was not following his supervisory directive and reinforced his earlier directive to use the full name of the list in order to maintain "clear communication and no confusion for all parties involved." Sneitzer acknowledged she did not use the full name of the list in the April 19 email as she should have but explained it was an inadvertent mistake because she had been calling it her "regular list" for a long time prior to Savala's April 14 directive. Although Sneitzer received a five-day suspension on May 26, 2017, her failure to call the *Pending WR/OWI Transfer Classification*

Reviews list by its full name in the April 19 email was not included as a reason for that discipline.

In addition to the April 19 email, the DOC provided email documentation of about 34 other instances in which Sneitzer referred to the *Pending WR/OWI Transfer Classification Reviews* list as "the list" in daily notification emails to CBC staff. In January 2017, Savala directed Sneitzer to process the *Pending WR/OWI Transfer Classification Reviews* list as her first order of business upon arrival to work because of its fiscal impact to the DOC for having to reimburse the county jails for holding DOC inmates. Sneitzer was directed to notify the CBC staff that the list was completed. The directive only pertained to the *Pending WR/OWI Transfer Classification Review* list. The 34 emails the DOC provided are of Sneitzer notifying the same four individuals, including Savala, that "the list" was completed.

The 34 instances of this daily notification that "the list" was completed occurred between April 17 and July 6. After the April 14 directive, the first time Sneitzer sent the daily notification was on April 17. Savala did not redirect her to call "the list" by its full name in the daily email notification, as he had done a few days later when she called it her "regular list" in the April 19 email discussed above. About 15 of the emails were sent before Sneitzer was given a five-day suspension on May 26. Sneitzer was not disciplined in the five-day suspension for failing to use the full list name for these 15 instances. The other 19 notification emails were sent after May 26. Savala did not correct or direct her in any of these instances to refer to the list by its full name. The record is devoid of any indication

that the CBC staff or Savala were confused what "the list" was in Sneitzer's daily notification emails.

Sneitzer was interviewed regarding the notification emails on July 7. A review of the interview transcript reveals that Sneitzer was only provided with daily notification emails she sent between May 26 and July 5. Although the DOC has now included an additional 15 daily notification emails as part of its evidence, Sneitzer was not given an opportunity to respond to them during the investigation.

During the July 7 investigatory interview, Sneitzer asserted that Savala's directive was not clear that it also encompassed the daily notification emails. She asserted that staff have always referred to the *Pending WR/OWI Transfer Classification Reviews* list as "the list" because it was the priority list due to its fiscal impact to the DOC. Savala told her to send the daily notification to the CBC staff that "the list is done" and the emails show her doing exactly as directed. She contends she had no notice until July 7, the day of her investigatory interview, that Savala had a problem with her daily email notification to the CBC staff that "the list is done." After he told her on July 7 that the use of the short form "the list" in the daily notification email was an issue, she immediately complied with the directive and used the full name of the *Pending WR/OWI Transfer Classification Reviews* list in her daily notification emails. The DOC has not presented any emails after July 7 in which Sneitzer failed to refer to this CBC list by its full name.

The DOC also provided documentation of a July 5 email Sneitzer sent to another ALJ, including Savala on the communication. Sneitzer asked the other ALJ, "Are you completing residential reports?" Sneitzer did not refer to either of the

two lists by their full name but only referred to them as "residential reports." The ALJ responded that she only completed the reports on the "WR/OWI Transfer list" and one other report that she was contacted about to be completed while Sneitzer was gone. Sneitzer was not presented a copy of this July 5 email or otherwise asked about it during her investigatory interview and thus did not respond to it during the investigation.

(2) Identifying Category of Leave Utilized

The ten-day suspension letter stated that Sneitzer was being disciplined for failing to communicate to Savala the type of leave she planned to utilize for her absences. The notice of discipline stated:

> This action is being taken as a result of your failure to follow my supervisory directive that you communicate with me as to the category of leave you will be taking. You have been previously disciplined for not following my supervisory directives. Your actions are a violation of the work rules of the DOC regarding the *General Rules of Employee Conduct* for not following a supervisory directive.

On June 9, 2017, Savala directed Sneitzer to identify the type of leave she was utilizing when she was leaving early or not reporting to work. In response to an email from Sneitzer stating she was "leaving early" between noon and 1, Savala stated:

> In the future, I need more information than receiving an e-mail that you are "leaving early." Additional clarity such as if you are taking vacation, comp time or fmla. If possible, let me know as soon as you can, so I can plan for workload.

While the June 9 directive from Savala does not mention it, the DOC contends this supervisory directive was implemented in response to a request from the IMCC payroll department. Although Sneitzer reported to Savala in central office, IMCC

still maintained her timecards and processed her payroll. As such, IMCC needed to know what leave she was utilizing for her absences. State witness testimony indicated that staff is required by policy to submit leave slips within 8 hours after taking leave. The record indicates that Sneitzer was expressly authorized an additional day to submit her leave slips. However, Savala contends that Sneitzer often waited until the end of the pay period to submit her leave slips which identified the type of leave she was utilizing for her absences. IMCC HR asked Savala to have Sneitzer designate the category of leave taken as the pay period progressed, which he contends was the purpose behind the June 9 directive referenced above.

The DOC contends Sneitzer violated this directive on July 7, the day of Sneitzer's investigatory interview for the ten-day suspension. The record reveals Savala informed Sneitzer on July 5 that he was going to conduct an investigatory interview with her on July 7. The DOC provided an audio recording of a voicemail Sneitzer left for Savala the morning of July 7. The time of the voicemail is unknown. In the 23-second voicemail, Sneitzer stated, "I'm not coming in this morning before the meeting" but that she would see him at the meeting. The DOC asserts this voicemail is evidence that Sneitzer violated the directive by failing to identify the type of leaving she was taking before the 10:30 a.m. interview. After receiving the voicemail, Savala contacted Sneitzer to inquire why she was not reporting to work from her "start time" to 10:30 a.m. Sneitzer indicated, "I'm just not coming in, I have to have my head straight." She told him she was not feeling well and that she needs to be in the right place before the investigatory interview.

She indicated that she does not make decisions as an ALJ if she is not at "100 percent."

When asked during the investigatory interview, Sneitzer confirmed that she told Savala she was not coming in before the interview. She testified during the hearing that there was no leave to take before the interview. Instead, she had a 6 a.m. to 6 p.m. window to work her shift. As such, not coming in prior to 10:30 a.m. was not taken as leave, but working within the designated work hour parameters. Sneitzer's timecard that includes July 7 is not in the record and it is not otherwise known whether she took leave before the 10:30 a.m. interview.

(3) Working Outside of Designated 6 a.m. to 6 p.m. Work Hours

The ten-day notice of suspension indicated the DOC disciplined Sneitzer for working outside of the designated work hours of 6 a.m. to 6 p.m. The letter stated:

> This action is being taken as a result of your failure to follow my supervisory directive that you work between the hours of 6:00 am-6pm. You have been previously disciplined for not following my supervisory directives. Your actions are a violation of the work rules of the DOC regarding the *General Rules of Employee Conduct* for not following a supervisory directive.

The directive to work between the hours of 6 a.m. to 6 p.m. was placed upon Sneitzer in the June 9, 2016, letter of expectation upon her on-site return to IMCC. The DOC contends that the work hour parameters were placed on Sneitzer for operational efficiency because other staff involved in the inmate discipline system also generally worked during this window of time. Furthermore, the DOC also contends the directive was implemented for safety reasons as the institution has

higher staffing during the 6 a.m. to 6 p.m. window to conduct safety checks and maintain security.

Sneitzer was previously disciplined for violating this directive. On April 4, 2017, Sneitzer was disciplined with a three-day suspension, in part, for returning to work after 6 p.m. without prior permission from Savala. In that instance, Sneitzer returned to IMCC and clocked in to work after 9 p.m.

Underlying the ten-day suspension, the DOC provided timecard documentation of two instances when Sneitzer clocked out after 6 p.m. The first instance, June 23, 2017, Sneitzer's timecard reveals she clocked in at 2:41 p.m. and clocked out at 6:07 p.m. She previously let Savala and the IMCC warden know of her late start that day. Upon her arrival to work, Sneitzer emailed Savala and the warden to let them know she had arrived and would "only be here until 6."

The second instance, June 28, Sneitzer's timecard reveals she clocked in at 1:27 p.m. and clocked out at 6:22 p.m. She had similarly informed Savala and the IMCC warden of her late arrival that day. Upon arrival to work, Sneitzer emailed Savala and the warden to let them know she had arrived. She further stated that she was updated about priority hearings for the day, stating to the warden that she is "mandated not [to] work past 6pm or so" but "can stay longer if you allow" in order to complete the priority hearings. She indicated if she is not approved to stay longer, she will get as many done as she can and resume the next day. Neither Savala nor the warden replied to Sneitzer's email. Savala testified he had no issue with approving Sneitzer to work past 6 p.m. when needed and had previously

approved such requests from her, but the issue is that Sneitzer unilaterally extended her designated work hours without supervisory approval.

During the July 7 interview, Sneitzer did not recall what specifically occurred on June 23 or June 28, but asserted that she made every effort to abide by the directive to leave by 6 p.m. Sneitzer stated it was unreasonable to expect her to leave exactly by 6 p.m. given her "difficulties and disabilities" and that it is oftentimes difficult for her to walk. Sneitzer testified that her routine was to start winding down about a quarter to six, packing up, and making her way to the time clock. Sneitzer also asserted that she had no control over whether she could get past security in time but that she is positive she was prepared to leave by 6 p.m. The record establishes that the precise time from Sneitzer's office to the KRONOS time clock varied depending on how long it took her to get through the security. Furthermore, based on Savala's testimony, if Sneitzer had clocked in at 11:36 a.m., as an example, it would be "well after noon" by the time she got through the security doors, walked to her office, and started her computer.

During the investigation, Sneitzer also claimed that no other ALJ was subject to this 12-hour restriction. The record supports Sneitzer's claim. No other ALJ was restricted to or reprimanded for working outside of the 6 a.m. to 6 p.m. hours.

(4) Working More than 8 Hours a Day

The ten-day notice of suspension indicated the DOC disciplined Sneitzer for working more than eight hours a day without prior supervisory approval. The letter stated:

> This action is being taken as a result of your failure to follow my supervisory directive that you work 8 hours each day. You have been previously disciplined for not following my supervisory directives. Your actions are a violation of the work rules of the DOC regarding the *General Rules of Employee Conduct* for not following a supervisory directive.

The directive to work an 8-hour shift was placed upon Sneitzer in the June 9, 2016, letter of expectations upon her return to IMCC. The DOC provided timecard documentation that shows Sneitzer worked 9.1 hours on July 3, clocking in at 7:27 a.m. and clocking out at 5:03 p.m. It contends this is in direct violation of the directive to work an 8-hour shift. The DOC contends this directive was implemented to have consistency among all contract-covered hourly employees. All contract-covered employees are overtime eligible, including Sneitzer. The DOC contends Sneitzer took it upon herself to work more than 8 hours without prior supervisory approval and this has a fiscal implication for the DOC. Savala indicated he had no issue with authorizing overtime if she needed time to complete her work. However, the issue was that Sneitzer took it upon herself to do so without his approval.

Sneitzer does not dispute that she worked 9.1 hours on July 3, but asserts that she did so to make sure she kept her docket current, in compliance with Savala's other directive. On July 3, she realized that another ALJ had processed some of her CBC reports without having communicated that information to Sneitzer and it took her at least 45 minutes just to figure out why she could not access her assigned reports on ICON. Email documentation in the record reveals that on July 3, Sneitzer emailed the other ALJ at 4 p.m. to inquire about the CBC

reports. The other ALJ did not respond to her until the morning of July 5. Without informing Sneitzer, the other ALJ processed several CBC reports, but she processed them out of chronological order and this forced Sneitzer to stay to "fix" this and complete her docket prior to leaving for the day. Sneitzer was previously reprimanded for processing CBC reports out of chronological order. In response to Sneitzer's explanation during the investigatory interview, Savala stated that the other ALJ was just trying to "help [Sneitzer] out" but that Sneitzer "chastised" her in an email for trying to assist her. A review of the email communication exchanged shows Sneitzer merely explained to other ALJ that she is under a directive not to process reports out of chronological order and that a little bit of communication would have avoided this issue.

Sneitzer also asserts that no other ALJ was under this 8-hour restriction and that ALJs could "flex" their time within the work week. The record supports this assertion. Evidence and testimony in the record reveals that during this time, the ALJs were allowed to "flex" their work hours instead of receiving overtime pay. As such, an ALJ was allowed to work 10 hours one day and only 6 hours the next day, so long as the 40 hours were worked during the same pay period. Other ALJs indicated that if they needed to attend an appointment during their work hours, they would often extend their hours on another work day to make up the time taken for the appointment. The other ALJs were not under an 8-hour restriction during the time relevant to Sneitzer's ten-day suspension.

