STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

JERED L. BRATLAND, Appellant, and STATE OF IOWA (DEPARTMENT OF CORRECTIONS) Appellee.	CASE NO. 102244

DECISION ON REVIEW

This case is before the Public Employment Relations Board (PERB or Board) on Appellee State of Iowa's petition and Appellant's cross petition for review of a proposed decision and order issued by an administrative law judge (ALJ) following an evidentiary hearing on Jered L. Bratland's Iowa Code section 8A.415 State employee disciplinary action appeal. The State alleges Bratland erroneously documented an inmate's property as "discharged" and improperly disposed of the inmate's property and the property belonging to another inmate. Management issued a one-day paper suspension to Bratland as a result.

In his proposed decision issued February 2, 2020, the ALJ concluded the evidence was insufficient to prove Bratland disposed of the two inmates' properties. The ALJ concluded, however, that the State proved Bratland mislabeled the one inmate's property as "discharged" in the Iowa Correctional Offender Network (ICON). The ALJ determined the conduct warranted a written reprimand rather than a one-day suspension

and he ordered a corresponding adjustment reflected in Bratland's personnel file.

Prior to oral arguments on the two petitions, both parties filed briefs outlining their respective arguments. Attorney Anthea Galbraith, for the State, and Jered Bratland, *pro se*, telephonically presented oral arguments to the Board on November 3, 2020. The parties challenge the ALJ's determinations and conclusion regarding Bratland's mislabeling of inmate property and not his conclusions reached on the alleged disposal of inmate property. The State also asserts the cost of reporting and of the agency-requested transcript should be assessed equally against the parties.

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' briefs and oral arguments, we adopt the ALJ's findings of fact with additions and we adopt the ALJ's conclusions with additional grounds for the basis of our decision. We concur with the ALJ and conclude the State did not establish just cause existed to support its imposition of a one-day suspension for Bratland, but just cause existed to support the issuance of a written reprimand to Bratland for his mislabeling of inmate property as

"discharged." We modify the ALJ's order for the assessment of the cost of reporting and of the agency-requested transcript and order two-thirds of the cost assessed to the State and one-third of the cost assessed to Bratland.

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, with the following additions:

1. There was a systemic breakdown in the chain-of-custody and accountability for how inmates' properties were received, inventoried, stored, released, and documented at the Newton Correctional Facility's (NCF) Correctional Release Center (CRC). In addition to several ALJ findings related to this systemic breakdown, there were occasions when several inmates were not supervised and stole property from the receiving and distribution (R & D) property room. Management did not conduct investigations of the incidents and thus, no staff members were disciplined.

2. Sergeant Burke requested one inmate's property from Bratland. The ALJ's findings reflect Bratland explained he had cleaned out a bunch of junk and clutter from the property room and he was "pretty sure [he] threw it away." Bratland described his conversation with Sergeant Burke in part,

> It was more of a "Well, what happened to this property?" And it was a "Well, I hope it didn't get mixed in somehow with the contraband that I was throwing out."

Based on his statements to Sergeant Burke, Bratland agreed "management had an obligation to look into [the matter]" and investigate.

3. Bratland admitted to mislabeling an inmate's property as "discharged" in ICON. He also admitted it was contrary to policy and testified:

> Q: And is that consistent with policy? Even if it was a mistake. Is that consistent with policy, what you did there?
> A: You mean like policy—
> Q: Is it contrary to policy?
> A: --policy dictating that I marked the wrong thing, essentially is what you're saying?
> Q: Right.
> A: That I shouldn't have discharged his property?
> Q: Yes.
> A: Yeah.

4. Bratland was not aware that he mislabeled the inmate property until the investigation was conducted and he received discipline. Additionally, he did not expect or foresee his written reprimand of record to result in more severe discipline regardless of the conduct.

CONCLUSIONS OF LAW

We have carefully considered the parties' arguments in our review of the ALJ's conclusions. The ALJ correctly examined the totality of circumstances to reach his conclusion that the State did not establish just cause existed to support its imposition of a one-day suspension to

Bratland, but just cause existed to support the State's issuance of a written reprimand to Bratland.

