

Pursuant to notice, an open evidentiary hearing on the merits of the appeal was held before me on May 21, 2019, in Mount Pleasant, Iowa.¹ Helmick was represented by Amber Moats and Earlene Anderson. The State was represented by Henry Widen. Both parties submitted post-hearing briefs on August 1, 2019.

Based upon the entirety of the record, and having reviewed and considered the parties' arguments, I find the DOC had just cause to terminate Helmick's employment.

FINDINGS OF FACT

Helmick began his employment with the DOC in January 1996 at the Iowa State Penitentiary (ISP) and subsequently transferred to the MPCF in 2012. He worked the 6 a.m. to 2 p.m. shift with Fridays and Saturdays off. Helmick was permanently assigned as a unit officer on unit 2D, which had both general population cells and short-term administrative segregation cells.

Helmick's tenure with the DOC was predominantly satisfactory. He received a letter of commendation in 2010 for resuscitating and saving an offender's life when he attempted to commit suicide. Outside of his employment with the DOC, Helmick has served in the military, served as a reserve police officer, and as a volunteer firefighter and EMT. Prior to his termination, Helmick had only been disciplined for attendance-related rule violations. He received a

¹ Although Helmick initially requested a closed hearing, he subsequently determined at hearing to open the proceedings.

written reprimand in February and a one-day suspension in March 2018 for violating DOC's leave without pay policy.

Helmick was a correctional officer (CO) during his entire 22-year tenure with the DOC. A CO's primary duty is to ensure safe and secure operations in the institution. A CO's core functions on a daily basis are conducting offender counts, offender security rounds, and offender and property searches ("shakedowns"). In the performance of these core functions, a CO is expected to maintain continual observation of the offender population, remain alert to offender behavior and changes in behavior patterns, and identify potential problems that may pose a risk to the safety and security of offenders and the DOC staff.

The DOC has a multitude of policies and procedures in place regarding institutional safety and security. The ones relevant to Helmick's discipline pertain to security rounds and shakedowns.

A security round is required to be performed every 30 minutes at irregular intervals to prevent predictability. Conducting security rounds is a core duty a CO performs. From a correctional standpoint, a security round is the most effective way to manage offender behavior and maintain safety at the institution. The purpose behind security rounds is to be noticeable to offenders, monitor offender behavior, keep alert for contraband and unusual offender behavior, and enforce institutional rules. The staff person is expected to physically perform a round by walking through the assigned unit. The frequent physical presence

throughout the unit allows the CO on the unit to notice and prevent incidents such as physical and sexual abuse, attempted self-harm by the offender population, and to secure entryways to the unit and ensure the offenders are following institutional rules.

When performing a round, the CO carries a hand-held electronic device, a PDA, and documents the completion of the round for every area of the assigned unit. MPCF has two ways to document the completion of a round. The preferred method is a “scan” method. The institution has bar codes at various locations throughout the unit. As the CO walks through the areas while conducting the round, he uses the PDA to scan the codes at the different locations. When a scan is made, the computer automatically and electronically logs that the CO was at that specific physical location when he scanned it.

The other method, a “manual” method, allows a CO to use the PDA in manual entry mode and manually enter that he completed a round. As this is a manual entry by the CO, this method trusts that the CO’s entry marking a round is accurate and truthful. It has no way of independently confirming a CO was physically present at a certain location like the scan method confirms. The “manual” entry method is not preferred and was to be utilized in the event of technological difficulties with the scanner, such as a bad Wi-Fi signal, where a CO is unable to use the scan method. When a staff person logs they completed a

round, either by a “scan” or “manual” entry, the obvious expectation is that they actually performed the documented round.²

The DOC also has policy requirements concerning offender and property searches, referred to as “shakedowns.” A shakedown could entail searching the offender, searching his property and cell, or an entire area of the prison. As with security rounds, shakedowns are in place for safety and security reasons. The purpose of a shakedown is primarily to find and eliminate hidden contraband, such as drugs or weapons, from the offender population. When a shakedown is performed, it is recorded by the staff person in ICON, DOC’s electronic database.

The following policies and procedures on institutional safety and security are relevant to Helmick’s discipline.

