



## FINDINGS OF FACT

### Background

Managed by the Iowa Commission of Veterans Affairs, the Iowa Veterans Home (IVH) is a long-term health care facility providing nursing and residential levels of care for honorably discharged veterans and their spouses. Appellant, Leavy-Westphal, has been employed as a Food Service Worker in IVH's Food and Nutrition Department since October 2008.

At the time of the events giving rise to this appeal, Melissa Sienknecht was the Food Service Director and oversaw the 120 employees in the Food and Nutrition Department. Below the Food Service Director were other supervisory positions that managed the employees and day-to-day operations of the Food and Nutrition Department. At the time, Karla Sperry was the Dietary Supervisor who oversaw food production and Kimberly Gummert was a Food and Nutrition Supervisor who managed a number of Food Service Workers, including Leavy-Westphal.

The duties of a Food Service Worker include accurately portioning and serving food to residents, assisting residents by carrying trays, cleaning and sanitizing work areas, dishes, and equipment, and storing food in clean sanitary containers. Food Service Workers are required to comply with the Iowa Commission of Veterans Affairs (CVA) Code of Conduct and Work Rules. On July 25, 2017, Leavy-Westphal signed an acknowledgment affirming that she was familiar with the CVA policies and work rules and she understood that any violation of the policies and work rules could result in disciplinary action.

In addition to her duties as a Food Service Worker, Leavy-Westphal also served as the vice-president and steward of her local union. As the union vice-president and steward, Leavy-Westphal's coworkers often came to her during her shift to discuss workplace issues. According to an individual performance plan and evaluation covering the period from July 30, 2016, to July 30, 2017, Leavy-Westphal worked hard to help answer her coworkers' questions and concerns.

As a union steward, Leavy-Westphal often went to her supervisors to discuss concerns brought to her by her coworkers. During these interactions, Leavy-Westphal was generally respectful and professional. Further, while Leavy-Westphal could become passionate when representing employees in her capacity as a union steward, when she intended to discuss union matters with management, she properly informed management when she wanted to discuss a union matter and she was professional during the discussions.

While the record shows Leavy-Westphal generally interacted professionally with management, management had twice notified Leavy-Westphal that her conduct violated CVA Work Rules. Although the record does not contain evidence of the specific conduct that led to the issuance of work directives and a corrective action notice, the notices clearly state the type of conduct they sought to address. On February 17, 2016, management issued Leavy-Westphal work directives stating:

**Expectations for Jenny Leavy-Westphal:**

1. You are expected to stay in your work areas that you are assigned for that day.
2. You are not to be using profanity or talking negatively about co-workers or the facility.
3. You are to be a team player with your peers and management.
4. You are to conduct yourself in a professional manner.

This will be reviewed monthly with you to track progress. Immediate concerns will be brought to your attention as they occur.<sup>1</sup>

On June 7, 2017, management issued Leavy-Westphal a corrective action notice for conduct that occurred in May 2017. The notice informed Leavy-Westphal she was being reprimanded because, "On May 31, 2017, you refused to fulfill a mandate for the second time." The notice further stated:

You have been in violation of Commission of Veterans Affairs Work Rule(s) B3, in part, "You are expected to follow all written and verbal instructions of supervisory staff or the designated person in charge."

Any further violation of Commission of Veterans Affairs Work Rules may result in further discipline up to and including discharge.

On July 24, 2017, Leavy-Westphal's direct supervisor, Kimberly Gummert, and Ms. Gummert's supervisor, Randy Reinertsen, evaluated Leavy-Westphal for the period July 30, 2016, to July 30, 2017. Despite the February 2016 work directive and the June 2017 written reprimand, in the category "maintains effective working relationships," Gummert and Reinertsen rated Leavy-Westphal

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<sup>1</sup> There was testimony Leavy-Westphal was coached and counseled after receiving the work directives. However, due to the absence of corroborating evidence, I give this testimony little weight.

as exceeding expectations. She was rated as meeting expectations in the other three categories.<sup>2</sup>

Approximately one week after the evaluation, Food Service Director, Melissa Sienknecht, learned Leavy-Westphal received an exceeds expectations in maintaining effective working relationships. Sienknecht discussed the rating with Reinertsen and Gummert and informed them that she did not believe they coded the evaluation appropriately. Sienknecht explained that because Leavy-Westphal was on work directives pertaining to her professionalism and relationships with her coworkers, she should not receive an exceeds expectations in maintaining effective working relationships.