In reaching this conclusion, the ALJ determined that the State had failed to establish sufficient proof that Bratland disposed of two inmates' properties. The ALJ determined there was sufficient proof Bratland mislabeled one inmate's property as "discharged" in ICON and the conduct warranted a written reprimand. The parties do not dispute the ALJ's conclusions regarding Bratland's alleged disposal of two inmates' properties. Therefore, the main issue on review is whether just cause existed to support the issuance of a written reprimand for Bratland's mislabeling of the inmate's property as "discharged" in ICON. A second issue is whether the cost of reporting and of the agency-requested transcript should be assessed equally against the parties.

We agree with the ALJ's conclusions as set out in the Appendix A and adopt them as our own, with the following additional discussions and clarifications:

1. At issue is Bratland's mislabeling of an inmate's property as "discharged" on June 21, 2018. Bratland seemingly challenges whether his mislabeling was adequately communicated to him as a reason for discipline and whether there was sufficient proof he violated the policy or work rules by his conduct. Bratland asserts the ALJ only made "generic reference to NCF work rules as far as a policy or post order violation in his ruling." He alleges his mislabeling is not a violation of the policy cited in

the notice of disciplinary action. He maintains the cited policy relates to the packing, storing, and discharging of inmate property and does not address computer entries by staff.

Before addressing Bratland's assertions, we note that Bratland was given forewarning and had knowledge of NCF's rules and expected conduct for the labeling or documentation of inmate property in ICON. On review, Bratland does not contest his knowledge of the rules. Nor was it an issue he raised before the ALJ. However, it is an incidental factor relevant to the thrust of his claims. NCF gave appropriate forewarning of expected conduct when Bratland was formally trained in April 2018, on how to properly document, deliver, and store inmate property. It is rational to assume Bratland had knowledge of the related rules when he mislabeled inmate property in August 2018, not long after his training had occurred.

Bratland seemingly argues his mislabeling was not a stated reason for his discipline and there was insufficient proof that his conduct violated policy. We disagree. The ALJ properly examined these factors and we concur with his determinations. The ALJ followed guiding just cause principles in setting out and analyzing Bratland's conduct and policy violations. The ALJ aptly noted "the presence or absence of just cause must be determined upon the stated reasons in the disciplinary letter alone." *See* proposed decision and order at 15 (citing *Eaves & State (Dep't of Corr.*), 2003-MA-04 at 14).

In his findings of fact, the ALJ outlined the State's disciplinary letter, which establishes that the reasons for discipline were adequately communicated to Bratland. The State referred to Bratland's mislabeling of property as one of the reasons for discipline. The August 27, 2018, letter, provided in relevant part:

> At 7:15am on 6/21/2018, over three hours prior to his leaving, *you documented his personal property as "discharged" in ICON.* When the incarcerated individual received a shock probation on 6/25/2018, . . . the property sergeant contacted you concerning this, you told her that you had thrown the property away.

(Emphasis added). The ALJ followed this with a citation of the work rules allegedly violated as contained in the letter of disciplinary action. Thus, the ALJ correctly set out the State's evidence establishing the reasons for discipline were adequately communicated to Bratland. This included Bratland's mislabeling of the inmate's "personal property as 'discharged' in ICON."

The ALJ was plainly correct in concluding the State had sufficient proof that Bratland mislabeled inmate property. First, Bratland acknowledged marking the property as "discharged" in ICON. Second, Bratland admitted at hearing that his mislabeling violated NCF policy. Based on Bratland's admissions, we disagree further analysis of the policy and its application to his action was required by the ALJ. We place greater weight on Bratland's admissions than any argument he now advances to distinguish nuances of the cited policy to his underlying action. To this end, Bratland received formal training in April 2018, on how to properly

document, deliver, and store inmate property. Therefore, he had knowledge of the employer's rules and expected conduct with respect to "procedures designed to protect the offender's property," which the policy generally references.

Consequently, the ALJ correctly outlined the relevant portions of the disciplinary letter, which communicated the reasons for the discipline to Bratland. The ALJ concluded, as we do, the State had sufficient proof that Bratland violated NCF policy when he mislabeled an inmate's property as "discharged" in ICON. The next issue is what discipline is warranted, if any, for Bratland's conduct.

Both parties challenge the imposition of a written reprimand for Bratland's mislabeling of inmate property in ICON. There are several factors that may be examined in a just cause analysis that are particularly relevant here to the determination of the appropriate discipline: whether progressive discipline was followed or is not applicable under the circumstances; whether there are other mitigating circumstances which would justify a lesser penalty; whether similarly situated employees were afforded the same or different treatment; and whether the punishment imposed is proportionate to the offense.