Policy IO-SC-10 MPCF Offender Counts and Accountability

- A. Continuous Accountability
 1. Staff supervision of offenders is critical to facility security. Staff shall be on duty in critical posts 24 hours a day to be able to supervise, observe, and interact with offenders.
 2. All IDOC employees must be active in patrolling housing units, interacting with offenders and must be alert to unusual incidents, changes in types of offender interaction or other signs of unusual activity in the facility.
 3. Staff must stay out of office areas to the greatest extent their duties allow and remain in personal contact with offenders in their units.
 4. Staff surveillance of key locations is an important part of the internal surveillance program.

² At the time of Helmick’s termination, the written policy allowed either scan or manual entries to document rounds. Following the events underlying Helmick’s termination, MPCF amended its procedures to require the “scan” method unless a legitimate reason prevented using the scanner, which had to be documented in ICON along with the performed round. Helmick’s termination had no basis in the manner in which he documented the rounds, but rather was solely based on his false documentation of rounds he never performed.

Policy IO-HO-01 MPCF Unit Management

B. Unit Team

9. Unit Officers

Unit Officers have direct responsibility for the enforcement of rules and regulations and the day-to-day supervision of offenders and offender work crews. Officers have security, safety, and sanitation responsibilities in the Unit. Officers posts are located immediately adjacent to offender living areas to permit Officer to hear and respond promptly to emergency situations. In many cases i.e., direct supervision living units, the Officer shall be posted directly in the living unit.

D. Communication and Access to Unit Team

4. Unit Officers shall interact with offenders on a continual basis with formal rounds being conducted on a frequent, at least every 30 minutes, and irregular basis to foster communication in the living unit.

Policy IO-HO-05 Short Term Restrictive Housing (STRH)³

4. Offenders in STRH status shall be personally observed by a correctional officer on an irregular basis, but not less than every 30 minutes. Offenders who are exhibiting violent or mentally unstable or unusual behaviors shall receive more frequent [:]

- Observation Supervision: Officers shall provide thirty (30) minute irregular spaced intervals of physical surveillance of the offenders actions each shift. Video monitoring does not replace round physically made by the officer. Video observation capability is an intermittent tool to be utilized to supplement the actual rounds of the officer. Offenders demonstrating aggressive behavior, if placed in Mental Health Observation (MHO) status will be checked on as prescribed in policy. Offenders in STRH on Suicide and Self-Injury Prevention (SSIP) protocol shall be constantly observed by a trained offender observer and a security staff member at least every fifteen (15) minutes or more often if required.

³ A full copy of this policy is not in the record. The language contained here is the language as recited in Helmick's notice of termination.

Searches and Inspections – All Shifts:

- Each shift will share the responsibility for searching all offenders, offender common areas and living areas.
- The 6:00 am to 2:00 pm and 2:00 pm to 10:00 pm shifts assume the bulk of the offender living area searches.
- All area searches will be documented electronically within ICON when completed and before the end of the shift.
- All offender rooms are to be searched at least once monthly.
- **Unit officers on the 6:00 am – 2:00 pm and 2:00 pm – 10:00 pm shifts will be responsible for searching a minimum of two (2) offenders and at least one (1) offender housed room each shift and to be recorded on ICON before the end of their shift. All personal searches of individual offenders are to be recorded on ICON before the end of the shift. These searches will be random and not used as a harassment or corporal punishment measure on any offender.**
- Unit officers will make a fire and security inspection rounds of the entire unit at irregular thirty (30) minutes and log same in unit log book if the PDA is not operational. **Periodic inspections rounds and checks should be made and documented by using the Personal Data Assistant (PDA) or within the unit log book (if the PDA is not functioning) in addition to the thirty (30) minute documented checks on all shifts. This is a mandatory safety/security directive from sunset to sunrise.**

Units with Offenders in Restricted Housing – All Shifts:

- Unit officers and their relief are responsible to:
 - Make irregular thirty (30) minute physical inspection checks
 - Make any additional checks will be made when instructed to do so.
 - Not substitute supplemental surveillance cameras in the cells for making physical checks/inspections of those cells. Make the physical check/inspection and offender interaction.

Prior to his termination, Helmick did not have any disciplinary history for failing to conduct rounds or shakedowns. However, he had received unsatisfactory performance ratings in 2016 and 2017 for failing to conduct the minimally required security rounds and shakedowns. In September 2016, Helmick received his performance evaluation for the August 2015 to August 2016 review period. Although he received an overall satisfactory rating, Helmick was rated as not meeting expectations under a performance goal pertaining to operational safety and security. Helmick's supervisor noted that Helmick "showed serious deficiencies in performing his required security rounds, offender pat downs, and room searches," and further indicated that the "completion rate of each was 19%, 18%, and 24% respectively." The supervisor advised Helmick he needs to greatly improve in these areas. Helmick was given a specific developmental plan to improve his shakedown percentages to the minimally required 70 percent and "work on ensuring security rounds are completed every ½ hour as required by policy."