#### Incident on September 6, 2017

The interaction between Leavy-Westphal and Food Service Director, Melissa Sienknecht, which lead to the issuance of Leavy-Westphal's discipline, occurred on September 6, 2017, in the food and nutrition supervisor's office. The interaction spawned an investigation that involved interviews of seven individuals. In addition, six witnesses testified at hearing, all but two of whom were interviewed in the course of management's investigation.

While the accounts of the interaction between Leavy-Westphal and Sienknecht are broadly similar, the characterizations of specifically what and how things were said differ in a number of respects. In making the following findings I have attempted to reconcile perceived conflicts in the evidence, which

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<sup>2</sup> Employee evaluation ratings consisted of does not meet, meets, or exceeds expectations.

consists primarily of the interviews of individuals who witnessed the interaction collected during management's investigation and testimony elicited at hearing. Where the evidence is not reasonably reconcilable, I have noted the discrepancies and credited that which is most reasonable and consistent with other credible evidence. In making these findings, I considered the established criteria for the making of credibility determinations, such as the witnesses' actual knowledge of the facts, memory, interest in the outcome of the case and candor. *See Barnard & State of Iowa (Dep't of Human Servs.)*, 2017 ALJ 100758 at 3.

At approximately 8:30 a.m. on September 6, 2017, Leavy-Westphal went to the food and nutrition supervisor's office to discuss a concern about a supervisor who denied an employee's vacation request the previous weekend and to discuss how management had recently mandated several employees to work extra hours out of turn. The supervisor's office is next to the employee breakroom. The shared wall between the office and breakroom has windows and there is a door connecting the two rooms.

When Leavy-Westphal arrived at the supervisor's office, the Food Service Director, Melissa Sienknecht, was in the office with the Food Production Supervisor, Karla Sperry. Leavy-Westphal entered the office, but remained standing near the doorway and began discussing the denial of the employee's vacation request with Sienknecht. Leavy-Westphal did not present the issue as a union matter. Sienknecht told Leavy-Westphal that because the situation did not concern or involve her she could not go into detail as to what happened with

the other employee, but she told Leavy-Westphal she had addressed the situation with the other employee earlier that week.

At this point, Leavy-Westphal alleges that she was not only trying to address the employee's vacation request denial, but was also trying to have a broader conversation about the mandating policy in general. Leavy-Westphal acknowledged that Sienknecht told her to stop the conversation several times, but Leavy-Westphal asserts that Sienknecht restarted the discussion by asking her new questions. Describing the interaction, Leavy-Westphal testified:

Melissa [Sienknecht]—Melissa became angry and was telling me that this had already been addressed and I'm trying to help another employee that this has just happened to. So Melissa had asked me to stop, but her next breath she started communicating with me again so the conversation between the two of us started again. And then she would ask me to stop and then she would start communicating with me again.

And so at this point I don't know what I'm supposed to do because she's asking to stop the conversation but then starting another one with me, then asking me to stop and starting another one with me...

...[Sienknecht] had [the schedule book] in her hand and slammed it down on the desk, at that point yelled at me that this conversation's over because I was asking her a question, and then started talking to me again and then said again, 'This conversation's over,' and again started talking to me again and then turned around and stomped out of the room, literally stomped out of the room.

According to Sienknecht, she told Leavy-Westphal twice that she could not discuss the situation about the other employee, but that the situation had already been addressed. However, Leavy-Westphal continued to pursue the



conversation. Leavy-Westphal became upset and her voice elevated. Sienknecht stated, “[Leavy-Westphal] made comments that people were popping pills to come to work, that the cooks—making comments about the cooks, that we were babying the cooks, and I felt the conversation was inappropriate.” Sienknecht told Leavy-Westphal at least three times that Leavy-Westphal needed to step out of the office and they could continue the conversation when she calmed down, however, Leavy-Westphal responded, “I’m fine. I’m fine. I don’t need to step out of the office” and continued talking. At that point, Sienknecht felt she needed to remove herself from the situation. She turned to Karla Sperry and said she needed to leave because the conversation was very upsetting. Sienknecht then walked out of the supervisor’s office. Sienknecht denied slamming any books and denied stomping out of the office.