Bratland alleges there should be no disciplinary action for his clerical error. The State advances several arguments, but focuses mainly on the ALJ's underlying analysis of progressive discipline with respect to the appropriate discipline for Bratland.

The State has misinterpreted the ALJ's application of progressive discipline and determination of the appropriate discipline warranted for Bratland's mislabeling of inmate property. The ALJ did not state or limit the application of progressive discipline to an employee's conduct which involves the same "work rule violation" as the State asserts. Rather, the ALJ looked to some commonality between Bratland's former misconduct and his mislabeling of inmate property at issue.

The ALJ's analysis is supported by the Board cases on review that are cited by the State. An example of this is illustrated in *Wiarda & State (Dept of Corr)*, where the ALJ applied progressive discipline because the conduct was of the same nature as the previously disciplined conduct. 2001-MA-03. In upholding the grievant's termination, the ALJ relied on the grievant's prior commission of similar acts and stated,

> It is the repetitive nature of the infractions which is most troublesome. All of the infractions fall in two areas, security and GED testing. If this had been the first episode where security regulations had been violated, Wiarda might justifiably retain his job.

Id. at App. 17. But for the similarity of offenses, the ALJ would not have upheld the termination.

Another case cited is not applicable to the case at hand where we addressed our exception to progressive discipline for serious or egregious offenses. *See Hoffman & State (Dep't of Transp.)*, 1993-MA-21 (Board determined rude and disrespectful letter to the public from supervisor constituted egregious conduct). We indicated,

> Although we agree with the ALJ that under most circumstances tenets of progressive discipline should be applied, application of these principles depends on the circumstances of the case. Under some circumstances, the offense may be serious enough to justify skipping some of the steps ordinarily imposed in the exercise of progressive discipline, or the offense may be so serious that progressive discipline is inapplicable.

Id. at 26.

We reiterated the principle again and affirmed the ALJ's departure from progressive discipline for serious conduct in *Wilkerson-Moore & State (Dep't of Human Servs.)*, 2018 PERB 10788. In this case, the ALJ determined that because the grievant had misused funds, progressive discipline was inapplicable when the conduct underlying the discipline was a serious offense. *Id*. at App. 20. (ALJ concluded five-day suspension was warranted rather than termination).

Here, Bratland's mislabeling of inmate property was not a erious or egregious offense. In his analysis of progressive discipline, the ALJ looked for commonality or pattern of conduct between Bratland's prior misconduct, which warranted a written reprimand, and his mislabeling conduct at issue. Instead, the ALJ found Bratland's prior misconduct was distinguishable from his mislabeling of inmate property as "discharged." As the ALJ set out, the prior conduct related to Bratland's duties as a Lower Post Officer and differed from his job duties of administering and overseeing the R & D property room. The ALJ placed even greater emphasis on the public safety risk created by Bratland's former conduct,

which differed significantly from Bratland's mislabeling of inmate property that presented no public safety risk.

We agree with the ALJ's contrasting of Bratland's prior conduct when the State made this very same distinction in another case involving the Newton Correctional Facility (NCF). In *Jones & State (Dep't of Corr.)*, the grievant claimed disparate treatment when NCF failed to investigate or discipline another staff member who transported an inmate off grounds without logging the inmate out of ICON. 2020 ALJ 102343 at 18. In its defense, the State distinguished the incident from Jones' conduct because it did not involve the same level of risk to safety and security, as it was a clerical error. *Id.*

In the present case, the ALJ correctly considered, but distinguished Bratland's former conduct and discipline in determining the appropriate discipline for Bratland's mislabeling of inmate property in ICON. The ALJ did not see a pattern of conduct to impose a more severe penalty. In any event, the State places undue emphasis on whether progressive discipline applied and misses the mark on why a written reprimand was warranted. From our interpretation of the ALJ's decision, "whether progressive discipline was followed, or is not applicable under the circumstances" was but one part of this analysis.

As we stated, there are other relevant factors to examine in determining the appropriate discipline. These include whether there are other mitigating circumstances which would justify a lesser penalty;

whether similarly situated employees were afforded the same or different treatment; and whether the punishment imposed is proportionate to the offense. Often in cases, the examination of these factors overlaps.