(5) "Negligence" in a Hearing Decision

The ten-day notice of discipline stated the DOC disciplined Sneitzer for "negligence" in issuing one particular inmate discipline decision. The letter stated:

> This action is being taken as a result of your negligence in an offender discipline hearing decision that stated you relied on "attached credible witness statements and evidence" when no witness statements existed. Your actions are a violation of the offender's due process rights, work rules of the DOC regarding the *General Rules of Employee Conduct* and the DOC *Major Discipline Report Procedures* for not performing your essential job functions, performance standards, and job duties. Your negligent action, especially as a licensed attorney, is not acceptable and casts confusion for offenders, staff, the Attorney General's Office, the Courts, and brings discredit to the legal profession.

This bulletin in the discipline letter was regarding a hearing decision Sneitzer issued on July 6, 2016. Per procedure, the "disciplinary notice" that initiates discipline of an inmate is investigated prior to being heard by an ALJ. Following the investigation, the assigned investigator completes an "investigation of violations" sheet on ICON. The sheet has numerous fields, such as the inmate's name, disciplinary number, plea, whether evidence is included, whether there is a waiver of hearing or the 24-hour notice. In addition, the investigation sheet also contains fields for the offender's comments, the case manager's comments, the work supervisor's comments, and the investigation staff's comments. If the investigator collects any evidence pertaining to the incident, the evidence is included with the investigatory report. Part of the evidence collected may include witness statements. As part of the procedures for preparing the disciplinary report for hearing, policy IO-RD-03 directs that a "separate statement on the *Witness Statement* (IO-RD-O3 F -1) should be submitted by each employee who witnessed the incident or has

knowledge of the incident." The disciplinary notice, the investigation of violations, and any accompanying evidence is uploaded into ICON and considered by the ALJ as evidence in reaching a decision.

The July 6 decision at issue here concerned an IMCC inmate who was disciplined for abusing work assignment privileges. The "investigation of violations" form submitted to Sneitzer to consider included the standard fields previously outlined as well as "comments" from the inmate, his case manager, and the investigator.[3] For the work supervisor field, the investigation report noted the supervisor "was unavailable for a statement." This specific discipline report did not contain any separate "witness statements" on ICON.

Sneitzer held a hearing with the inmate and issued a decision on July 6. The hearing decision, which is also an ICON form with various fields, is in evidence. Under the "findings of facts" field, Sneitzer prefaced the findings by referencing the "some evidence" standard of proof she is required to utilize when making her findings. Sneitzer then provided her factual findings regarding the specific incident underlying the disciplinary report, including the date of the incident and what occurred as established by the facts before her.

The hearing decision also contained a field titled "evidence relied upon." The information she wrote in this field is the subject of her discipline. In this field, Sneitzer stated, the "Disciplinary Notice attached hereto; attached credible witness

[3] Offender's comments: "Offender asks that the ALJ review the tape of the incident." Case manager's comments: "Offender has been quiet and appropriate on the pod as far as I've seen. No behavior log entries are noted." The investigator's comments: "I have had no issues with Offender [B] on the pod. He is always respectful, and does as he is asked."

statements and evidence; and the following statements and admissions of the offender." She then wrote the inmate's statements and admissions, about five separate statements that pertain to the specific incident. She determined the inmate violated the rules alleged and issued a sanction of 14 days loss of earned time. The inmate subsequently filed a PRC action against the DOC challenging the forfeiture of earned time.[4] The AG's Office defends the DOC in PCR litigation and generally contacts the ALJ who decided the report for information or clarification.

The AG's office first contacted Sneitzer about the July 6, 2016, hearing decision on November 16, 2016. In that communication, the assistant AG asked Sneitzer to clarify her indication in the decision that she relied on "attached credible witness statements" when ICON did not contain any "witness statements." Sneitzer responded the next day, November 17, and included Savala on her communication to the AG's Office. Sneitzer explained the cited language is "standard" in her decisions and is there "to include evidence provided before, during, and quite often after a hearing, by the Offender themselves." In this and subsequent communications with the AG's Office, Sneitzer explained that any evidence she accepts after a hearing is only considered if it is received prior to her rendering a decision. The AG had no further follow-up or discussion with Sneitzer regarding the July 6 hearing decision until July 5, 2017, almost 8 months after the

[4] Per procedure, an inmate first right of appeal is to the institution's warden. The warden may affirm, reverse or remand an ALJ's decision. The warden's decision constitutes final agency action that can be challenged in court. The record provides no indication that any concerns were raised with Sneitzer's July 6, 2016, decision at the warden's level of appeal.

initial contact. Savala also did not discuss this particular hearing decision with Sneitzer during this time period.

On July 5, 2017, Sneitzer and Savala received an email from the assistant AG who took over the PCR case. The assistant AG and Sneitzer exchanged several lengthy emails regarding the July 6, 2016, hearing decision. In terms of the concerns expressed by the AG's office, the assistant AG concluded Sneitzer's reference to "attached witness statements" was highly problematic because she thought its inclusion made it appear to a reviewing court that Sneitzer was not paying attention to the evidence before her as no witness statements were part of her record.

For the purposes of determining whether Sneitzer's inclusion of this language violated the alleged policy provisions of IO-RD-03, *Major Discipline Report Procedures*, Sneitzer's explanations for including this language are relevant. In her response to the assistant AG, Sneitzer explained she has always used the same standard language in her decisions. Sneitzer explained she included the language because:

> I otherwise include the language because Offenders do not receive copies of the Investigation reports, but the investigation report serves as evidence. Because Investigation reports are attached to every single report, I consider it evidence provided to the ALJ at the time of hearing. So Offender [B] did have attached evidence; every Offender does.
>
> That is my thinking. I have been using this format for some 10 years. Noone questioned it before, but I will certainly change it now if you think it creates any procedural hurdles. Let me know your thoughts if this is not satisfactory.

The assistant AG was dismissive of Sneitzer's explanation and expressed that she thought Sneitzer obviously made an error when including this template language but refused to admit her error. Although Savala was included in every email communication between Sneitzer and the AG's Office, he provided no input. He also did not address the issue with Sneitzer. The issue only arose as part of Sneitzer's investigatory interview on July 7.

During Sneitzer's investigatory interview on July 7, 2017, Savala asked her to respond to the July 6, 2016, hearing decision. Sneitzer reiterated, as she had communicated to the AG's Office, that she includes the "attached credible witness statements and evidence" as standard language in all her decisions because the disciplinary notice always comes with some form of evidence from the DOC, like the investigation form, and this is all considered as evidence when issuing a decision on a discipline report.[5] She has used this format during her entire tenure without challenge, even in prior decisions that did not have separate witness statements. Sneitzer further stated that Savala also became aware of the AG's inquiry on this decision in November 2016, but never indicated to her it was a problem. Savala responded that he assumed she had worked the issue out with the AG's Office. Sneitzer stated that after she replied to the assistant AG in November 2016, she did not receive any further communications from him for additional clarification or information, and thus had no reason to think there was an issue or that her explanation was insufficient.

[5] Policy IO-RD-03, section 15, specifically states that an ALJ is to review available evidence, including investigative reports.

Sneitzer further stated that she understood there was a legal disagreement with the assistant AG about the appropriateness of this language, but has offered to and is willing to change the language because ultimately it is the AG who has to defend the PCR action in court. Sneitzer provided numerous examples of other instances when the ALJs reviewed and made changes to their way of processing inmate discipline reports in response to court rulings, concerns from the AG's Office, or because DOC itself questioned some of its practices. Sneitzer explained that it is "par for the course" as ALJs whose job is to interpret laws that the court may subsequently issue a ruling that requires the department to change its practice. She indicated that all ALJs have had decisions that resulted in an inmate filing a PCR, and some of those PCRS were successful in court, but no other ALJ had been disciplined for a decision that resulted in a PCR action. Instead, it was grounds for the department to conduct business a little bit differently. Savala told Sneitzer during the investigatory interview that her inclusion of the phrase about witness statements is "an incorrect and false statement" and that her actions "discredited" the DOC.

The DOC did not review as part of its investigation the over 12,700 other hearing decisions Sneitzer issued to verify her claim this was template language she consistently used. Conversely, no inquiry was made to determine whether other ALJs used similar template language for summarizing the evidence relied upon.

The extent of the DOC's investigation into Sneitzer's alleged "negligence" in issuing the July 6 hearing decision was limited to the investigatory interview Savala

conducted with Sneitzer. The DOC has presented email communication Savala exchanged with the assistant AG on August 2 about Sneitzer's hearing decision. Savala's stated reason for the email was to corroborate a statement Sneitzer made during the investigatory interview. Upon review of Savala's August 2 email and the investigatory interview, I find that Savala inaccurately conveyed Sneitzer's statements regarding PCRs. Nevertheless, the inaccuracy need not be addressed here because it is not relevant. Savala sent the email over two weeks after Sneitzer was disciplined for the July 6 hearing decision. As such, the DOC did not have this information when determining whether discipline was warranted because discipline had already been imposed on July 14.

Savala testified that all ALJs have PCR actions filed against their decisions. Some of the PCR actions are lost in court, but no ALJ has been disciplined for having a PCR filed as a result of his or her decision or having their decision reversed as a result of losing a PCR. He further testified that the AG's Office has previously contacted him regarding ALJ decisions, in instances "if we needed to change a practice or we needed to change our policy based on the judge's ruling." However, he deemed this situation different than past instances, and testified he had never been contacted where an "ALJ said that evidence existed when none existed in the record." He found it "troubling" that she issued a decision that said "evidence existed when none existed" and that it brought "discredit" upon the DOC. The record establishes that Sneitzer had the least number of PCRs filed against her decisions of all the ALJs. She had not lost any PCRs during her tenure at the DOC.

Savala determined Sneitzer's use of the verbiage of "attached witness statements" in the July 6 hearing decision violated AD-PR-11 and IO-RD-03. The discipline notice does not specify which policy provisions Sneitzer allegedly violated. However, testimony and evidence presented at hearing indicate the DOC concluded the following provisions were violated.

> **AD-PR-11, General Rules of Employee Conduct**
>
> C. Code of Conduct
>
> 1. The IDOC's mission requires all personnel to provide specific services and to follow established regulations and procedures.
>
> 3. Employees are expected to be familiar with their job description, essential functions, performance standards and job duties. …
>
> **IO-RD-03, Major Discipline Report Procedures**
>
> 15. The ALJ shall conduct the hearing on a Disciplinary Notice as follows:
>
> L. The ALJ shall review all pertinent evidence presented and may draw an adverse inference from the offender's hearing waiver or silence during the proceedings.

Evidence in the record reveals an instance when another ALJ failed to review the supervision status of an offender on parole prior to issuing a decision and erroneously took away earned time. For offenders on parole, forfeiture of earned time can only be ordered by a board of parole ALJ. Savala testified that this ALJ was not disciplined, but reminded to be mindful and check the offender's supervision status. Savala indicated these mistakes are infrequent and he does not discipline for them.

C. Imposition of Discipline

Savala was the sole decisionmaker in concluding that Sneitzer's actions violated his supervisory directives and DOC policies, and that discipline was warranted. Savala concluded, based on the investigatory interview with Sneitzer, that "she didn't want to take responsibility for any of the work rule violations." Savala also determined the appropriate level of discipline. Savala testified that, at the time, DOC's standard discipline schedule was to terminate an employee following a five-day suspension. However, in considering Sneitzer's predominantly positive ten-year tenure and some recent improvement, Savala determined to discipline her with a ten-day suspension instead to provide additional opportunity for Sneitzer "to change her behavior."

The notice of suspension is dated Friday, July 14, 2017. However, Sneitzer was not provided with a copy of it until Wednesday, July 19, 2017. The record provides no explanation for this delay. Pursuant to the grievance procedures available to merit system employees, Sneitzer appealed the discipline to the DAS director.[6] The DAS director's designee denied the grievance on August 25, 2017.

IV. *Case No. 102132: Sneitzer's Termination*

The DOC contends that after the issuance of the ten-day suspension, Sneitzer continued to violate supervisory directives and DOC policy. Savala testified that he coached and counseled Sneitzer following the ten-day suspension. The

[6] Following changes to Iowa Code chapter 20 in 2017, the CBA between the State and AFSCME no longer contained grievance procedures as of July 1, 2017. Consequently, Sneitzer's instant appeals were filed pursuant to her appeal rights as a merit system employee.

record does not contain any information regarding when these counseling sessions occurred or what exactly was discussed as part of Savala's discussions with Sneitzer. On August 28, 2017, the DOC terminated Sneitzer's employment. The notice of termination stated the DOC's investigation concluded Sneitzer's actions on four separate matters were "a violation of the work rules of the DOC regarding the *General Rules of Employee Conduct* for not following a supervisory directive." No other policies or work rules were cited in the termination notice.