In October 2017, Helmick received his performance evaluation for the August 2016 to August 2017 evaluation period. His supervisor again rated him as not meeting expectations on the performance goal pertaining to operational safety and security. The supervisor noted that Helmick "failed to meet the minimum expectation for completing required shakedowns of cells/rooms and personal searches on his assigned living unit." Helmick also received an unsatisfactory rating in a category pertaining to problem identification and

resolution. Successful performance of this goal required Helmick to engage in continual visual observation of the offender population and continually move throughout the area of responsibility while observing, listening, and talking with the offenders. More pertinent to the instant discipline, this goal also involved conducting “formal and informal rounds of the area of responsibility per facility procedure.” His supervisor noted that for two consecutive evaluations “Helmick has failed to meet the minimum expectation for completing security rounds of his assigned unit.” The supervisor added that Helmick was “reminded on multiple occasions, including documented on his previous year’s performance [evaluation], of the need and importance of successfully meeting this established security standard.” Like with the previous evaluation, Helmick was given a developmental plan to “meet the minimum requirements for security rounds, personal pat searches, and cell/room searches.”

In September 2017, Helmick was coached specifically on the proper frequency of conducting rounds of the segregation cells. A review of his segregation rounds revealed that Helmick had “several unacceptable time gaps between rounds in that area.” During the coaching session, the security director reminded Helmick that rounds must be completed “sometime within the 30 minute guideline” and that “anything over 45 minutes is questionable [and] not acceptable.” He was also reminded that extreme liability exists when an inmate is in restricted housing status. The security director noted at the time that Helmick was receptive and indicated he would adhere to the requirements.

Sometimes in the fall of 2017, Helmick was investigated for improper FMLA leave. At the time, Helmick was using significant leave time to care for his wife. Helmick's wife had received serious medical and mental health diagnoses. The stress of his wife's health condition and trying to care for her put a heavy burden on Helmick. He did not approach management to ask for assistance through the employee assistance program. However, he had spoken to the Warden about the general difficulty of dealing particularly with his wife's mental health diagnosis. The record indicates that at some point during this time, management had concerns about Helmick and asked a captain to speak to him and inquire whether he wanted to use the available employee assistance program services. Helmick does not recall ever having been asked.

The investigation that ultimately led to Helmick's termination was initiated in December 2017 after the DOC received an allegation that Helmick was taking contraband (tobacco) into the institution for monetary gain. The contraband investigation included reviewing camera surveillance of Helmick's assigned unit, 2D. Ultimately, the DOC found no evidence corroborating the contraband allegation. However, in reviewing the camera footage, the investigator noticed Helmick remained in his office for most of the shift even though he had documented performing rounds of the entire unit. This prompted the DOC to fully investigate these observations. The investigation included obtaining documentation of Helmick's logged security rounds and shakedowns, reviewing all available surveillance of unit 2D, and interviewing Helmick.

Helmick's assigned unit, 2D, included offender living areas and offender segregation or isolation areas. The segregation unit houses offenders who are having mental health issues, behavioral issues, or serving out sanctions for violation of institutional rules. The purpose of segregating this population is to protect the offender and other individuals in the institution by preventing self-harm or harm to others. A scan point for documenting rounds was located at various areas of the unit, including the kitchen, dayroom, bathroom, north hall, and the three segregation cells on the unit. The proper way for Helmick to perform a security round was to leave his office and walk through each of these areas.

MPCF's surveillance system only retains surveillance footage for approximately 30 days before it automatically deletes. By the time Helmick's potential violation was discovered, the DOC only had surveillance footage going back to April 9. The available footage included two camera angles of Helmick's office in 2D. The investigators reviewed the available footage for the duration of Helmick's 8-hour shifts from both camera angles, totaling about 16 hours of footage for every day Helmick worked from April 9 to May 7, 2018. While viewing the footage, the investigators had the ICON documentation and were attempting to verify whether the video footage corroborated that Helmick actually performed the security rounds and shakedowns he documented as having completed.