In this case, there are relevant mitigating circumstances and the treatment of similarly situated employees to consider. NCF had a breakdown of accountability with resulting disparate treatment. We agree with Bratland that clerical errors of this kind have been left unchecked. However, this does not necessarily preclude disciplinary actions under the facts presented. For one, an employer's failure to enforce a policy or rule is not a prohibition to its future enforcement with appropriate notice. As another, Bratland knew his mislabeling was a violation of policy and his own actions, or specifically his statements, led to the investigation. Yet, NCF's systemic breakdown in protocols and its treatment of other similarly situated employees are relevant factors to consider in determining the appropriate penalty for Bratland's mislabeling of inmate property in ICON.

A final factor considered by the ALJ and relevant to our conclusion as well is whether the penalty imposed is proportionate to the offense. It is sometimes difficult to discern the analysis of this factor when it often overlaps the examination of other factors as it did in this case. In the ALJ's analysis, he stated Bratland's mislabeling "did not endanger" the "safety of others," was "relatively minor, inadvertent, and reversible," "not a failure of a core duty," and not "part of a pattern of poor job performance."

The ALJ concluded and we concur the one-day suspension is not a penalty proportionate to the offense of mislabeling inmate property in ICON. The State seemingly acknowledged a lesser penalty may have been forthcoming for just the mislabeling. In oral arguments, the State conceded the one-day suspension was discipline warranted for not only the mislabeling, but also for two incidents of Bratland's alleged disposal of inmate property. When we take all of the facts in consideration, a one-day suspension is an excessive penalty for what was essentially Bratland's clerical error. Considering all relevant factors, the imposition of a written reprimand is a penalty appropriate and proportionate to Bratland's minor offense.

Based on the record, Bratland had knowledge of NCF's rules and expectations for proper labeling or documentation of inmate property in ICON; the State adequately communicated Bratland's mislabeling as one of the reasons for his discipline; and there was sufficient proof Bratland mislabeled the inmate's property in ICON in violation of policy. However, our examination of other relevant factors lead us to conclude that the offense does not warrant a one-day suspension.

After considering the totality of circumstances, we agree with the ALJ that the State failed to establish just cause supported its imposition of a one-day suspension on Bratland for the mislabeling of inmate property in ICON. We agree with the ALJ that just cause supported the State's issuance of a written reprimand to Bratland instead.

2. The final issue raised on appeal is whether the cost of reporting and of the agency-ordered transcript should be assessed against the State as ordered by the ALJ. The State argues the costs should be equally assessed against the parties. Bratland alleges the State has the burden of establishing just cause and should bear all costs associated with court reporting and the agency-requested transcript. We agree with the State in part that the costs should be apportioned.

Iowa Code section 20.6(6) authorizes PERB's appointment of a certified court reporter and the assessment of that cost along with any transcript requested for these proceedings. The relevant provision and corresponding PERB administrative subrule provide:

> **20.5 Public employment relations board.**
> The board shall:
> . . . .
> 6. Appoint a certified shorthand reporter to report state employee grievance and discipline resolution proceedings pursuant to section 8A.415 and fix a reasonable amount of compensation for such service and for any transcript requested by the board, which amounts shall be taxed as other costs.
> . . . .
>
> **621—11.9(8A,20) Costs of certified shorthand reporters and transcripts.**
> 11.9(2) *Taxation as costs.* The cost of reporting and of the agency-requested transcript shall be taxed as costs against the nonprevailing party or parties although the presiding officer, or the board on appeal or review of a proposed decision and order, may apportion such costs in another manner if appropriate under the circumstances.

Iowa Code § 20.5(6); and Iowa Admin. Code r. 621—11.9(2).

According to the provisions, costs are assessed against the non-prevailing party or the presiding officer or board has discretion to apportion the costs. We are more persuaded by the State's assertion that Bratland did not prevail in all respects and should bear a portion of the reporting and transcript costs. However, we disagree that we should assess the costs equally against the parties.

Like the ALJ, we have treated this case as one involving three allegations of employee misconduct, including the two instances of alleged mishandling of inmate property and the one instance of mislabeling of inmate property. With the latter of the three, Bratland did not prevail and should bear the corresponding cost of reporting and of the agency-requested transcript. Therefore, two-thirds of the cost are assessed against the State and one-third of the cost is assessed against Bratland.

Accordingly, we enter the following:

ORDER

The State shall rescind and remove the original and all copies of the August 27, 2018, notification of Jered Bratland's one-day paper suspension, from all personnel files maintained concerning Bratland. The State shall also take all other actions necessary to place Bratland in the position he would now be in had he instead been issued a written reprimand on August 27, 2018.