A. Investigation

As with the investigation pertaining to the ten-day suspension, Savala was the sole investigator and decisionmaker in determining whether Sneitzer's actions warranted discipline. It is unknown when Savala decided an investigation was warranted, but the alleged violations underlying Sneitzer's termination span from July 11 to August 10, 2017. It appears Savala informed Sneitzer on or about August 9, that he would conduct an interview with her on August 11. Savala did not inform Sneitzer in advance what specific alleged violations the investigatory interview would entail.

The DOC contends that the allegations were sufficiently and fairly investigated. The investigation consisted of the August 11, 2017, investigatory interview with Sneitzer. Present during the interview were Sneitzer, Savala, DAS personnel officer Erick Lynes, and Jason Moats, an IMCC employee who was present as Sneitzer's peer representative. During the interview, Sneitzer made a statement that she wanted to have another ALJ present as her peer representative because an ALJ is in a position to understand her job duties and

responsibilities. It appears the request was denied given that Moats, an IMCC employee, was present as her peer representative.

Sneitzer was the only person interviewed as part of the investigation. No other employees were interviewed or otherwise consulted to verify or corroborate any of the statements, explanations, or purported practices Sneitzer asserted during her investigatory interview. Savala obtained documentary evidence, such as emails and calendar entries, as part of the investigation. Upon the conclusion of his investigation, Savala did not in any manner memorialize his investigative findings or document his reasoning for finding that Sneitzer violated his supervisory directives. Sneitzer's responses to the allegations and any documentary evidence relied upon were obtained on or prior to August 11, 2017. Nothing in the record demonstrates the DOC continued to investigate Sneitzer's alleged violations after August 11. However, she was not terminated until Monday, August 28. The record provides no explanation for the delay between the apparent conclusion of the investigation and the imposition of discipline. Notably, however, the evidence does establish that Sneitzer's termination of employment occurred on Monday, August 28, 2017, three days after DAS denied her appeal of the ten-day suspension on Friday, August 25.

B. Alleged Violations

(1) Failure to Remand CBC Discipline Report

The notice of termination indicated Sneitzer failed to follow a supervisory directive when she "dismissed" a discipline report instead of remanding it.[7] The letter states:

> This action is being taken as a result of your failure to follow my supervisory directive on July 7, 2017 to remand offender discipline reports, so that staff have an opportunity to correct. On July 12, 2017 you dismissed an offender discipline report simply because the acronym "DH" appeared in the report and you did not follow my supervisory directive in remanding the report. You have been previously disciplined for not following my supervisory directives.

The specific discipline report at issue here concerned "Resident A" at a CBC facility. The inmate was written up for not repaying money he owed to the facility. The CBC committee held a due process hearing with Resident A, reviewed the evidence and issued a decision that the resident was guilty of violating the facility's rules. The committee's decision outlined the rules violated, factual findings, and the evidence relied upon. The evidence relied upon included the following statement, "Resident [A] stated to this committee that he couldn't cash the check because he had a DH pending and he said Manager [H] was on vacation and kept asking when she would be back." The committee's decision did not explain what "DH" means. The committee determined the violation constituted a major report.

[7] Although the DOC asserts Sneitzer "dismissed" the report, this terminology misstates an ALJ's role in reviewing CBC reports, which is solely to determine earned time sanctions. In this instance, Sneitzer did not order forfeiture of earned time as a sanction, or "zeroed out" the report, but the founded violation and any other sanctions ordered by the CBC committee were unchanged.

In reviewing CBC inmate discipline reports, an ALJ conducts a "paper review" to solely determine whether the resident will forfeit any earned time but cannot change the committee's decision on guilt. On July 12, Sneitzer reviewed the hearing record for Resident A's discipline report and determined "zero earned time lost." She stated in her review that the CBC "hearing decision fails to meet minimum due process requirements and the taking of earned time based upon the hearing decision would be arbitrary and unsupported for the following reason(s): The finding of facts are simply not clear to this ALJ; namely the term 'DH.'" The DOC concluded that Sneitzer's decision not to remand the report to the CBC for clarification was "unacceptable" and contrary to a supervisory directive Savala issued on July 7, five days before she issued this decision, to remand any reports that had procedural errors or required additional clarification. Savala asserts Sneitzer was required to remand the report to the CBC facility to ask for clarification on what "DH" meant instead of zeroing out the report.

The record shows Savala and Sneitzer discussed remand requirements during Sneitzer's July 7 investigatory interview pertaining to the ten-day suspension. The July 7 discussion was about a discipline report Sneitzer processed out of Newton Correctional Facility (NCF) while covering for another ALJ. The inmate pled guilty to the alleged violation. Upon review of the evidence, Sneitzer determined the report failed to meet the "some evidence" standard and dismissed the report. When Savala asked why she dismissed the report, Sneitzer informed Savala the report was not well written or processed, and did not contain a date in the report or have a waiver. Sneitzer stated it was irrelevant that the inmate pled

guilty because due process requires the disciplinary report contain basic elements, such as a date and waiver, which this report did not have. She asserted it is within her discretion as an ALJ to dismiss reports that fail to meet the "some evidence" standard.

During the July 7 discussion, Savala and Sneitzer disagreed whether an ALJ was required to remand reports back to the institution. Sneitzer asserted that every ALJ has dismissed a report for procedural errors. Sneitzer also asserted that remand is not a tool often used because the ALJs are supposed to have judicial independence from the DOC in order to have a fair process in place for both sides, the inmate and the DOC. In response, Savala read portions of policy IO-RD-03, *Major Discipline Report Procedures*, regarding remand and told Sneitzer the policy requires the ALJ to give the institution a chance to fix "procedural" errors before an ALJ can dismiss it. He further indicated that he personally spoke to each ALJ and confirmed that they send the reports back to the institution to give them the opportunity to fix it. The specific contents of Savala's conversations with the other ALJs were not documented and are not part of this record. Through the rest of the discussion, it was clarified that "procedural" errors were to be sent back, and a report with no date, no waiver, or missing witness statement, were given as examples. In response to Sneitzer asking how to do a remand in ICON, Savala told her to issue a continuance of the hearing and outline for the institution what is missing from the report. He told Sneitzer if the institution does not fix the issue within the timeframe she orders then she can dismiss the report.

The July 7 discussion ended with Savala reiterating that Sneitzer needed to give the institution an opportunity to fix procedural, non-substantive errors before she dismissed a report. The July 7 discussion was limited to remanding requirements at the institutions. No mention or inquiry was made regarding remanding requirements for CBC discipline reports.

After Sneitzer decided the July 12 CBC discipline report at issue, the CBC facility thought Sneitzer was being "nit-picky" by zeroing out the report when she did not understand the "DH" acronym. Once Savala became aware of the issue, he emailed Sneitzer on July 19 to inform her it was "unacceptable" that she did not ask for clarification on what "DH" meant prior to deciding the issue and that her action was in violation of his July 7 directive to "remand reports with a procedural matter."

Sneitzer responded to Savala by email and was asked about this particular CBC report during the investigatory interview. Sneitzer asserted that in the time she had been responsible for processing CBC reports, she never had a practice of remanding reports back to the CBCs or instructing the CBC to fix something in particular on a report prior to determining earned time sanctions. Instead, Sneitzer stated she would zero out the report and explain to the designated CBC contact afterwards why she zeroed it out. She further indicated there was no formal remand process available in ICON that would administratively track the time given to the CBC to fix the error. Furthermore, she asserted that the July 12 report at issue did not fall into the category Savala discussed on July 7 – "procedural errors" like no date, no waiver. Instead, based on the manner "DH" was written in the

decision, Sneitzer thought it referred to detention, or "disciplinary housing," and that it was a substantive part of the decision which would impact her decision on the loss of earned time.

In addition to violating Savala's July 7 directive, the DOC also contends Sneitzer violated DOC policy IO-RD-03, *Major Discipline Report Procedures*. This particular policy violation was not alleged in the termination notice. At hearing, however, the DOC highlighted the following provisions supporting the discipline:

> **IV. PROCEDURES**
>
> NOTE: If, at any time in the process of writing, investigating, or hearing a major report, it is noted that a document and/or procedure is incorrect, the process shall be stopped and the process reinitiated.
>
> ***
>
> 15. The ALJ shall conduct the hearing on a Disciplinary Notice as follows:
>
> ***
>
> d. Continue the report and remand to the appropriate staff member to correct the procedure or other defects prior to continuing with the disciplinary hearing when procedures have not been followed properly. If necessary, a revised Disciplinary Notice shall be given to the offender and further investigation done before the hearing resumes. The ALJ who remanded the matter back for changes or corrections may conduct the hearing after the corrections are made, unless the ALJ determines that to do so would violate the offender's right to an impartial hearing officer.

The cover page of the IO-RD-03 policy in the record expressly states that its procedures are only applicable to the DOC institutions, not the CBC facilities. Although the DOC contends the policy applies to all the discipline reports an ALJ processes, other evidence and testimony received does not support this claim. Namely, deposition and hearing testimony from another DOC ALJ indicates the main policy governing the discipline reports at the institutions is IO-RD-03, but

that the CBC facilities have their own policies in place. The ALJ further explained that because processing CBC reports is a two-phase process -- the CBC committee who determines guilt and the ALJ who determines earned time sanctions -- the CBC policy contains sections pertaining to those two phases. It is unknown on this record whether the CBC policies contain remand language. However, based on the evidence in the record, there is an unresolved factual dispute whether the provisions of IO-RD-03 govern remand procedures for the CBC reports.

(2) Utilizing the ALJ Calendar

The notice of termination also indicated the DOC disciplined Sneitzer for her "continued failure to follow [Savala's] June 9, 2016 Letter of Expectation to keep [her] schedule current on the ALJ calendar." The letter outlined nine separate instances between July 11 and August 10 that purportedly showed Sneitzer did not keep the ALJ calendar updated. The letter further indicated Sneitzer was "previously disciplined on two separate occasions for failing to keep your schedule current on the ALJ calendar." Those prior disciplines were a written reprimand on October 4, 2016, and a one-day suspension on December 14, 2016.

The October 2016 notice of written reprimand stated the DOC disciplined Sneitzer, in part, for failing to note on the ALJ calendar when she "will be arriving too (sic), and leaving work," as well as failing to contact Savala to inform him of the same. The specific issue in the written reprimand, as found by DAS at third-step of the grievance procedure, was that Sneitzer did not mark on the calendar when she was off-site at appointments.

The December 2016 notice of one-day suspension stated Sneitzer was disciplined, in part, for failing to "keep [her] schedule current on the ALJ calendar." The suspension notice stated that on October 19, 2016, the ALJ calendar indicated Sneitzer had a 2 p.m. and 4 p.m. appointment. However, Sneitzer was in the office at 3:30 p.m. as evidenced by her emails to Savala.

The DOC contends that even after these previous disciplines Sneitzer continued to violate a supervisory directive to keep her schedule current on the ALJ calendar. Savala asserts that the ALJ calendar was a way for him to know when she was on-site or away from the institution during her 12-hour work window. He needed to know this information for operational and safety reasons. On the operational side, a lot more staff than just Sneitzer are involved in processing inmate discipline reports. Particularly in Sneitzer's situation where the institution was escorting inmates to her office, knowing her schedule was critical for workload planning purposes. It was also important for safety reasons, as the prison is different than a typical office environment. Particularly in Sneitzer's situation, she still had limited mobility and had an office with a door and a covered glass cut-out. This presented safety concerns and the DOC had an interest in knowing her schedule to keep her safe. Savala would communicate Sneitzer's schedule to the institution as he knew it and they would know to conduct welfare checks by her office.

Underlying the termination, the DOC relies upon nine calendar entries to argue that Sneitzer failed to keep the ALJ calendar updated as required by the supervisory directive.

Three of the nine calendar entries the DOC provided – July 13, July 27 and August 7 – pertain to repeating calendar entries that Sneitzer added to the calendar as "potential" FMLA appointments. Although Sneitzer had these appointments listed on the calendar, the DOC argues she violated the supervisory directive by failing to remove them when she ended up not leaving for the appointment. The first "potential" appointment listed was for July 13. The notice stated:

> - On July 13, 2017 you placed an entry on the ALJ calendar that you had an appointment from 4-6pm. You never left for the 4-6pm appointment and did not advise me of your schedule change.

Sneitzer's timecard reveals that she worked from 9:08 a.m. to 5:28 p.m. on Thursday, July 13. The ALJ calendar for July 13 indicated Sneitzer had a 4 p.m. to 6 p.m. appointment.

The next "potential" appointment listed on the calendar was for July 27. The termination notice stated:

> - On July 27, 2017 you had an appointment from 4-6pm listed on the ALJ calendar. You never left for the 4-6pm appointment and did not advise me of your schedule change. You submitted a cancelled appointment notice at 5:23 pm, which was after normal business hours and 1 hour and 23 minutes after you were supposed to be gone from work.