From April 9 to May 7, Helmick worked 15 days. Helmick documented having performed anywhere from 10 to 16 rounds per shift. However, the video

footage reviewed showed only two instances per shift that could be construed as a round. The segregation cells on unit 2D always housed at least one offender from April 9 to May 7. The video surveillance showed Helmick taking food to the segregation cells at meal time but otherwise did not show him doing physical rounds of these cells. The documentation revealed that up to an hour and a half passed before any staff member physically came to the segregated cells.

Although video surveillance preceding April 9 was unavailable, the DOC retrieved Helmick's round documentation going back to January 1, 2018. The DOC noted a pattern in Helmick's round documentation in that he always used the "manual" entries option except for the round Helmick entered while conducting the required offender count on his shift. This same pattern with manual entries existed as far back as January 1. The DOC suspected that Helmick was similarly falsifying earlier rounds documentation by entering manual entries instead of the scan option.⁴ At hearing before the undersigned, Helmick acknowledged the falsification of round and shakedown documentation prior to April 9.

The DOC's comparison of ICON documentation with the available surveillance video also demonstrated that Helmick falsified records pertaining to shakedowns. His ICON documentation noted he completed 22 offender searches but the video surveillance did not show he completed them. Similarly, Helmick's

⁴ In investigating Helmick, the DOC noted that other officers also used manual entries but not to the same extent as Helmick. When the DOC checked the surveillance video, it confirmed these other officers actually performed the rounds they documented as a manual entry.

ICON documentation indicated he completed eight cell searches during this time period but the video surveillance did not corroborate those either.

DOC conducted an investigative interview with Helmick on June 7, 2018. Helmick's responses indicated he understood the institutional requirements, the purpose, and the importance of security rounds and shakedowns. He was also able to identify where the scan points on the unit are when doing rounds, but stated he does not always use the scan points.

The investigators presented Helmick with a summary of the surveillance findings and asked why he documented completing rounds when the footage showed they were not done. Helmick indicated a lot of times he did a "visual" round by using the cameras he had in his office and using the mirror in front of his office to look down the hallway. When asked if he believed this "visual" constituted a round by policy, Helmick stated it is "not as adequate" because he could not see what was happening inside the cells. As the interview progressed, Helmick acknowledged that the policy expectation for conducting a round is to physically walk through the assigned unit about every half hour.

The investigators also informed Helmick that the camera surveillance reviewed did not show he completed the shakedowns documented in ICON. Helmick was informed he could not be seen leaving his office, which would be required to conduct a shakedown, other than at count time and to feed the offenders in the segregation cells. When asked if it was safe to assume the

documented shakedowns were not completed even if they were logged, Helmick responded “yes.”

Upon being presented with the investigative findings, Helmick acknowledged fault. He stated he was “quite embarrassed” by his actions. Helmick shared with the investigators that his wife has chemotherapy once a week. Additionally, in the fall of 2017, his wife received a serious mental health diagnosis. He stated the mental illness makes her not remember her actions, so he is constantly worrying about her well-being while at work. Helmick stated he has been “trying to suck it up” and continue to come to work, but that he is physically and mentally exhausted from it. Helmick asserted he “can make this right” and did not want to be terminated for something he can fix.

In his testimony before the undersigned, Helmick expressed the same sentiments about this incident being isolated to this particularly stressful time in his life. He never reached out to management to ask for help, but shared some of the information with a few people he trusted. Upon reflection since his termination, he realized that the stress overcame him. Helmick stated he did not have a forethought or mindset to falsify documents. Helmick asserted he was unknowingly at the time also dealing with post-traumatic stress disorder, for which he has since gotten medical treatment and counseling. He expressed remorse over the incident and that he is “worth saving.” Helmick stated this incident was his “wake-up call.” He asserts that progressive discipline in this instance would have gotten him on the right track. Other than this time period,

he asserts he had a positive tenure with no similar discipline. Helmick asked for “a second chance.”

Upon the completion of the investigation and consultation among the DOC’s executive team, a decision was reached that termination was the appropriate penalty given the extent of misconduct. MPCF asserted it did not have any prior disciplines of employees that had the extent of falsification of records as presented by Helmick’s case. Helmick presented several cases of employees at other DOC institutions who had similarly falsified documentation pertaining to security rounds and shakedowns. In 2013, a CO received a three-day suspension for falsely documenting the completion of rounds and shakedowns over a three-day period. In 2008, another employee was suspended for 15 days for falsifying 15-minute rounds over the course of one day. The suspension was reduced to 10 days through a grievance procedure.