Sienknecht’s account is supported by two witnesses to the interaction: Karla Sperry and Taddi Ryan. Sperry, who was in the office, testified that Sienknecht told Leavy-Westphal that she had taken care of the other employee’s situation, but Leavy-Westphal continued discussing the matter. Sperry described the interaction:

And at that point things just started to get heated up and Jennifer [Leavy-Westphal] became agitated and just continued to say that it hadn’t been taken care of. And Melissa [Seinknecht] had asked Jennifer I want to say on at least three different occasions to step out of the office because she was overheated and she needed to calm down and Jennifer just kept on going, so Melissa removed herself. She looked at me and said, ‘I have to leave the room.’



According to Sperry, Seinknecht remained calm and composed and she did not slam any books or stomp out of the office. As Seinknecht was leaving the office, Leavy-Westphal pointed at her and said to Sperry, “Look at her, she’s walking away. She can’t handle her job. She can’t do it.”

The other witness, Taddi Ryan, a fellow Food Service Worker, entered the breakroom and overheard Leavy-Westphal and Sienknecht talking. Ryan said Leavy-Westphal was not “extremely loud,” but described her as “adamant.” She said Sienknecht was respectful throughout the interaction. In her investigatory interview, Ryan said Sienknecht told Leavy-Westphal at least four times “she could not discuss it with [Leavy-Westphal], end of the story but it was already being addressed.” Ryan said Sienknecht kept saying, “I can’t discuss this matter with you. It’s been addressed, end of the story.” However, “Jennifer [Leavy-Westphal] just kept coming back with something else and Melissa got up and walked out.” At the hearing, Ryan testified that as Sienknecht left the room Leavy-Westphal said, “She just didn’t want to hear the truth, that’s why she left.”

Because Sienknecht, Sperry and Ryan all personally witnessed the interaction and because their accounts of the interaction are generally consistent with one another, I find their testimony credible and persuasive. For these reasons, I give their testimony significant weight.

I find Sienknecht asked Leavy-Westphal to stop the discussion and to step out of the office to calm down at least three times, but Leavy-Westphal continued the discussion despite being told to stop. Leavy-Westphal was agitated, her voice became elevated, and others outside of the office could overhear the interaction.

Sienknecht remained reasonably calm throughout the interaction and, after telling Leavy-Westphal to stop the discussion and step out of the office at least three times, Sienknecht told Sperry she needed to leave and she walked out of the supervisor's office. Sienknecht did not slam a book or stomp as she left the office. Finally, while Sienknecht was walking out of the office, Leavy-Westphal made a comment along the lines of, "see, she can't handle her job" loud enough that employees in the breakroom could overhear.<sup>3</sup>

After Leavy-Westphal left the supervisor's office, Sperry requested an investigation. The Human Resources Division Administrator, Penny Cutler-Bermudez, conducted an investigation from September 8 to September 11. Cutler-Bermudez interviewed the individuals she knew witnessed the interaction and anyone else who was named during the course of the investigation. She also spoke with supervisory staff, reviewed supervisory notes and looked at the work directives that were already in place. Based on the results of her investigation, in light of Leavy-Westphal's prior work directives and because she had previously been coached and counseled regarding the appropriateness of her behavior in the workplace, Cutler-Bermudez determined it was appropriate to move to the next step of discipline and issue a one-day suspension.

On September 13, 2017, Leavy-Westphal's supervisor provided her with the corrective action notice advising her she was receiving a one-day paper

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<sup>3</sup> Although Sperry and Ryan's testimony differs regarding specifically what Leavy-Westphal said, they both agree she made a negative comment about Sienknecht. Further, when interviewed five days after the interaction, Leavy-Westphal acknowledged she made a comment along the lines of "see, she can't handle her job." However, in the interview, Leavy-Westphal said she did not say it precisely that way. This evidence supports the finding that Leavy-Westphal made a comment along the lines of "see, she can't handle her job."

suspension and noting that while the paper suspension does not reduce her pay or other benefits, it carries the same weight and seriousness as if she was suspended without pay. The notice continued, in relevant part:

**REASON FOR CORRECTIVE ACTION AND ADDITIONAL COMMENTS:** On September 6, 2017 you where [sic] disrespectful and insubordinate in the work place.