Sneitzer's timesheet shows she worked on July 27 from 12:47 p.m. to 5:58 p.m. The ALJ calendar indicated Sneitzer had an appointment on Thursday, July 27 from 4 p.m. to 6 p.m. On this day, July 27, Sneitzer also had to attend to an FMLA matter in the morning and resulted in her not being able to report to work until close to 1 p.m. At 5:23 p.m. on July 27, Sneitzer removed the 4 p.m. to 6 p.m. potential appointment she had listed.

The final "potential" appointment listed on the calendar was for August 7. The termination notice stated:

> - On August [7], 2017 you had an appointment for 12pm-4pm listed on the ALJ calendar. You did not leave work for the 12-4pm appointment and did not advise me that you were still at work.[8]

Sneitzer's timecard for Monday, August 7 shows she worked from 11:38 a.m. to 4:06 p.m. A copy of the ALJ calendar for August 7, showed 12-4 blocked off and indicated Sneitzer had an appointment at 12 p.m. and 4 p.m., stating "Renee appt 12p.m. and 4."

When asked about these appointments (July 13, July 27, August 7) during the investigatory interview, Sneitzer indicated she listed them as potential FMLA appointments following a conversation with Savala during which he indicated he wanted a sense of when she could be gone for intermittent FMLA. Based on this conversation, Sneitzer listed known times when she might have FMLA obligations to her daughter and when she might attend physical therapy (PT) appointments for herself. For her daughter, she marked a 12 p.m. appointment every Monday. This was a time when her daughter's school had a standing telephone appointment to discuss any issues with Sneitzer. If there was nothing to discuss, the school did not contact Sneitzer and she continued working. For her PT appointments, Sneitzer marked entries for 4 p.m. on Mondays, Wednesdays and Thursdays. Sneitzer asserted these were times she could attend PT, but were non-emergent. Sneitzer

[8] The termination notice listed August 8, 2017, as the date for this calendar entry. At hearing, however, the DOC indicated this was an error and the actual date was Monday, August 7. During the investigation, Sneitzer was correctly asked about August 7 in regard to this calendar entry.

forewent the appointment if she had to attend to other FMLA obligations earlier in the work day or needed to work through the appointment to get her docket current. Sneitzer's docket remained current during the time relevant to the termination.

The specific calendar entries Sneitzer referred to as "potential" appointments contained the following information. She placed a calendar entry for the 12 p.m. to 4 p.m. time slot, with additional detail in the description that stated: "Renee appt 12 p.m. and 4 [.] Any day can result in all, none or part of the day addressing my obligations to [my daughter]. Mondays are scheduled in advance but may change intermittently." She had this same description at the top of the calendar for every Monday with no designated time. She also placed a calendar entry for every Wednesday and Thursday at 4 p.m. She indicated that her intent was to provide more notice to Savala about when she might be gone and thought the calendar entry was sufficient to inform him of the potential nature of the appointments. The Monday notification was intended to pertain to the entire week. During the investigatory interview, Sneitzer stated that she had previously told Savala she was forgoing many of the listed PT appointments in order to keep her docket current. Savala did not dispute Sneitzer's assertion during the interview.

Savala disagreed with Sneitzer's assessment that he asked her to place potential appointments on the calendar, but merely informed her to keep him apprised of her schedule. The DOC contends that a lack of communication regarding her schedule was an ongoing issue with Sneitzer. Whenever she continued working past a noted absence on the calendar, the DOC argues

Sneitzer had an obligation to notify Savala of her schedule change and update the calendar.

Documentary evidence in record demonstrates Sneitzer had these "potential" weekly appointments on the calendar as early as January 2017. From January 2017 to August 2017, Savala did not discuss or indicate any issues with the weekly calendar entries Sneitzer placed on the calendar. The record further establishes that Sneitzer had worked during the "potential" appointments on at least three other dates prior to the termination. Sneitzer's timesheets in the record demonstrate she worked during the 12 p.m. Monday appointment on June 19 and July 3, and worked past 4 p.m. on June 19, June 28 (Wednesday), June 29 (Thursday), and July 3. Although these instances occurred prior to the DOC's investigation and issuance of the ten-day suspension, the DOC did not discipline Sneitzer for failing to keep the calendar updated for these dates as part of the ten-day suspension.

In addition to the three "potential" appointments, the DOC cited six other calendar entries in the termination notice which it claims demonstrate Sneitzer did not follow Savala's supervisory directive to keep her schedule current on the ALJ calendar. The first calendar entry is for July 11, 2017. The termination notice states:

- On July 11, 2017 you stated in an e-mail to me that you had placed a vacation request on the ALJ calendar, which was not done.

It is unknown on this record when Sneitzer arrived to work on July 11, but the record establishes that she processed the *Pending WR/OWI Transfer Classification*

Reviews list as her first order of business as required by another supervisory directive.[9] Sneitzer then called Savala at 7:56 a.m., to obtain his permission to attend a telephonic appointment at 8:00 a.m. After he did not answer the call, Sneitzer emailed him at 8:07 a.m. letting him know she was awaiting his response. Savala replied at 8:21 a.m., letting her know he will approve the request but requires more advance notice in the future, and informed her the ALJ calendar did not contain an entry for the appointment. Sneitzer replied that she ended up not attending the appointment because she did not timely receive his approval.

When asked about July 11 incident at the investigatory interview, Sneitzer again stated she ended up not attending the 8 a.m. appointment. Sneitzer further asserted that she thought she placed the entry on the ALJ calendar, but it defaulted to her personal calendar. She made a mistake when she was inputting it and it did not initially make it on the ALJ calendar. Savala asserted that he printed a copy of the ALJ calendar for July 11 on August 10, and the entry was not on there. A copy of the ALJ calendar for the entire day on July 11 is not in record.[10]

The second calendar entry cited in the termination letter is for July 14. The notice stated:

> - On July 14, 2017 you e-mailed me at 8:42am that you were leaving for an all-day FMLA appointment. This appointment was not listed on the ALJ calendar previously until 8:41am on July 14, 2017.

[9] The record reveals that Sneitzer was disciplined with a five-day suspension, in part, for failing to process the *Pending WR/OWI Transfer Classification Reviews* list as her first order of business upon arriving to work because she had checked her work email prior to completing the list.
[10] The record contains a copy of the ALJ calendar for July 11but only from 9 p.m. to 11 p.m.

Sneitzer's timesheet for Friday, July 14 shows she worked from 6:04 a.m. to 8:52 a.m. and then from 1:16 p.m. to 5:55 p.m. At 8:41 a.m., she added an entry to the ALJ calendar that stated "Renee leaving for appt Will return." The calendar entry was marked as an all-day appointment. Savala automatically received a copy of the change to the ALJ calendar. Sneitzer then directly emailed Savala at 8:42 a.m. informing him that she is "leaving for my FMLA appointment."

During the investigatory interview, Sneitzer indicated this was an emergent situation with her daughter and could not provide any more notice. She quickly placed the event on the calendar, and must have failed to see it was marked as an all-day event, but the event title stated she would return. Her timecard confirms she returned to work at 1:16 p.m. Sneitzer further testified that she did not know of the emergent situation with her daughter until she was allowed to look at her cell phone after completing the *Pending WR/OWI Transfer Classification Reviews* list, in compliance with Savala's other work directive. As soon as she saw her cell phone, she informed him she had an FMLA matter and placed it on the calendar. In Savala's testimony, he indicated an "appointment" is an event scheduled ahead of time but that Sneitzer did not place it on the calendar until it was time to leave. The DOC has not provided evidence that the July 14 matter Sneitzer attended was a prescheduled appointment.

The termination notice cited another July 27 calendar entry, separate from the one regarding the listed "potential" appointments. The notice states:

- On July 27, 2017 you had an entry listed on the ALJ calendar that you would be in late due to FMLA. You never advised me that

> you reported to work at 12:47pm. I was not made aware that you had reported to work until 5:24pm, after normal business hours.

Evidence in the record establishes that Sneitzer texted Savala the day before, on July 26 at 7:52 p.m., and informed him "I have an FMLA matter tomorrow at 9:30. I will be in following [.] You may want to cover the residential reports." Sneitzer's timesheet for July 27 shows she worked from 12:47 p.m. to 5:58 p.m. On July 27, Sneitzer added a calendar event at 5:24 p.m. titled "Renee in late FMLA." The entry did not have specific times listed. During the investigatory interview, Sneitzer could not recall what she had on July 27 and that she would need to review the FMLA paperwork to find out. No additional follow-up was done regarding the July 27 FMLA matter.

Savala testified that he had no issues with her attending FMLA appointments, but that he needed to be apprised of her schedule and her schedule changes. When she did not clock in until almost 1 p.m., she should have called him to apprise him of the change. It would be too late for someone to process the *Pending WR/OWI Transfer Classification Reviews* list because by the time the ALJ processed the reports, the inmates could not be transferred out of county jail until the next day. Sneitzer testified that she had an appointment with her neurologist on July 27 at 9:30 a.m. The appointment went long. As soon as she was done, she went to work. She indicated that she did not call Savala as she was coming in because she was no longer under a directive, as of January 2017, to call him when she is heading into work.

The DOC cited a July 28 calendar entry. The notice of termination states:

- On July 28, 2017 you had an appointment from 2:30 pm-3:30pm listed on the ALJ calendar. You did not leave until 3:11pm and did not advise me that you had not left work around 2:15pm for your 2:30 pm appointment. Additionally, you failed to advise me if you were returning to work after your appointment.

Sneitzer texted Savala on July 28 at 8:09 a.m. that she would be in about 8:30 a.m. Sneitzer's timecard shows she worked from 8:36 a.m. to 3:11 p.m. on July 28. She added a new calendar entry at 9:48 a.m. on July 28 indicating "renee leave FMLA" appointment from 2:30 to 3:30 p.m. Savala received automatic email notification of this entry. Sneitzer did not leave for the day until 3:11 p.m. During the investigatory interview, Sneitzer could not recall what the appointment was for and could not answer without looking at her paperwork. No follow-up was done regarding the July 28 appointment following the interview. At hearing, Sneitzer testified the July 28 was a non-emergent appointment. She decided to forgo the appointment to make sure her docket was current.

The termination letter cited another August 7 calendar entry, separate from the August 7 "potential" appointment entry. The notice states: [11]

- On August [7], 2017 you had an appointment from 9am-10am listed on the ALJ calendar. You did not advise me about your schedule change, as you did not report to work until 11:36am.

Sneitzer's timecard shows she worked on August 7 from 11:38 a.m. to 4:06 p.m. A copy of the ALJ calendar for Monday, August 7, shows Sneitzer had an appointment, "Renee appt medical" noted from 9 a.m. to 10 a.m. During the

[11] The notice of termination listed August 8, 2017, as the date for this calendar entry. At hearing, however, the DOC indicated this was an error and the actual date was Monday, August 7. During the investigation, Sneitzer was correctly asked about August 7 in regards to this calendar entry.

investigatory interview, Savala and Sneitzer referenced an email Sneitzer sent to Savala on Friday informing him she had an appointment on Monday and that he needed to cover the CBC reviews. This email is not in the record. Savala's complaint to Sneitzer during the interview was that she did not inform him whether she would be in before her appointment to complete the *Pending WR/OWI Transfer Classification Review*s list. He asserted that she generally arrived to work between 6 and 7 a.m. and then went to her appointments. Sneitzer responded that the Friday communication was to inform him to cover the *Pending WR/OWI Transfer Classification Review*s list, which is always her first order of business, and that should have informed him she was not coming in before her appointment.

During the hearing, the DOC argued that Sneitzer's calendar reflected an absence from 9 a.m. to 10 a.m., but she did not report to work until 11:30 a.m. Savala contended there would be no reason for him to cover the *Pending WR/OWI Transfer Classification Reviews* list if she were only gone until 10 a.m., but she did not report to work until 11:30 a.m. and this impacts the DOC's ability to promptly process the CBC reports that have residents sitting in county jails. Sneitzer testified that she could not update her calendar remotely to reflect that her appointment was running late.

Finally, the notice of termination also refenced an August 10 calendar entry. The notice stated:

- On August 10, 2017 you had an appointment from 12pm-4pm listed on the ALJ calendar. You did not leave work for the 12pm-

> 4pm appointment and did not advise me that you were still at work.

A copy of the ALJ calendar for Thursday, August 10, is not in evidence, but the DOC contends the ALJ calendar showed Sneitzer had a 12 p.m. to 4 p.m. appointment listed. The August 10 calendar entry was not discussed during the investigatory interview. A copy of Sneitzer's timesheet for August 10 is blank, so it is unknown the exact hours she worked. Based on email and text communication, however, Sneitzer arrived to work before 10 a.m., as she texted Savala at 9:35 p.m. that she was heading in. Sneitzer sent an email to Savala at 4:30 p.m., evidencing that she was still at work at 4:30 p.m. on August 10.