The cost of reporting and of he agency-requested transcript in the amount of $275.50 are assessed against the State of Iowa, Department of

Corrections, and the amount of $137.75 is assessed against Jered Bratland pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9. Bills of costs will be issued to the State of Iowa and Jered Bratland in accordance with PERB subrule 11.9(3).

This decision constitutes final agency action.

DATED at Des Moines, Iowa, this 30th day of March, 2021.

PUBLIC EMPLOYMENT RELATIONS BOARD

Mary T. Gannon, Board Member

Erik M. Helland, Board Member

Orignal filed EDMS.

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

JERED L. BRATLAND, Appellant, and STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.	CASE NO. 102244

PROPOSED DECISION AND ORDER

The Appellant, Jered L. Bratland, filed a state employee disciplinary action appeal with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 8A.415(2)*(b)* and PERB rule 621—11.2(8A,20), alleging the one-day paper suspension imposed on him by the Iowa Department of Corrections – Newton Correctional Facility on August 27, 2018, was not supported by just cause.

Pursuant to notice, an evidentiary hearing on the merits of the appeal was held before me on June 6, 2019. The hearing was closed to the public in accordance with section 8A.415(2)*(b)*. Bratland represented himself pro se and attorney Jeff Edgar represented the State. Both parties filed post-hearing briefs, the last of which was filed on August 1, 2019.

Based upon the entirety of the record, and having reviewed and considered the parties' briefs, I conclude the State has not established just cause existed to support issuing Bratland a one-day paper suspension.

FINDINGS OF FACT

Background

The Newton Correctional Facility (NCF), part of the Iowa Department of Corrections, is a low and medium security correctional institution located in Jasper County, Iowa, near the City of Newton. NCF is comprised a medium-security unit referred to as NCF-Medium and a minimum-security unit called the Correctional Release Center (CRC).

NCF-Medium and CRC generally operate independently from one another. Each site has its own staff, its own supervisors, and each has its own Receiving and Discharge (R&D) property rooms used to inventory, distribute, and occasionally store inmate property.

Appellant, Jered Bratland, has been employed as a correctional officer for the Iowa Department of Corrections at NCF since May 2005. At all times relevant to the events at issue in this appeal, Bratland worked as a correctional officer in CRC. Although Bratland maintained the rank of correctional officer, on November 3, 2017, NCF assigned Bratland the duties of the CRC R&D Sergeant, making Bratland responsible for overseeing and administering the CRC property room.

Under NCF policy and procedures, it is the CRC R&D sergeant's duty to maintain a continuous inventory of all CRC inmate property on the Iowa Corrections Offender Network (ICON). To maintain this inventory, when inmates first arrive at CRC, the inmates' property is sent to R&D where the R&D sergeant inventories the property and documents it in ICON. If the property complies with

NCF policy, the R&D sergeant issues the property back to the inmates and labels the property "issued" in ICON. When inmates are released from CRC, a correctional officer is supposed to pack and inventory the inmate's property and send it to R&D, where the CRC R&D sergeant performs a final inventory of the property. The R&D sergeant compares the second inventory to the initial inventory to ensure all of the inmate's property is accounted for, and then returns the property to the released inmate. After returning the property, the R&D sergeant labels the property "discharged" in ICON, in effect, closing out the electronic file on the inmate's property to show the property is no longer at the institution.

When an inmate temporarily transfers from the facility, such as on court order, it is the duty of a correctional officer to ensure the inmate's property is packed, inventoried, and placed in R&D. Once R&D receives the property, the R&D sergeant performs a final inventory of the property, labels each item "stored" in ICON—to designate the property is being stored in the CRC property room—and stores the property in the CRC property room until the inmate returns from court.

NCF Policy IS-RO-03 (NCF)[1] creates four different categories of inmate property—personal property, confiscated property, seized property, and contraband—and establishes different rules regarding how and when NCF can

[1] All references to IS-RO-03(NCF) are to the rules that became effective January 2016, which were in effect during the events at issue in this appeal. The updated rules the State submitted into evidence did not become effective until September 2018 (State's Exhibit F), which, as will be discussed below, is after Bratland's alleged misconduct occurred.

dispose of the different types of inmate property. In general, except in few limited circumstances, officers cannot dispose of policy compliant inmate personal property. If an inmate is released from NCF and leaves their property behind, the property may be discarded or donated to charity at the option of the Warden/Superintendent. However, officers are allowed to dispose of "contraband," "seized" and "confiscated" inmate property after an inmate's 30-day deadline to file an appeal of the property's seizure has passed or 30-days after completion of the appeal process, if the appeal was unsuccessful.