You have been in violation of Commission of Veterans Affairs Work Rule(s) B2, B3[.]

Any further violation of Commission of Veterans Affairs Work Rules may result in further discipline up to and including discharge.

The notice indicated Leavy-Westphal's actions were in violation of the following:

### **Work Rules**

#### **B. PERFORMANCE OF DUTIES**

2. You are expected to work cooperatively with other employees, residents and all others involved with the Commission's work. You will treat other employees, residents, guests, visitors and the public with respect, dignity courtesy and fairness. You will comply with Iowa's dependent adult abuse requirements, including reporting abuse. You shall not abuse, neglect or exploit residents, whether verbally, physically, sexually or financially.

3. Insubordination will not be tolerated. You are expected to follow all written and verbal instructions of supervisory staff or the designated person in charge.

In addition to the one-day paper suspension, management placed Leavy-Westphal on six new work directives, which stated:

Written Expectations:

1. You are expected to stay in your work areas that you are assigned for that day.
2. You are not to be talking negatively about co-workers or the facility that would disrupt the work environment.
3. You are to be a team player with your peers and management.
4. You are to conduct yourself in a professional manner and maintain appropriate control of your behavior, even when provoked or in stressful situations.
5. You are expected to follow all written and verbal instructions of supervisors.
6. You will not insert yourself into concerns that do not involve you.

The next day, September 14, 2017, Leavy-Westphal signed a state employee grievance form alleging the one-day paper suspension was not supported by just cause and requesting the one-day suspension and work directives be removed from her personnel file.

On October 9, 2017, Gummert and Sienknecht issued Leavy-Westphal a “special evaluation” covering the period from July 30, 2017, to October 10, 2017. The special evaluation overall rated Leavy-Westphal as meeting expectations, however, in maintaining effective working relationships, she was rated as not meeting expectations.<sup>4</sup>

On October 18, 2017, following the third-step grievance, the Department of Administrative Services (DAS) Director’s designee denied Leavy-Westphal’s grievance concluding the one-day paper suspension was supported by just cause. On November 17, 2017, Leavy-Westphal filed the present appeal.

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<sup>4</sup> As Leavy-Westphal’s grievance concerns only the September 13, 2017, one-day paper suspension and work directives, this decision addresses only whether the State had just cause to issue the one-day paper suspension.

## CONCLUSIONS OF LAW

Leavy-Westphal filed this appeal pursuant to Iowa Code section 8A.415(2), which provides:

### *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.

DAS rules provide specific disciplinary 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.

Just cause must exist to support the disciplinary action taken. The State bears the burden of establishing that just cause supports the discipline imposed. *Harrison & State of Iowa (Dep't of Human Servs.)*, 05-MA-04 at 9.

In the absence of a definition of just cause, PERB has long considered the totality of circumstances and rejected a mechanical, inflexible application of fixed elements in its determination of whether just cause exists. *Wiarda & State of Iowa (Dep't of Human Servs.)*, 01-MA-03 at 13-14. In analyzing the totality of circumstances, examples of factors that may be relevant to a just cause determination include, but are not limited to:

Whether the employee has been given forewarning or has knowledge of the employer's rules and expected conduct; whether a sufficient and fair investigation was conducted by the employer; whether reasons for the discipline were adequately communicated to the employee; whether there is sufficient proof of the employee's guilt of the offense; whether progressive discipline was followed, or is not applicable under the circumstances; whether the punishment imposed is proportionate to the offense; whether the employee's employment record, including years of service, performance, and disciplinary record, have been given due consideration; and whether there are other mitigating circumstances which would justify a lesser penalty

*Gleiser & State of Iowa (Dep't of Transp.)*, 09-MA-01 at 16-17

PERB also considers the treatment afforded other, similarly situated employees relevant to a just cause determination. *See Woods & State of Iowa (Dep't of Inspects. and Appeals)*, 03-MA-01 at 2. All employees who engage in the

same type of misconduct must be treated essentially the same unless a reasonable basis exists for a difference in the penalty imposed. *Id.*

PERB has determined the presence or absence of just cause rests on the reasons stated in the disciplinary letter. *See Eaves & State of Iowa (Dep't of Corr.)*, 03-MA-04 at 14; *see also, Hunsaker & State of Iowa (Dep't of Emp't Servs.)*, 90-MA-13 at p. 46, n. 27. Iowa Code section 8A.413(19)(b) and DAS subrule 11—60.2(1)(b) require the State to provide the employee being disciplined with a written statement of the reasons for the discipline. In order 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. *See Gleiser*, 09-MA-01 at 17-18, 21.