While all ALJs were required to utilize the ALJ calendar for absences, the record reveals that no other ALJ was disciplined for failing to place an entry on the calendar, failing to give the exact time of absence, or for failing to take leave off the calendar when not taken. Testimony in evidence establishes that at least one other ALJ has placed appointments on the calendar that he ended up not taking. The other ALJ was not reprimanded for failure to remove a calendar event, or told that he is required to do so if he ended up not taking the leave. Furthermore, the ALJ is unaware and was never informed of any impact on the institution if he ended up working through an appointment listed on the calendar.

(3) Identifying Category of Leave Utilized

The notice of termination indicated the DOC disciplined Sneitzer for failing to identify the type of leave she was taking. The notice of discipline stated:

> This action is being taken as a result of your failure to follow my supervisory directive that you communicate with me as to the

> category of leave you will be taking (such as vacation, sick, fmla). On August 10, 2017 you sent me an e-mail stating "I will not be in tomorrow before the investigation." In addition, there was not an entry on the ALJ calendar that showed you with any type of appointment or leave.

The supervisory directive underlying this violation was given on June 9, 2017. As previously discussed with Sneitzer's ten-day suspension, Savala directed Sneitzer to let him know the type of leave, *e.g.* vacation, sick, or FMLA, she was using when she needed to be gone from work. The DOC contends she violated this directive on August 10.

Savala scheduled an investigatory interview with Sneitzer for August 11 at 10:30 a.m. The DOC provided an email Sneitzer sent to Savala on August 10 at 4:30 p.m. stating, "I will not be in tomorrow before the investigation." The ALJ calendar did not reflect any appointments prior to 10:30 a.m. Sneitzer's timecard for August 11 indicates she clocked in at 10:27 a.m. and clocked out at 11:56 a.m., which is the duration of the investigatory interview. Her timesheet indicates she used 5.23 vacation hours for this day and worked 1.28 hours. The DOC contends this is in direct violation of the June 9 directive because Sneitzer did not identify the type of leave she would use for her absence on August 11 before 10:30 a.m.

During the investigatory interview, the August 11 absence was discussed. Savala acknowledged during the interview that after the 4:30 p.m. email, Sneitzer sent a text message to him at 6:18 p.m. informing him that she would be taking FMLA before the interview and that she also has an FMLA appointment at 12 p.m. Savala's complaint to Sneitzer during the interview is that between 4:30 p.m. and 6:18 p.m., he had no idea why she was not coming into work before 10:30 a.m.

(4) Identifying CBC Lists by Full ICON Names

The notice of termination indicated the DOC also disciplined Sneitzer for failing to refer to the CBC discipline lists by their full name. The notice of discipline stated:

> This action is being taken as a result of your continued failure to follow my supervisory directive in referring to the *Pending WR/OWI Transfer Classification Reviews* list and the *Residential ALJ Process Scheduling* list in their full name. You have been previously disciplined for not complying with this directive and for not following my supervisory directives.

The supervisory directive underlying this violation was given on April 14, 2017. As discussed pertaining to the ten-day suspension, Savala informed Sneitzer in an email that she was "expected to use the full name of the ICON lists on all future communication." The DOC provided an email Sneitzer sent to the CBC staff and Savala on August 3, with the subject "Residential Decision Due Process Errors." She provided a list of three inmates, their inmate number and a note about the errors the reports contained, *e.g.*, no hearing waiver, no facts listed, only rules violations. Sneitzer did not include the full name of the ICON lists in her email communication.

During the investigatory interview, Sneitzer indicated this email was to comply with Savala's directive to inform the CBC staff of procedural errors that needed to be addressed. Sneitzer asserted the list of errors pertained to both CBC lists. As such, she was not referring to either list individually. Savala responded that she should put the name of both lists in the email and referenced his prior directive to refer to the lists by their full name. Sneitzer stated the reason for the

directive was so that CBC staff knew which list she was working from, and in this instance, these were from both CBC lists. She stated that Savala told her to send the procedural errors to the same CBC contact regardless of which list the resident was on, so the delineation between lists is not important. Savala gave no response to Sneitzer's explanation. Sneitzer's assertion that the list of three inmates in her email were from both lists is undisputed on this record.

During the investigatory interview, Savala also referenced text messages he received from Sneitzer on July 26, July 28, August 8, and August 10. In these text messages, Sneitzer was informing Savala that she would be coming in late due to FMLA obligations and told him to cover the "residential reports," or to confirm on her way to work whether he completed the "residential owi list." Some of the texts were only between Savala and Sneitzer, and some also included Sneitzer's union representative. No other DOC or CBC staff were involved in the text message exchanges. Savala never indicated confusion as to which CBC list Sneitzer referenced in her text messages as he understood only the *Pending WR/OWI Transfer Classification Reviews* list was the priority order of business. During the investigatory interview, Savala told Sneitzer she was continuing not to follow his directive to call the lists by their full names to avoid confusion and that "everyone knows what you are talking about." The text messages were admitted into record under a tab titled "correspondence regarding leave and coverage" but not specifically discussed or referenced during testimony.

During the investigatory interview, Sneitzer pointed out these were text messages. She does not have the full ICON name in front of her when she is

texting. When she is on her computer, she can see the full name of the lists as contained in ICON. She also highlighted that Savala responded to her and clearly understood what list she was referring to, and knew what list was her first order of business per his own directive.

C. Imposition of Discipline

Savala reached out to Sneitzer to schedule a meeting around August 22, 2017. When Sneitzer asked for specific information regarding the meeting, Savala indicated it was a "follow up" to the August 11 interview. On August 24, 2017, Savala held a meeting with Sneitzer which he described as a *Loudermill* interview. Savala stated that he had concluded the investigation and reviewed her past disciplines. Prior to making a final decision on whether to terminate her employment, Savala stated this was Sneitzer's opportunity to provide any new or additional information he may not have considered. Savala did not provide Sneitzer, verbally or in written form, any information regarding the specific violations for discipline was being considered. Sneitzer expressed confusion regarding the purpose of the meeting because Savala had told her this was a "follow up" to the August 11 meeting. Furthermore, Sneitzer indicated she had not seen Savala's conclusions regarding this investigation and is unable to respond to information she does not have. The interview concluded without Savala providing Sneitzer with any investigative conclusions upon which the termination decision hinged.

The DOC determined Sneitzer's actions violated AD-PR-11 for failing to follow lawful supervisory directives in regard to the four bulletin points outlined above.

The DOC concluded Sneitzer was not taking responsibility for her actions as she continued to violate the same directives and was not changing her behavior. The DOC considered Sneitzer's work history and length of service and, following progression, the DOC decided to terminate her employment.

Pursuant to the grievance procedures available to merit system employees, Sneitzer appealed the discipline to the director of DAS on September 4, 2017. The DAS director's designee denied the grievance on November 29, 2017.

CONCLUSIONS OF LAW

Sneitzer filed the instant state employee disciplinary action appeals pursuant to Iowa Code section 8A.415(2), which states:

> 2. *Discipline Resolution*
>
> a. A merit system employee . . . who is discharged, suspended, demoted, or otherwise receives a reduction 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. The director shall respond within thirty calendar days following receipt of the appeal.
>
> b. If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. . . . 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.

The following DAS rules set forth specific discipline measures and procedures for disciplining employees.

> **11—60.2(8A) Disciplinary actions.** Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when

> the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. . . . Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.
>
> . . .
>
> **60.2(1)** Suspension.
>
> . . .
>
> *b*. Disciplinary suspension. An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days …. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.
>
> . . .
>
> **60.2(4)** Discharge. An appointing authority may discharge an employee. Prior to the employee's being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

The State bears the burden of establishing that just cause supports the discipline imposed. *E.g., Phillips and State of Iowa (Dep't of Human Res.)*, 12-MA-05 at App. 11. The term "just cause" as employed in subsection 8A.415(2) and administrative rule 11—60.2 is not defined by statute or rule. *Stockbridge and State of Iowa (Dep't of Corr.)*, 06-MA-06 at 21 (internal citations omitted). Whether an employer has just cause to discipline an employee is made on a case-by-case basis. *Id.* at 20.

When determining the existence of just cause, PERB examines the totality of the circumstances. *Cooper and State of Iowa (Dep't of Human Rights)*, 97-MA-12 at 29. As previously stated by the Board,

> . . . a [§ 8A.415(2)] just cause determination requires an analysis of all the relevant circumstances concerning the conduct which precipitated the disciplinary action, and need not depend upon a mechanical, inflexible application of fixed "elements" which may or may not have any real applicability to the case under consideration.

Hunsaker and State of Iowa (Dep't of Emp't Servs.), 90-MA-13 at 40. The Board has further instructed that an analysis of the following factors may be relevant:

> While there is no fixed test to be applied, examples of some of the types 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 sufficient evidence or proof of the employee's guilt of the offense is established; whether progressive discipline was followed, or 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.

Hoffmann and State of Iowa (Dep't of Transp.), 93-MA-21 at 23. PERB also considers how other similarly situated employees have been treated. *E.g. Kuhn and State of Iowa (Comm'n of Veterans Affairs),* 04-MA-04 at 42.

The presence or absence of just cause rests on the reasons stated in the disciplinary letter provided to the employee. *Eaves and State of Iowa (Dep't of Corr.)*, 03-MA-04 at 14. To establish just cause, the State must demonstrate the employee

is guilty of violating the work rule, policy, or agreement cited in the disciplinary letter. *Gleiser and State of Iowa (Dep't of Transp.)*, 09-MA-01 at 17-18, 21.

I. *Case No. 102064: Sneitzer's 10-Day Suspension*

The DOC issued Sneitzer a ten-day suspension for violating supervisory directives and DOC rules in regard to five separate items. Those items were: (1) failing to refer to the CBC lists by their full name; (2) failing to identify the category of leave taken; (3) working outside of the designated 6 a.m. to 6 p.m. work hours; (4) working more than 8 hours a day without approval; and (5) "negligence" in a discipline hearing decision. Upon review and consideration of the evidence in the record before me, the DOC has not established it had just cause for the imposition of the ten-day suspension as alleged in the notice of discipline.

A. Sufficiency and Fairness of the Investigation

When determining the existence of just cause, PERB must examine whether the employer conducted a fair and thorough investigation of the alleged violations prior to the imposition of discipline. Upon review and consideration of the evidence presented, the DOC has not established that its investigation was fair or sufficient.

First, the investigation did not obtain adequate information to resolve the factual disputes regarding the expectations of the supervisory directives that Sneitzer allegedly violated. Just cause requires the employer to establish that the employee had knowledge of the employer's rules and expected conduct. For all supervisory directives at issue in the ten-day suspension, the original directive was provided in written form. However, as Savala acknowledged, he and Sneitzer had numerous conversations, what he considered "coaching and counseling" sessions,

regarding those directives. During the investigation, Sneitzer expressed disagreement regarding the clarity and requirements of Savala's directives. For example, she indicated a different understanding from Savala as to what his directive to use the full CBC list names encompassed. The problem presented under this record is that the contents of all subsequent conversations after the initial written directive are not documented. In addition, because Savala was the investigator in this case, his recollections of those conversations were not obtained as part of the investigation prior to the imposition of discipline. This lack of separation between the DOC's material witness to the dispute and its investigator who determined a violation is highly problematic. Savala, as the supervisor who not only gave the directives, also had the sole discretion to conclude whether his directives were clear and whether Sneitzer violated them. Under this record, because of this lack of separation, the DOC cannot establish that these conclusions were based on information obtained as part of the investigation.

Second, the DOC cannot establish that Savala was an independent and unbiased investigator. As Sneitzer's supervisor, Savala was the individual formulating and communicating the supervisory directives to her. Thus, solely based on his direct involvement in the incidents at issue, a question is raised whether he was able to conduct a fair investigation. Furthermore, Savala made statements to Sneitzer during the investigatory interview that demonstrate he had reached conclusions regarding her conduct even before the investigation concluded. For example, Savala told Sneitzer that she "discredited" the DOC in issuing the July 6, 2016, hearing decision. Furthermore, in response to Sneitzer

providing a factual explanation why she worked more than 8 hours on July 3, Savala told her the other ALJ was merely attempting to help her out and Sneitzer "chastised" her. Savala's statements evidence that he had already reached his conclusions regarding the appropriateness of Sneitzer's conduct even before he started the investigatory interview. As evidenced by these statements and his direct involvement in the issues in dispute, the DOC cannot establish that Savala was an independent and unbiased investigator.

Finally, the DOC cannot establish that Sneitzer's discipline was not motivated by improper reasons not constituting just cause because it never investigated that issue. Sneitzer alleged that Savala's repeated investigations of her conduct were motivated by improper reasons, such as discrimination, harassment and retaliation. Savala's response was to merely disagree with her allegations. However, even though she was making this allegation against the investigator and sole decisionmaker, it did not prompt Savala to allow another investigator not directly involved with the dispute to conduct the investigation. As a result, the DOC cannot show that Sneitzer's discipline was not motivated by improper reasons because it never investigated that allegation prior to imposing discipline.