Missing Inmate Property

The discipline at issue in this appeal involves the disappearance of two inmates' personal property. Inmates M.R. and H.R. both temporarily transferred out of CRC on court order at different times. When the inmates returned, their property was not in the CRC property room and it was never found. The missing property spawned an investigation that involved interviews of three individuals. In addition, four witnesses testified at hearing, two of whom were interviewed in the course of management's investigation.

In this case, it is necessary to understand the timeline of when M.R. and H.R. arrived and left CRC and the individuals who were in charge of the CRC property room at those times. While the general timeline of events is reasonably clear, there are inconsistencies in the record concerning specific dates. Further, the parties' characterizations of specifically what and how things were said during their interactions differ in a number of respects.

In making the following findings I have attempted to reconcile perceived conflicts in the evidence, which consists of the interviews of individuals collected during management's investigation, testimony elicited at hearing, and documents admitted at hearing. Where the evidence is not reasonably reconciliable, I have noted the discrepancies and credited that which is most reasonable and consistent with other credible evidence. In making these findings, I have 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.

Several important facts concerning inmate M.R.'s property occurred prior to Bratland assuming the duties of the CRC R&D sergeant. Inmate M.R. arrived at CRC on July 2, 2017. At that time, Sergeant Eric Waller was the R&D sergeant in charge of the CRC property room. An ICON entry from that day shows M.R. possessed a pair of white/gray socks. However, no other property belonging to M.R. was documented in ICON at that time. The record is absent evidence that the failure to document the rest of M.R.'s property in ICON resulted in any discipline.

In early-September 2017, while Sergeant Waller was still the CRC R&D sergeant, M.R. temporarily transferred out of CRC on court order. On the day M.R. left for court, an officer told M.R. to lock all of his personal property in his drawer and M.R. complied with the officer's order. According to CRC Post Orders, after M.R. left for court, the officer should have gone to M.R.'s cell, packed all of

M.R.'s personal property, and taken his property to CRC R&D. However, the record is absent evidence showing an officer ever packed and delivered M.R.'s property to the CRC property room. Specifically, M.R.'s property was never documented in ICON nor was it labeled "stored" to designate the property had been packed, inventoried, and stored in the CRC property room. The record is also absent evidence that the failure to document M.R.'s property in ICON resulted in any discipline.

On November 3, 2017, NCF reassigned Waller and assigned Bratland the duties of the CRC R&D Sergeant.[2] However, NCF did not promote Bratland in rank and NCF did not provide Bratland formal training on how to properly document, deliver, and store inmate property until April 2018.

Unbeknownst to Bratland, Waller's predecessor, Sergeant Brenda Edmunds, had made an agreement with the NCF-Medium R&D Sergeant to keep gently used contraband and unclaimed inmate property in the CRC property room because the NCF-Medium property room was full. Edmunds kept the contraband and property to use as a substitute for missing property. When Bratland assumed the CRC R&D duties in November 2017, a large amount of unclaimed and unmarked property and contraband in the form of clothing,

[2] There is disagreement in the record concerning precisely when Waller was reassigned. Waller's predecessor, Sergeant Brenda Edmunds, said Waller was reassigned at the end of August or end of September 2017. However, Bratland testified Waller was reassigned on November 3, 2017, at which point Bratland assumed the duties of the CRC R&D Sergeant. As Bratland's date is specific and he has direct knowledge of when he was assigned the R&D duties, his testimony is more reliable and supports a finding NCF reassigned Waller on November 3, 2017.

tennis shoes, soup bowls, and drinking mugs had accumulated in the CRC property room.

Despite having not yet received formal R&D training, on January 9, 2018, Bratland emailed his supervisor, Larry Lipscomb, to raise concerns about the number of staff who had access to the property room. Bratland wrote:

> Larry, we are getting a lot of traffic in the property room these days as far as staff. I understand that, and am thankful for those that hand out canteen on my day off. With that being said it seems a lot of people seem to be getting access to that room for whatever other reason. This makes me very uneasy because if something goes missing, is misplaced, etc., I am ultimately responsible

The record is absent evidence Bratland's supervisor ever responded to or addressed Bratland's concerns.