The reasons for Leavy-Westphal's discipline contained in the corrective action notice are that she violated CVA Work Rules B2 and B3 when, on September 6, 2017, she was disrespectful and insubordinate in the work place. The existence of just cause for Leavy-Westphal's suspension must be determined upon these grounds alone (i.e., Leavy-Westphal was disrespectful and insubordinate to Sienknecht during their interaction in the supervisor's office on September 6, 2017), rather than upon other reasons suggested in the DAS third-step response or in testimony elicited at hearing.<sup>5</sup>

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<sup>5</sup> At points in the record, the State indicated Leavy-Westphal's discipline was based, in part, on her not being in her assigned work area during the interaction in the supervisor's office. As this allegation was not included in the corrective action notice, it was not considered as a potential basis for just cause in this decision.



Based on the record, the State provided sufficient proof that Leavy-Westphal violated CVA Work Rules B2 and B3. As discussed above, the evidence received at hearing establishes that while talking with Sienknecht, Leavy-Westphal failed to maintain appropriate control, she became heated and her voice was elevated. Because Leavy-Westphal was upset and speaking loudly, Sienknecht told her to step out of the office to calm down at least three times. However, Leavy-Westphal ignored Sienknecht's instructions and continued pursuing the conversation. Finally, while Sienknecht was leaving the office—because she felt the conversation was inappropriate—Leavy-Westphal made a comment about Sienknecht not being able to handle her job loudly enough that employees in the breakroom could overhear.

CVA Work Rule B3 prohibits insubordination, stating, “You are expected to follow all written and verbal instructions of supervisory staff or the designated person in charge.” The record shows that as Leavy-Westphal became agitated, Sienknecht—the Food Service Director and Leavy-Westphal's superior—instructed Leavy-Westphal to step out of the office to calm down at least three times. However, Leavy-Westphal ignored the instructions and continued the conversation. Ignoring a supervisor's clear verbal instructions is insubordinate. Accordingly, I conclude Leavy-Westphal's conduct was insubordinate and in violation of CVA Work Rule B3.

CVA Work Rule B2 requires IVH employees treat others with “respect, dignity courtesy and fairness.” While the work rules do not define these terms, it is clear from their ordinary meaning that employees are expected to be polite

to one another and to give due regard to the feelings of others. The record shows that during the interaction, Leavy-Westphal became heated and she raised her voice to Sienknecht. Further, when Sienknecht was leaving the office, Leavy-Westphal made a comment about Sienknecht not being able to handle her job loudly enough for employees in the breakroom to overhear. Speaking loudly and ignoring a supervisor's instructions is disrespectful, as is commenting that a supervisor cannot handle her job. Accordingly, I conclude Leavy-Westphal's conduct was disrespectful and in violation of CVA Work Rule B2.

The State adequately forewarned Leavy-Westphal of CVA's Work Rules and IVH's expected conduct. Leavy-Westphal asserts she was unaware her conduct could lead to discipline because she had had similar conversations with supervisors in the past about issues raised by her coworkers and those conversations never lead to discipline. For this reason, Leavy-Westphal argues that she was not adequately forewarned her conduct could lead to discipline. Leavy-Westphal's argument that she was unaware her conduct could lead to discipline is not persuasive.

Although Leavy-Westphal had discussions with supervisors about issues raised by her coworkers in the past, the record shows Leavy-Westphal typically behaved respectfully and professionally during those interactions. In this case, Leavy-Westphal did not inform her supervisors that she wanted to discuss union matters and she did not remain respectful during the interaction.

Furthermore, it is undisputed that Leavy-Westphal had knowledge of the CVA Work Rules management concluded she violated. On July 25, 2017, Leavy-

Westphal signed an acknowledgment of receipt of the Iowa Veterans Home Policies and Work Rules. Moreover, in February 2016, Leavy-Westphal received work directives relating, in part, to her professionalism and in June 2017, Leavy-Westphal received a written reprimand for insubordination because “[Leavy-Westphal] refused to fulfill a mandate for the second time” in violation of CVA Work Rule B3.