B. Alleged Violations

(1) Identifying the CBC List by Full ICON Names

The DOC contends that because the April 14 email directed Sneitzer to use the full name of the ICON lists "on all future communication," her failure to do so in the 35 emails presented demonstrate she violated the directive. Under the

totality of the evidence in the record, the DOC has not demonstrated that Sneitzer violated the April 14 supervisory directive.

First, the DOC's contention of what the directive encompassed is overly broad and entirely disregards the stated purpose of the directive, *i.e.* to avoid confusion among staff. While a supervisor has the authority to implement directives, the employer must demonstrate the directive is reasonable and related to a legitimate work purpose. Under the DOC's position here, if accepted, Sneitzer could be disciplined for any and all written and verbal references to the lists except by their full name regardless of the context. This broad scope is unreasonable and unnecessary to the stated purpose of the directive. For the 35 separate instances the DOC has presented, it has not presented any evidence that her emails created confusion among the recipients. The absence of such evidence demonstrates that her communications in these specific instances did not thwart the reasonable purpose behind the directive, which was to avoid confusion among staff as to which list she was referencing in her communications.

Next, under the notice consideration of just cause, the DOC has not established that it provided Sneitzer with knowledge that she was expected to use the full ICON name of the lists in every context. Of the 35 emails the DOC has presented, 34 of them are Sneitzer's daily notification to the same four recipients that "the list" was done. Although Savala was a recipient of these 34 emails, he never corrected or redirected Sneitzer for referring to the *Pending WR/OWI Transfer Classification Reviews* list as "the list" in the daily notification context even though he contends he had many conversations with Sneitzer regarding his expectations.

The first daily notification email Sneitzer sent after the April 14 directive was on April 17. Savala did not correct her for referring to it as "the list" in this context, but he did correct her two days later, on April 19, when she failed to use the full ICON name in a different context, which Sneitzer acknowledged was against the directive. As such, for over two and a half months while Sneitzer was sending these emails, the DOC neglected to provide her with any indication that her daily notification emails regarding "the list" were violative of the April 14 directive. The DOC's failure in this regard supports Sneitzer's contention that she did not have knowledge that she was violating a work directive.

Additionally, the DOC's failure to formally discipline Sneitzer for the daily notification emails as part of the five-day suspension further bolsters Sneitzer's claim that she lacked notice the April 14 directive encompassed the daily notification emails. The record establishes that 15 of the 34 daily email notifications the DOC relies upon predated the five-day suspension Sneitzer received on May 26, 2017. While the DOC claims she was disciplined for these emails as part of the five-day suspension yet continued to violate the same directive, the record contradicts this claim. A plain reading of the five-day suspension letter indicates Sneitzer was disciplined for failure to complete the *Pending WR/OWI Transfer Classification Review*s list as her first order of business. Although both touch upon the subject of CBC lists, it concerns two separate directives. The record unambiguously establishes the DOC failed to take any formal action with regard to the 15 daily notification emails she sent from April 17 to May 26 regarding the *Pending WR/OWI Transfer Classification Review*s list even though

she was disciplined for another matter related to the CBC lists. This fact further indicates that Sneitzer was not provided with notice that her use of "the list" in this specific context violated Savala's directive.

The DOC's inclusion of 15 emails predating Sneitzer's five-day suspension also raises a question about the fairness of the investigation. A review of the investigatory interview confirms that Sneitzer was not asked or presented with any emails predating May 26. The record establishes that she had no opportunity to respond to those emails even though the DOC is now using them as a basis for discipling her. As such, the DOC cannot demonstrate that its investigation in this regard was fair.

Other than the 34 daily notification emails, the only other instance the DOC presented to demonstrate Sneitzer violated the April 14 directive is an email she sent on July 5. A review of the email does not show that Sneitzer was referring to an individual CBC list. Instead, in her communication to another ALJ, she inquired whether that ALJ was working on "residential reports." This clearly refers to the two residential lists collectively. Nothing about Savala's April 14 directive, or subsequent April 17 follow-up, prevented Sneitzer from referring to them in this manner. Furthermore, her reference to the "residential reports" did not create confusion in this context because the recipient ALJ understood Sneitzer was asking about both lists.

The DOC has failed to show Sneitzer's failure to refer to the lists by their full ICON names in the instances presented violated the April 14 supervisory directive.

As such, the DOC has not established just cause for imposing discipline on this basis.

(2) Identifying the Type of Leave Utilized

The DOC contends that Sneitzer indicated she would not report to work on July 7, prior to the investigatory interview scheduled for 10:30 a.m., but failed to communicate to Savala the type of leave she was going to utilize between 6 a.m. to 10:30 a.m. Under the evidence presented, the DOC has failed to establish Sneitzer violated the directive to identify the type of leave utilized in this specific instance.

The initial issue with the DOC's position is that it treats 6 a.m. as Sneitzer's start time. Savala specifically stated during the investigatory interview that he had to call Sneitzer on July 7 to find out why she was calling in from her "start time" to 10:30 a.m. Pursuant to the June 9, 2016, letter of expectations, Sneitzer was not required to report to work at 6 a.m., but instead had a window of time between 6 a.m. to 6 p.m. to work her shift. Therefore, Sneitzer had no reason to report taking leave from 6 a.m. when she was not required to be at work at that time.

Furthermore, the DOC has not presented Sneitzer's timecard for July 7 or other evidence demonstrating Sneitzer took leave prior to 10:30 a.m. While it is true that Sneitzer did not arrive to work until 10:30 a.m., Sneitzer's testimony, undisputed on this record, demonstrates that she started her shift at 10:30 a.m. that day and worked the remainder of the day. As such, absent a showing that Sneitzer actually took leave prior to the interview, the directive to identify the type of leave taken is inapplicable in this instance.

For the reasons discussed, the DOC has failed to show Sneitzer violated the supervisory directive to identify the type of leave taken on July 7. As such, the DOC has not established just cause for imposing discipline on this basis.

(3) Parameters on Hours of Work

The DOC contends that because the June 9, 2016, letter of expectations directed Sneitzer "to choose [her] 8 hour shift between the hours of 6:00am-6:00pm," she violated these directives when she clocked out after 6 p.m. on June 23 and June 28, and worked 9.1 hours on July 3, 2017. Upon consideration of the totality of the evidence presented, the DOC has failed to establish Sneitzer's discipline over the work hour parameters is supported by just cause.

One directive regarding Sneitzer's work hours is that she could only work between the hours of 6 a.m. to 6 p.m. As an initial matter, the record demonstrates Sneitzer was the only ALJ subject to this restriction. The rest of the ALJs had the flexibility to extend their work day past 6 p.m. if they needed more time to get work done, or adjust their start time if they had to attend an appointment earlier in the day. The other ALJs were not required to obtain Savala's approval to work past 6 p.m. and were not disciplined for working past 6 p.m. The facts presented in this record establish that Sneitzer was subject to a different set of expectations regarding her work hours and disciplined for those work hour restrictions that were only applicable to her.

The DOC's operational and safety rationale for implementing this directive is a legitimate purpose on its face, but fails to explain why the same parameters did not apply to the rest of the ALJs. The DOC points out that, unlike the rest of the

ALJs who had no active FMLA obligations, Sneitzer's schedule was more varied due to her intermittent FMLA obligations and it was reasonable for management to implement a 12-hour work window for operational and safety reasons. Operationally, the individuals who had a role in the inmate discipline system, *i.e.* investigators, medical staff, clerks and administrative support, and correctional staff escorting inmates to Sneitzer's office, were also on-site and available during the majority of the 12-hour window. Similarly, on the safety side, the 12-hour work window also coincided with shifts during which the institution was best staffed to conduct welfare checks on Sneitzer who was working by herself in a closed office. The DOC's stated efficiency and safety rationales are legitimate reasons to restrict an employee's work schedule. However, the same efficiency and safety rationales also apply to the rest of the ALJs, particularly those working inside the institutions like Sneitzer. On this record, while the DOC has established the reasons for the 12-hour window were legitimate, it has failed to show a legitimate reason why Sneitzer was the only ALJ subject to and disciplined for these parameters.

The record as a whole does not establish that the 12-hour window was communicated to Sneitzer as a strict clock in and clock out requirement. Under just cause, the DOC must establish it provided the employee with adequate notice and forewarning of the expected rules and conduct. Under this record, the DOC has shown that Sneitzer was directed to conduct her work between 6 a.m. and 6 p.m. and that she had not clocked out by 6 p.m. However, the evidence does not establish that Sneitzer was in any way still conducting work, *e.g.* logged into her computer or ICON, sending emails or working on decisions, after 6 p.m. on June

23 or June 28. Instead, the DOC has only established that Sneitzer had not gotten to the KRONOS time clock, which is located on the administration side of the building past the security gates, by 6 p.m. The DOC is disciplining Sneitzer under the 12-hour window directive as if it were an attendance policy where a failure to clock in by even a minute counts as an occurrence. However, it has failed to demonstrate that Sneitzer was provided with notice that failure to clock out by 6 p.m., *i.e.* not being at the KRONOS time clock by 6 p.m., was violative of the directive. In his testimony, Savala specifically declined to call this 12-hour window a "restriction" but referred to it instead as "parameters" and "window of work opportunity" that was implemented for operational and safety reasons. The DOC's chosen terminology in describing the directive is significant. While the DOC continues to describe the 12-hour directive as a parameter within which Sneitzer was to conduct her work, it has actually disciplined her for not clocking out within the 12-hour window. Under the facts presented, this presents an important distinction. The DOC has not established the directive was adequately communicated to Sneitzer as a clock in and clock out requirement.

The DOC has not shown that Sneitzer's failure to clock out by 6 p.m. in any way undermined the operational and safety rationales behind the directive. Operationally, the DOC had a legitimate reason for requiring Sneitzer to conduct work when the other staff involved in the inmate discipline system were also working. However, when the DOC fails to establish that Sneitzer was in any way conducting work past 6 p.m., but merely had not gotten to the timeclock by 6 p.m., it cannot establish that her actions in any way undermined the operational

purpose of the directive. The same conclusion is reached regarding the safety rationale behind the directive. Specifically, the safety purpose was to prevent Sneitzer from being at the institution in a closed office outside of regular business hours when most of the administrative staff had left and the number of security staff present was lower. Similar to the operational purpose, because the DOC has not shown that Sneitzer remained in her office past 6 p.m., but was merely making her way to the time clock, the DOC has not demonstrated that Sneitzer's actions jeopardized her safety. Based on the provided reasons for the directives as communicated to Sneitzer, the DOC has not shown that Sneitzer's failure to clock out by 6 p.m. undermined the operational and safety rationales behind the directive.

The DOC failed to consider the mitigating circumstances presented during the investigation prior to imposing discipline. Sneitzer indicated during the investigation that she starts winding down for the day, *i.e.* shutting down her computer and packing up to leave, about a quarter to 6 p.m. However, she also stated that it takes time to physically get to the KRONOS time clock because she has to walk from her office through the security gates to get to the KRONOS time clock. Savala acknowledged it takes time to get to Sneitzer's office from the security doors. Savala testified that if Sneitzer had clocked in at 11:36 a.m., it would be "well after noon" by the time she got through the security doors, walked to her office, and started her computer. The process would be similar for Sneitzer winding down for the day. On June 23 and 28, it took her 7 minutes and 22 minutes past 6 p.m., respectively, to get to the KRONOS time clock. However, the record is devoid

of any indication that the time required to get to the time clock was considered when determining whether discipline was warranted. Furthermore, Sneitzer also indicated her limited mobility creates a physical impediment for her as her leg locks when she tries to walk and it takes her time to get packed up to leave. The DOC was aware of her limited mobility. It arranged for inmates to be escorted to her office because it recognized she could not walk around the institution to conduct the hearings. However, it entirely neglected to consider this fact in determining whether discipline was warranted when she did not physically reach the time clock by 6 p.m. The DOC did not consider mitigating circumstances that were relevant to determining whether discipline was warranted.

The other work hour directive the DOC disciplined Sneitzer over is working more than 8 hours a day. The DOC contends the letter of expectations told her to choose her "8 hour shift" and she violated this directive when she worked 9.1 hours on July 3. As an initial matter, like with the 12-hour window, the record shows Sneitzer was the only ALJ subject to this restriction. The other ALJs could "flex" their work day without Savala's approval. The only limitation was that the hours had to be within the same pay period. On this record, the facts establish that Sneitzer was the only ALJ subject to the 8-hour restriction and the only ALJ disciplined on that basis.