Helmick presented one prior discipline of an employee for falsifying count documentation. In 2014, the DOC terminated an employee who had 10 instances of failing to conduct offender counts but documented the counts were completed. This situation involved a total of twelve employees found to have falsified count documentation; all employees received suspensions while one senior officer and this employee were terminated. The senior officer who was also terminated failed to conduct counts 23 of the 28 times he was tasked with that responsibility. The termination of the senior officer was upheld. However, the termination of the other employee with 10 instances of falsification was overturned by a contract grievance

arbitrator and reduced to a 45-day suspension. The arbitrator's decision was based on equal treatment considering all other employees except the senior officer were suspended.

Prior to termination, management held a *Loudermill* interview during which Helmick was given an opportunity to present any mitigating circumstances for the Warden to consider. Helmick indicated he is suffering from PTSD, depression and that he has been under a lot of stress with his wife's medical diagnoses. He acknowledged that he "screwed up" but asked for an opportunity to continue his employment because he is "worth keeping." Helmick urged the DOC not to end his correctional career "over something [he] can fix." The DOC determined to proceed forward with termination.

Helmick was given a letter of discharge on June 14, 2018. The noticed advised Helmick:

This letter is to inform you that effective 6/14/2018, you are being discharged from employment with the Department of Corrections. This action is being taken as a result of our investigation. Specifically, the charges are that between the dates of 4/9/2018 and 5/7/2018 you falsified round documentation, failed to conduct rounds, and failed to conduct searches of offenders and their property. Our investigation brought forth evidence that supports the Department's allegation.

The discharge notice identified the provisions of IO-SC-10, IO-SC-01, IO-HO-05 and the unit officer post order that were violated, all of which were previously recited. The termination notice also indicated the DOC concluded Helmick's

conduct violated the following provisions of AD-PR-11, DOC General Rules of Employee Conduct:

C. Code of Conduct

3. Employees are expected to be familiar with their job description, essential functions, performance standards and job duties. Employees are expected to perform their duties in an impartial manner.

E. Personal Ethics

8. Cooperate fully and truthfully in oral statements, official documents, inquiries, investigations, and/or hearings. Employees may not withhold information or impede any of these processes.

Helmick appealed his termination to DAS on June 15, 2018, claiming he was “terminated without justification.” The DAS director’s designee denied his grievance on July 13, 2018. Helmick subsequently filed the instant appeal with PERB on July 25, 2018.

Helmick argues the DOC should not have entirely disregarded the principles of progressive discipline. He highlights that he is a long-term employee with no similar disciplinary history. He claims to never have intended to falsify documents, but he was just surviving day by day through all the stress in his life and never realized it got as bad as it did until the investigators laid out the findings in his interview. He contends the DOC did not have to abruptly end his lengthy career over behavior he could fix. Helmick asks for his situation at the time to be considered along with his long, positive work record and asks for a second chance to demonstrate he is a better officer than this short period of time shows.

The State maintains the extent and seriousness of Helmick's disregard of his core functions as a CO warranted discharge. The misconduct was discovered by chance, and would have continued had management not had reason to review the video surveillance. Helmick's misconduct undoubtedly increased the possibility of serious incidents occurring, such as physical harm to others or self-harm. Management contends the trust relationship it had with Helmick was irreparably broken after he engaged in such extensive falsification of records pertaining to critical safety and security operations.

CONCLUSIONS OF LAW

Helmick filed the instant state employee disciplinary action appeal 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(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.

Helmick's notice of termination indicates he was terminated for failing to conduct security rounds, offender and cell searches as required by policy, work rules, and institutional post orders, but still documenting that they had been completed. Under the record presented, the State has established sufficient proof that Helmick engaged in the misconduct alleged. The DOC's investigation obtained and considered all available evidence regarding the alleged misconduct. Helmick acknowledged he did not conduct the documented rounds and shakedowns he logged as being completed.

The State has also demonstrated Helmick had sufficient notice regarding his duties and applicable work rules at issue in this case. Helmick was a 22-year employee of the DOC. He knew the proper way to conduct rounds and searches, the required frequency, and the corresponding documentation that confirmed their completion. Helmick also understood the critical security and safety purpose behind the requirements pertaining to rounds and searches.

The parties' main point of contention in this case is whether the DOC was required to utilize progressive discipline. The State proceeded directly to termination, contending that Helmick's misconduct was so egregious that discharge was a proportionate and appropriate penalty. Helmick argues termination is too severe for a long-term employee with no like discipline in his

record, particularly considering the serious medical issues and stress he was experiencing during this time period.