While the February 2016 work directives were issued more than a year and a half before the suspension at issue, the June 2017 reprimand for insubordination was recent, clearly relates to the behavior at issue, and warned Leavy-Westphal that she must follow all instructions from supervisory staff. For these reasons, I conclude Leavy-Westphal had knowledge of the work rules and was forewarned that insubordinate or disrespectful conduct could lead to further discipline.

The State conducted a fair and sufficient investigation. Before issuing the one-day paper suspension, the State sufficiently investigated the incident by interviewing the individuals who witnessed the interaction—including Leavy-Westphal—speaking with supervisory staff, reviewing supervisory notes, and looking at the work directives that were already in place. In all, the State interviewed seven people during the course of the investigation.

After concluding the investigation, IVH adequately apprised Leavy-Westphal of the reasons for the one-day paper suspension through the corrective action notice. The notice provided the rules violated, the date of the incident, and the conduct that led to the discipline.

Leavy-Westphal argues the one-day paper suspension was not the appropriate discipline given the circumstances of the case. Leavy-Westphal argues the State did not follow progressive discipline because the February 2016 work directives were more than a year and a half old and the “exceeds expectations” rating she received on her July 30, 2017, individual performance plan for maintaining effective working relationships should have removed the directives.

Progressive discipline is a system where measures of increasing severity are applied to repeated offenses until the behavior is corrected or it is clear the behavior cannot be corrected. *Nimry & State of Iowa (Dep’t of Nat. Res.)*, 08-MA-09, 08-MA-18 at App. 30. The purpose is to convey the seriousness of the behavior while affording an employee the opportunity to improve and take corrective responsibility. *Phillips & State of Iowa (Dep’t of Human Servs.)*, 12-MA-05 at App. 16 (citing Norman Brand, *Discipline and Discharge in Arbitration* at 57 (BNA Books 1998)).

In this case, the State followed progressive discipline. In February 2016, the State issued Leavy-Westphal work directives instructing her, in part, that she needed to behave in a professional manner. The work directives were given to notify Leavy-Westphal of areas of concern and IVH’s expectations of her conduct so she could correct her behavior and avoid formal discipline.

Even assuming *arguendo* the February 2016 work directives should have been removed, the record still shows Leavy-Westphal was aware of the work rules and was on notice she needed to conduct herself in a professional manner.

Further, in June 2017, Leavy-Westphal received a written reprimand—the least severe form of formal discipline—for conduct that occurred in May 2017. *See Frost & State of Iowa (Dep’t of Admin. Servs.)*, 07-MA-01, 07-MA-02 at 41. That conduct involved failing to fulfill a work mandate for the second time in violation of CVA Work Rule B3, which is one of the two rules cited in the notice of suspension regarding the need to follow all instructions of supervisory staff.

Despite being aware of the work rules and having recently received a written reprimand for insubordination, on September 6, 2017, Leavy-Westphal was disrespectful and insubordinate during her interaction with Sienknecht. The underlying behavior of disrespect and insubordination at issue in the one-day suspension is similar to the behavior for which Leavy-Westphal was previously reprimanded and a one-day suspension is the next step in progressive discipline. Under these circumstances, I conclude the State appropriately followed progressive discipline and that the one-day paper suspension is proportionate to the offense.

After reviewing the record as a whole, the State properly considered Leavy-Westphal’s employment record when making the decision whether to issue the one-day paper suspension and there are no other mitigating circumstances that would justify a lesser penalty. Accordingly, I conclude the State has established that just cause existed to issue Leavy-Westphal a one-day paper suspension. I consequently propose the following:


ORDER

Leavy-Westphal's state employee merit appeal is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$629.75 are assessed against the Appellant, Jennifer Leavy-Westphal, pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the Appellant in accordance with PERB subrule 11.9(3).

The proposed decision and order will become PERB's final agency action on the merits of Leavy-Westphal's appeal pursuant to PERB rule 621—9.1 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 13<sup>th</sup> day of December, 2019.

  
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Patrick B. Thomas  
Administrative Law Judge

Filed electronically.  
Parties served via eFlex.