The DOC has not shown a legitimate reason for implementing the 8-hour directive. The DOC's claim that the directive was implemented for consistency among all contract-covered staff is contradicted by the record. While consistency is a legitimate rationale on its face, the facts presented demonstrate that no other ALJ

was subject to this 8-hour restriction, including those ALJs that also worked at the institutions like Sneitzer. During this time period, the rest of the ALJs were allowed to flex their hours within the work week without Savala's approval. Even though the ALJs are hourly employees, this was a decision the ALJs made as a group and understood they had the flexibility to flex their work day within the same pay period. Savala's attempt to compare Sneitzer's situation to that of correctional staff unilaterally extending their work day is entirely unpersuasive. He compares Sneitzer's situation to correctional staff that undoubtedly and understandably have stricter work schedules. They have entirely different work duties, and Savala does not supervise them. Sneitzer's work hours should be compared to those of other ALJs. Under the facts presented here, the DOC's purported consistency rationale behind this directive is unpersuasive and contradicted by the record as it shows Sneitzer was the only ALJ subject to this restriction. The DOC has not provided any legitimate reason for requiring only Sneitzer to work 8 hours a day.

The DOC's argument that Sneitzer working more than 8 hours has a fiscal impact is inapplicable in this instance. The record shows no evidence that Sneitzer actually incurred or was paid overtime because of working 9.1 hours on July 3. Conversely, as already discussed, all ALJs were allowed at this time to work more than 8 hours a day as long as they did not incur more than 40 hours a week without approval. Under this record, the DOC has not shown that Sneitzer exceeded 40 hours in a work week that would result in a fiscal impact to the DOC.

The DOC's enforcement of this 8-hour directive was inconsistent. Sneitzer's time cards in the record demonstrate that prior to working 9.1 hours on July 3, for

which she was disciplined, she also worked over 8 hours a day on June 20 (8.77 hours), June 27 (8.55 hours), June 29 (8.07 hours), and June 30 (8.08 hours). Nothing in the record shows that Sneitzer obtained Savala's prior approval to work more than 8 hours on these dates. The DOC did not discipline Sneitzer for these other instances of working more than 8 hours. Under the facts presented, the DOC has failed to explain why working 9.1 hours was in contravention of the directive, but not working more than 8 hours on any of the other referenced dates was not violative of the directive.

Finally, Sneitzer's factual explanation for working 9.1 hours on July 3 was dismissed without consideration. Sneitzer indicated, and the records supports, that another ALJ started working on CBC reports assigned to Sneitzer without communicating with Sneitzer. The ALJ processed reports out of chronological order, a matter for which Sneitzer was previously reprimanded, and did not respond to Sneitzer's email regarding it until July 5. Although Sneitzer indicated it took her 45 minutes just to figure out why she could not access the reports on ICON before she could process them, the factual explanation regarding the reason she worked 9.1 hours was not considered when assessing if discipline was warranted.

A review of the investigatory interview also demonstrates that Sneitzer was not provided a fair investigation into this matter. In response to her supported claim that another ALJ processed reports assigned to her, Savala directed her to provide evidence of this even though he was already included in the communication. He further commented that the other ALJ was just trying to "help

[Sneitzer] out" but that Sneitzer "chastised" her. An investigator should be an independent individual whose task is to obtain facts necessary to determine whether a violation occurred. Here, Savala's statements during the interview demonstrate that he had a predetermined conclusion regarding the situation even before interviewing Sneitzer. As such, it made no difference as to what Sneitzer's explanation was during the investigation regarding this matter as the investigator and sole decision maker had already decided whether Sneitzer's conduct was acceptable. Under this record, the DOC cannot establish that Sneitzer was provided with a fair investigation because the matter was not investigated by an independent and unbiased investigator.

(4) "Negligence" in Hearing Decision

Based on the totality of the record before me, the DOC has failed to establish that Sneitzer violated policy IO-RD-03, *Major Discipline Report Procedures*, or was otherwise "negligent" when she included the language "attached credible witness statements and evidence" in the July 6, 2016, hearing decision.

The facts presented establish that Sneitzer complied with policy IO-RD-03, *Major Discipline Report Procedures.* The specific policy provision the DOC cites required Sneitzer to "review all pertinent evidence" in reaching her decision. The record before me provides no indication that the DOC considered the entirety of Sneitzer's record or written decision when determining whether she followed this policy provision. Instead, the DOC's discipline solely hinged on Sneitzer's use of the phrase "attached credible witness statements and evidence" to the exclusion of all the other findings and conclusions she reached. However, when the entirety of the

record before Sneitzer and her written decision is considered, it demonstrates that Sneitzer reviewed all the pertinent evidence as required by the policy. The facts and conclusions she reached specific to this inmate discipline report had an evidentiary basis.

The DOC has failed to establish that Sneitzer's inclusion of the phrase "attached credible witness statements and evidence" in her decision was categorically erroneous. The DOC has not specifically articulated what it defines as a "witness statement" in the context of processing discipline reports or shown that IO-RD-03 defines the term "witness statement." However, based on the limited provisions of IO-RD-03 that are in the record, the policy directs that "each employee who witnessed the incident or has knowledge of the incident" must complete a specific "witness statement" form ("Witness Statement" IO-RD-03 F-1) in ICON. Although never expressly articulated as such, it appears the DOC is narrowly interpreting a "witness statement" to be those statements from staff who witnessed or have knowledge of the incident underlying the discipline report. It is undisputed, under this narrow interpretation, no "witness statements" for this specific incident were part of the evidence before Sneitzer. However, the investigation report on this discipline report contained statements from the inmate, the inmate's case manager, and the investigator. While these are included under a field titled "comments," not statements, I find the distinction a matter of semantics that are insignificant to the analysis here. Even the investigator who authored the report referred to these as "statements" when he indicated that the supervisor was "unavailable for a statement." The information contained in the investigation

report, including those comments or statements, were part of Sneitzer's record and proper evidence for her to consider when issuing the July 6, 2016, discipline report. As such, the DOC has not demonstrated that Sneitzer's use of the phrase "attached credible witness statements and evidence" in this instance was categorically erroneous as to constitute negligence or establish that she did not review the evidence before her.

Furthermore, Sneitzer's use of the phrase "attached evidence and credible witness statements" was a reasoned decision made prior to the July 6, 2017, inmate discipline decision for which she was disciplined. Undisputed evidence in the record establish that Sneitzer had used the same template language during her tenure, including in decisions that did not have a "witness statement" in the manner the DOC is now defining it. Prior to the ALJ hearing an inmate discipline report, an investigation is conducted and an investigation report is sent to the ALJ to consider as evidence, along with any other evidence obtained during the investigation. This is precisely what Sneitzer explained during the investigation as her reasoning for using the same template language in this decision and the rest of the over 12,700 decisions she issued during her tenure. Because each discipline report always comes with an investigation report, which is evidence to consider, the template language "attached credible witness statements and evidence" is applicable in every case. Under this record, the use of the phrase "attached credible witness statements and evidence" as standard language in all her decisions was a reasoned decision based on the entirety of the information that comes before an ALJ for consideration in every discipline report.

The record further demonstrates the DOC failed to conduct a fair and thorough investigation of this particular allegation. Although Sneitzer explained her reason for using this template language and continually asserted that she had used this language during her tenure without challenge, the record is devoid of any indication that the DOC considered her explanation or made any effort to verify her statements. Particularly in this instance, where the DOC is disciplining her for "negligence" in one out of over 12,700 decisions she had issued, corroborating whether this has been her standard language without challenge is a material fact that should have been obtained and considered. Additionally, Savala's communications with the AG's office after Sneitzer was disciplined further demonstrates the insufficiency of the DOC's investigation. Savala reached out to the AG two weeks after Sneitzer was disciplined to confirm the accuracy of the statements she made during the investigatory interview. This action is evidence that the DOC did not timely obtain the information it found necessary to determine whether discipline was warranted, and yet proceeded to impose discipline without this information.

The DOC has not established that Sneitzer's discipline on this basis comports with the way it has treated other ALJs. Under just cause, the employer must establish that it treats its employees similarly in terms of discipline. First, the record reveals that the ALJs under Savala's supervision have had to change practices as a result of court rulings regarding inmate discipline decisions, AG concerns, and concerns from the DOC, and it was done through non-disciplinary means. In contrast, the DOC chose to discipline Sneitzer for her practice of using

this template language even though she had used it without any challenge in over 12,700 decisions. The DOC's only provided explanation for this disparate treatment is that these prior instances were not about an ALJ relying on evidence that did not exist. While Savala describes Sneitzer's conduct as relying on nonexistent evidence, this is a slanted and inaccurate description. A review of Sneitzer's written decision demonstrates that Sneitzer's findings and conclusions had an evidentiary basis and were supported by the record before her.

Furthermore, the record demonstrates a clear instance when another ALJ failed to review an offender's supervision status and erroneously took away earned time from an offender on parole, a sanction that can only be imposed by a board of parole ALJ. Savala testified that this ALJ was not disciplined, but reminded to be mindful and check the offender's supervision status, because these mistakes are infrequent and he does not discipline for them. While this may be true, this explanation does not provide an objective rationale for declining to discipline an ALJ in that instance, as she clearly did not review the offender's supervision status, and Sneitzer's situation, who provided a reasoned explanation for including template language in all her decisions. Under the totality of the evidence presented, the DOC's failure or refusal to see Sneitzer's situation as anything but a categorical error that had to be handled through disciplinary means evidences disparate treatment.

Due to the DOC's failure to prove Sneitzer violated the policy or acted negligently, the DOC's hasty imposition of discipline after a failure to fully investigate the matter, and evidence of disparate treatment, I find the DOC has

failed to show just cause for the imposition of discipline on the Sneitzer's alleged negligence.

For the reasons discussed above and upon consideration of the evidence presented, the DOC has not established just cause for the imposition of discipline for any of the five items outlined in the disciplinary notice for Case No. 102064.

II. *Case No. 102132: Termination of Employment*

Sneitzer was terminated for violating supervisory directives on the following four items: 1) failing to remand a CBC discipline report; 2) failing to keep her schedule current on the ALJ calendar; 3) failing to identify the category of leave taken; and 4) failing to refer to the CBC lists in their full name. Upon consideration of the evidence in the record, the DOC has not established just cause for the imposition of discipline based on the violations listed in the notice of termination.

A. Sufficiency and Fairness of Investigation

Upon review and consideration of the evidence presented, the DOC has not established that its investigation was fair or sufficient.

The DOC did not obtain sufficient evidence as part of the investigation to resolve material factual disputes. For example, the dispute regarding "potential" appointments on the ALJ calendar was presented during the investigation. This issue pertained directly to the issue whether Sneitzer was told, or reasonably understood based on her conversation with Savala, to place potential appointments on the calendar. Additionally, Sneitzer disputed the remand requirements for CBC reports. The DOC dismissed this contention without further inquiry or investigation. As such, under this record, the investigation failed to obtain

information that was material to determining whether Sneitzer's actions violated DOC policies.

Additionally, similar to the discussion pertaining to the ten-day suspension, the DOC cannot demonstrate that the investigation was conducted by an independent and unbiased investigator. Savala was directly involved in the conversations that formed Sneitzer's understanding of her expectations. As such, it is problematic that he is given unilateral discretion to determine if his communications were clear. Furthermore, the evidence also shows that Savala reached some of his conclusions before the investigation. For example, he told Sneitzer her decision not to remand the CBC discipline report was "unacceptable" prior to interviewing her. As such, even before investigating the matter, Savala's response indicates he had already concluded that she violated his directive. Overall, the record lacks evidence that Savala considered any of the responses or explanations Sneitzer provided during the investigation prior to concluding she violated the directives at issue.

For the reasons discussed, the DOC has not shown that it conducted a fair and sufficient investigation into Sneitzer's alleged violations.

B. Alleged Violations

(1) Remanding a CBC Discipline Report

The DOC contends that Sneitzer's "dismissal" of the July 12 inmate discipline report violated Savala's July 7 supervisory directive to first remand all inmate discipline reports containing procedural defects or requiring clarification before processing the report. Under the totality of the evidence in the record, the

DOC has not demonstrated that Sneitzer violated the July 7 supervisory directive when she issued the July 12 inmate discipline report.

Upon review of Savala's discussion with Sneitzer on July 7, the DOC has not established the directive required her to remand the July 12 CBC inmate discipline report. Although a dispute exists whether the "DH" acronym constituted a "procedural error" that Sneitzer was directed to remand, it is unnecessary to resolve this dispute because the DOC has not established a remand directive was in place for CBC discipline reports. The July 7 discussion was limited to remand requirements for inmate discipline reports at the institutions. In the institution context, the ALJ conducts the hearing and determines guilt on inmate discipline reports. Savala informed Sneitzer that an ALJ must continue the hearing on a report until the ALJ provides the institution with an opportunity to fix procedural errors. However, the July 7 discussion did not discuss remand requirements or procedures for CBC inmate discipline reports. For CBC "paper reviews" of discipline reports, such as the one for which Sneitzer was disciplined, the ALJ does not hold a hearing or determine guilt but merely determines whether the resident will forfeit earned time based on the written decision already reached by a CBC committee. Procedurally, these are two very different reports, and the record does not establish that the directive to remand one type of report for procedural defects automatically means the ALJ should remand the other type of report for procedural defects. As such, the discussion on July 7 regarding remand requirements to institutions did not contain a supervisory directive to remand CBC inmate discipline reports.