Progressive discipline is a system where measures of increasing severity are applied to repeated offenses until the behavior is corrected or it becomes clear that it cannot be corrected. *Nimry and State of Iowa (Dep't of Nat. Res.)*, 08-MA-09, 08-MA-18, at App. 30. The purpose is to correct the unacceptable behavior of an employee and to convey the seriousness of the behavior while affording the employee an opportunity to improve. *Phillips and 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)). Progressive discipline may be inapplicable when the conduct underlying the discipline was a serious offense. *See Phillips and State of Iowa (Dep't of Human Servs.)*, 12-MA-05 at App. 1, 13, 16-18. When determining the appropriate type of discipline given the circumstances, PERB examines the severity and extent of violations, the position of responsibility held by the employee, the employee's prior work record, and whether the employer has developed a lack of trust and confidence in the employee to allow the employee to continue in that position, taking into account the conduct at the basis of the disciplinary action. *Palmer and State of Iowa (Dep't of Corr.)*, 2019 ALJ 102115 at 19 (internal citations omitted).

Upon consideration of the seriousness of Helmick's misconduct, I agree with the State's conclusion that progressive discipline is inapplicable in this situation. While there is no dispute that Helmick's 22-year tenure has been

predominantly satisfactory and positive, this history is not enough to overcome the egregiousness of the misconduct. The situation presents an extensive and intentional neglect of one's most essential and core duties as a correctional officer. Security rounds and shakedowns, which Helmick repeatedly failed to conduct, are critical to the safety and security of staff and the offender population. The failure to abide by these security protocols undoubtedly increased the risk of serious incidents unfolding, such as physical violence, medical issues, and undiscovered contraband. In addition to not performing rounds and shakedowns, Helmick's falsification of documents misled the institution by giving the appearance that the critical safety and security procedures in place were being followed.

The extent of falsification in this instance pales in comparison to the similar disciplines of other employees that are in the record. Those other situations presented isolated incidents or, in the case of the reinstated employee, a case of failing to do ten offender counts in an environment where a senior officer on his shift was routinely engaging in the same misconduct. In Helmick's situation, the number of documented round falsifications during the reviewed period was over 10 times per shift. Just during this approximately one-month period corroborated by video surveillance, Helmick falsified round documentation at least 10 times per shift for the 15 days he worked from April 9 to May 7. Additionally, during the hearing, Helmick acknowledged that he

engaged in the same conduct even prior to the April 9 date for which video surveillance was available.

Helmick has presented mitigating circumstances. First, the stress that Helmick's personal and family situation caused is a circumstance to be considered. Without question, Helmick was dealing with a lot during this time period. I am sympathetic to his situation, as were members of management when he briefly discussed it with them prior to and during the investigation. His acknowledgement of wrongdoing and acceptance of culpability is also a mitigating factor. However, the just cause analysis requires consideration of all the circumstances presented. Helmick had been previously talked to on multiple occasions about the frequency of conducting security rounds and shakedowns. In doing so, management attempted to correct Helmick's deficient performance. Helmick needed to realize he was not meeting expectations at that point. However, Helmick's response to this coaching was not to improve his performance, but instead to falsify the documentation to make it appear he had improved his performance.

Based on the totality of the circumstances presented, I find the DOC's conclusion that it can no longer trust an employee with this extent of violations is reasonable. Helmick was a long-term employee and fully aware of the importance of rounds and shakedowns. His lengthy tenure elevates the seriousness of his misconduct because he was in a position to demonstrate the proper way to perform his duties. When I consider all of the circumstances

presented, I find the DOC reasonably developed a lack of trust and confidence in Helmick as a CO and the DOC was justified in finding progressive discipline to be inapplicable.

For all the reasons stated, the State has demonstrated that Helmick's termination is supported by just cause. Consequently, I propose the following:

ORDER

Helmick's state employee disciplinary action appeal is DISMISSED.

The cost of reporting and of the agency-requested transcript in the amount of \$827.40 is assessed against the Appellant, Robert Helmick, pursuant to Iowa Code subsection 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the State of Iowa in accordance with PERB subrule 621—11.9(3).

This proposed decision and order will become PERB's final agency action on the merits of Helmick's appeal 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 21st day of September, 2020.

/s/ Jasmina Sarajlija
Administrative Law Judge

Electronically filed.
Parties served via eFlex.