Furthermore, the DOC's claim that remand was a practice used in the CBC context is unsupported by the record. Sneitzer raised this as a point of contention during the investigation when she stated that in her time handling CBC reports, she never discussed reports with the CBC prior to issuing a decision on earned time forfeiture to suggest that remand procedure was not utilized in the CBC context. Sneitzer also identified by name the CBC contact with whom she had worked so Savala could determine the accuracy of Sneitzer's claim. However, the DOC did not interview the CBC contact Sneitzer identified to corroborate or contest Sneitzer's assertion. The record further reveals other ALJs had been assigned to process CBC reports in the past. However, no other ALJ was interviewed as part of the investigation to determine whether they utilized remands in the CBC context. Whether other ALJs would have known to remand the CBC discipline report for which Sneitzer was disciplined is a material fact that was not investigated. As such, under the facts presented, the DOC has not shown that it fairly and sufficiently investigated this matter prior to the imposition of discipline.

At hearing, the DOC also argued that Sneitzer's actions violated the IO-RD-03, *Major Discipline Report Procedures*, remand provisions. However, the termination notice does not allege a violation of IO-RD-03, but solely contends that Sneitzer's actions violated a supervisory directive in violation of policy AD-PR-08 requiring employees to follow supervisory directives. PERB has consistently held that just cause must be established on the reasons and alleged rule violations stated in the disciplinary notice provided to the employee. *Eaves*, 03-MA-04 at 14; *Gleiser*, 09-MA-01 at 17-18. Since the DOC did not allege this rule violation in the

termination letter, the employer cannot rely on it to establish just cause for Sneitzer's termination.

Even if the termination notice could somehow be broadly read to encompass IO-RD-03 provisions, the DOC has not shown that IO-RD-03 governs the ALJ's processing of CBC discipline reports. The written IO-RD-03 policy expressly states that it only applies to the institutions, not the CBCs. Additionally, the specific policy procedures for remanding discuss the ALJ continuing the hearing if procedures have not been met. In the CBC context, the hearing has already been conducted prior to the ALJ's review, and thus the policy provisions about how to procedurally remand a case are plainly inapplicable or inaccurate in the CBC context. Under the record presented here, the DOC has not established that policy IO-RD-03 governs remand requirements in the CBC context.

For the reasons discussed, the DOC has not shown just cause to issue any discipline for Sneitzer's alleged failure to remand the July 12 CBC inmate discipline report.

(2) Calendar Use

Upon consideration of the totality of the evidence presented, the DOC has not established just cause for the imposition of discipline over Sneitzer's calendar entries cited in the termination letter.

First, three of the nine entries the DOC relies upon predated Sneitzer's ten-day suspension. The DOC had knowledge of the July 11, 13 and 14 entries before it disciplined Sneitzer with a ten-day suspension. However, Sneitzer was not disciplined as part of the ten-day suspension for any actions pertaining to her

utilization of the ALJ calendar. Had these entries been in violation of the directive to utilize the ALJ calendar, as the DOC now contends, the DOC should have reprimanded her for it as part of the ten-day suspension to provide her with notice that she was violating this directive.

Second, evidence in the record demonstrates that Sneitzer complied with the directive to "utilize" the ALJ calendar as communicated in the letter. For the calendar entries presented, it shows that Sneitzer placed her known absences on the calendar. If she did not take leave, such as on July 11 where she was seeking Savala's approval to take leave, Sneitzer had no obligation under the directive to place an entry on the calendar. Furthermore, Sneitzer did not have the ability to remotely add or amend existing entries on the calendar. As such, for the August 7 appointment that went long, Sneitzer had no ability to remotely change the entry as listed on the calendar. Sneitzer also could not plan for emergent absences, such as the one she had on July 14, and could not reasonably be expected to place those on the ALJ calendar in advance. In this emergent situation, Sneitzer contacted Savala to inform him she had to leave and quickly placed a calendar entry indicating that she "will return." Finally, some of the calendar entries were not investigated. The DOC contends an August 10 entry violated the directive, but the record does not contain a copy of the ALJ calendar for August 10 and Sneitzer was never asked about August 10 during the investigation. To the extent Sneitzer knew her absences ahead of time and was on-site to add the entries, evidence in the record shows that Sneitzer "utilized" the ALJ calendar in compliance with the supervisory directive.

Third, nothing in the record demonstrates that the calendar entries cited in the termination letter in any way undermined the operational purpose of the directive. As communicated in the letter of expectations, Savala directed her to utilize the ALJ calendar so that he can prepare back-up coverage for her assignments if needed. While the DOC contends the core issue with Sneitzer's conduct is a lack of communication, the record shows that she was communicating with Savala by email, phone, text messages, and entries on the ALJ calendar, with information on her absences and whether he should process the CBC priority list. For the specific calendar entries cited in the termination notice, the DOC has not presented any evidence to show Savala did not know at the time about Sneitzer's absences or whether he needed to provide coverage for her CBC priority list. As such, Sneitzer's utilization of the ALJ calendar, in addition to the other methods of communication they used, provided Savala with information on her absences and whether he needed to provide coverage for her priority assignments.

Fourth, the investigation conducted did not obtain sufficient information to resolve material factual disputes regarding the "potential" appointments Sneitzer listed. Sneitzer contended during the investigation that she added the potential appointments because she understood Savala wanted a sense of when she could be gone for FMLA appointments. This conversation prompted her, as early as January 2017, to list the recurring weekly appointments. While Savala disagrees with Sneitzer's understanding, this is still a factual dispute that should have been further investigated prior to the imposition of discipline. Additionally, although the DOC now contends these calendar entries created operational and safety issues,

the DOC did not raise a concern about these calendar entries for eight months even though Sneitzer had worked through the "potential" appointments in the past without reprimand. In fact, undisputed evidence in the record indicates that Sneitzer informed Savala during a conversation that she was forgoing many of the recurring appointments in order to keep her docket current. As such, under this record, the DOC failed to sufficiently investigate the matter prior to discipling Sneitzer for adding the recurring appointments to her calendar.

Finally, the DOC has not shown that its discipline of Sneitzer over her calendar entries is consistent with its treatment of the other ALJs who were also required to utilize the ALJ calendar. Initially, for a period of time following her on-site return to IMCC, Sneitzer was required to note on the ALJ calendar the exact time she would be arriving to and leaving work. The DOC subsequently disciplined her as part of the written reprimand for not noting her arrival and departure on the ALJ calendar. No other ALJ had such requirements. Additionally, the evidence also shows that no other ALJ was disciplined for failing to remove and working through listed appointments on the ALJ calendar. In contrast, the DOC disciplined Sneitzer for at least four such calendar entries during which she worked past a listed appointment time.

For the reasons discussed, the DOC has not shown that Sneitzer's discipline over her utilization of the ALJ calendar is supported by just cause.

(3) Identifying Type of Leave Utilized

The DOC contends that Sneitzer indicated she would not report to work on August 11, prior to the investigatory interview scheduled for 10:30 a.m., but failed

to communicate to Savala the type of leave she was going to utilize for the period of time between 6 a.m. to 10:30 a.m. Under the evidence presented, the DOC has failed to establish Sneitzer violated the directive to identify the type of leave utilized in this specific instance.

As discussed as part of the ten-day suspension, the issue with the DOC's position is that it treats 6 a.m. as Sneitzer's start time. Nothing in the record establishes that Sneitzer was expected to report to work at 6 a.m., or otherwise take leave if not at work by 6 a.m. Instead, she had a window of time between 6 a.m. to 6 p.m. to work her shift. Therefore, Sneitzer had no obligation to report taking leave from 6 a.m. when she was not required to be at work at that time.

Furthermore, the record reveals that Sneitzer informed Savala she had an FMLA obligation on August 11 before the 10:30 a.m. investigatory interview and at 12 p.m. Sneitzer sent an initial email on August 10 at 4:30 p.m. letting Savala know she would not come to work prior to the 10:30 a.m. interview. She then sent a subsequent text message to Savala at 6:11 p.m. that same day to inform him she had an FMLA matter before the interview as well as an FMLA appointment at 12 p.m. As such, while she did not provide this information in the same communication, the record establishes that Sneitzer complied with the directive by informing Savala she was utilizing FMLA leave on August 11. The information she provided fulfilled the supervisory directive.

For the reasons discussed, the DOC has failed to show Sneitzer violated the supervisory directive to identify the type of leave taken on August 11. As such, the DOC has not established just cause for imposing discipline on this basis.

(4) Using Full Name for CBC Lists

The DOC contends that Sneitzer again violated the supervisory directive to refer to the CBC lists by full names in an August 3 email she sent to CBC staff titled "Residential Decision Due Process Errors." As discussed in relation to the ten-day suspension, Sneitzer was directed to refer to the lists by full name to avoid confusion among staff as to which list she was referencing in her communications. In the August 3 email, Sneitzer was providing the CBC staff a list of reports that contained procedural errors to give the staff an opportunity to fix them, in compliance with Savala's other directive to remand reports. The email communication contained inmate names and numbers. It is uncontradicted on this record that the list of procedural errors in Sneitzer's August 3 email were derived from both CBC lists. In this instance, Sneitzer was referring to the lists collectively and nothing about the April 14 directive prohibited her from doing so in this context.

The DOC also investigated Sneitzer for failing to use the full name of the lists in her text messages with Savala. While the text communications were discussed during the investigatory interview, the DOC has not provided testimony claiming the text communications also violated the directive. Thus, it is unclear to the undersigned whether the DOC has abandoned this argument. In the event the DOC is still relying on these text messages as a basis for discipline, I find it has failed to establish the April 14 directive applied to text messages between Sneitzer and Savala. As an initial matter, I find it unreasonable to require Sneitzer to recite the full names of the lists – *Pending WR/OWI Transfer Classification Review*s list

and the *Residential ALJ Process Scheduling* list – in text communication. She is texting him while off-site and with no access to the full ICON names.

Furthermore, and more importantly, requiring her to recite the full name in text messages is wholly unnecessary to the purpose of the directive. The directive was implemented, as the DOC contends, to avoid staff confusion as to which list Sneitzer referenced in her communications. The only DOC staff in the text communications the DOC presented is Sneitzer and Savala. Sneitzer was letting him know whether he should cover processing the *Pending WR/OWI Transfer Classification Reviews* list when she had to attend FMLA appointments. The record unambiguously establishes that Savala knew exactly what "residential reports" Sneitzer was referring to in her text messages. He never once expressed confusion or asked for clarification as to which list Sneitzer was referencing. Additionally, Savala knew the *Pending WR/OWI Transfer Classification Reviews* list was the priority list and was always Sneitzer's first order of business pursuant to his own supervisory directive.

For the reasons discussed, the DOC has not established that Sneitzer's August 3 email or her text messages to Savala violated the supervisory directive to refer to the CBC list by their full names. As such, the DOC has not established just cause for imposing discipline on this basis.

For the reasons discussed above and upon consideration of the evidence presented, the DOC has not established just cause for the imposition of discipline for any of the four items outlined in the disciplinary notice for Case No. 102132.

III. *Conclusion*

Based upon the evidence presented and for the reasons discussed, the DOC has not established that its imposition of a ten-day suspension or its termination of Sneitzer's employment is supported by just cause.

Consequently, I propose the following:

ORDER

The State of Iowa, Department of Corrections, shall reinstate Renee Sneitzer to her former position as an Administrative Law Judge at the IMCC (if the position still exists, and if not, to a substantially equivalent position), with back pay and benefits, less interim earnings; restore her benefit accounts to reflect accumulations she would have received but for the discharge; make appropriate adjustments to her personnel records and take all other actions necessary to restore her to the position she would have been in had she not been subject to a 10-day suspension and termination of employment.

The cost of reporting and of the agency-requested transcript in the amount of $2,027.75 are assessed against the State of Iowa, Department of Corrections, pursuant to Iowa Code subsection 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the Appellant, Renee Sneitzer, in accordance with PERB subrule 621—11.9(3).

This proposed decision and order will become PERB's final agency action on the merit of Sneitzer's appeals pursuant to PERB subrule 621—11.7(2) unless, within 20 days of the date below, a party files a petition for review with the Public

Employment Relations Board or the Board determines to review the proposed decision on its own motion.

DATED at Des Moines, Iowa this 20th day of April, 2021.

/s/ Jasmina Sarajlija
Administrative Law Judge

Electronically filed.
Parties served via eFlex.