On April 4, 2018, Bratland received an email from a correctional officer stating she had found a bag of CRC R&D property in the upper security post with an inmate's name on it. The officer told Bratland when she inventoried the property she discovered an item of property was missing from the bag. The next morning, Bratland emailed his supervisor expressing concern that someone had removed stored inmate property from the CRC property room and that an item of property was missing. The record is absent evidence Bratland's supervisor ever responded to Bratland's concerns.

On April 19, 2018, Bratland was assigned a job outside of the property room as a CRC Lower Post Officer. One of the duties of a Lower Post Officer is to sign out inmates on ICON when they leave the facility to work jobs in the

community outside of CRC. While Bratland was signing out the inmates, he became distracted and failed to scan one of the inmate's I.D.'s, which resulted in ICON not being updated to show the inmate left the facility for work. Due to this error, on April 26, 2018, Bratland's supervisor issued Bratland a written reprimand.

In late spring of 2018,[3] Bratland began cleaning the CRC property room and throwing away the unclaimed inmate property and contraband that had accumulated. Bratland described the CRC property room as having been full of "accumulated junk" and "property of people who had been gone for years and years." Bratland estimated he threw away about "two bales full" of clutter and contraband.

On June 21, 2018, at 10:35 a.m., inmate H.R. temporarily left CRC to go to court. The record shows earlier that same morning, between 7:15 a.m. and 7:27 a.m., Bratland marked the property of five inmates, including H.R.'s property, as "discharged" in ICON.

On June 25, 2018, the court released H.R. from NCF. Shortly after being released, H.R. called the NCF-Medium R&D Sergeant, Lindsey Burke, to request his property. Burke contacted Bratland and asked him to send her H.R.'s property. However, Bratland informed Burke that H.R. did not have any property stored in the CRC property room. Sergeant Burke went on ICON to double check

[3] At the hearing, when asked when he began cleaning out the property room, Bratland stated, "It was in—I just remember it must have been close to summertime...that's as close as I can narrow it down for you." The undersigned interprets Bratland's testimony to mean late spring, presumably the end of May or beginning of June.

the status of H.R.'s property and discovered Bratland had erroneously marked the property as "discharged" when H.R. left for court on June 21, 2018.

On July 10, 2018, inmate M.R. returned to NCF after having been at court for approximately ten-months. Burke called Bratland to instruct him to send M.R.'s property to NCF-Medium.

When Bratland called her back, he told Burke "we have a problem." Burke asked him, "What do you mean we have a problem?" Bratland told her M.R.'s property was not in the property room. He explained he had cleaned out a bunch of junk and clutter from the property room and he was "pretty sure [he] threw it away."[4]

After the call, Burke immediately reported the conversation to her shift captain. Burke then informed the Warden and the Security Director that Bratland told her he was "pretty sure" he had thrown M.R.'s property away and that H.R.'s property was also missing from the CRC property room. Officers searched the CRC property room and surrounding area, but the officers were unable find M.R. or H.R.'s property.

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[4] In her investigatory interview, Burke claimed that Bratland informed her, regarding both H.R. and M.R., that he was "pretty sure" he threw away their property. Bratland acknowledged he might have said this regarding M.R.'s property, but he denies saying it about H.R.'s property. The evidence supports Burke's claim that Bratland said he was "pretty sure" he threw away M.R.'s property. However, it does not support her claim he made the same statement about H.R.'s property. At the hearing, Burke did not testify that Bratland said he was "pretty sure" he threw away H.R.'s property and there is no evidence indicating that, after the call concerning H.R.'s property, Burke notified her superiors, as she immediately did following the call concerning M.R.'s property. For these reasons, I give Bratland's testimony concerning H.R.'s property greater weight.

The Warden assigned Correctional Supervisor Darrell Morris to investigate whether Bratland had thrown away H.R. and M.R.'s property. Morris conducted an investigation from July 12 to August 1, 2018. For his investigation, Morris interviewed Burke, Bratland, and Edmunds. Morris did not review any other documents or interview any other witnesses.

In his interview, Bratland acknowledged he might have told Burke he was "pretty sure" he had thrown M.R.'s property away. However, Bratland explained, "[it was] the only conclusion that I could come up with...the only way I can see it getting thrown away is like in that type of situation" (referring to the property having been accidently mixed with the contraband). Bratland told Morris, "If I had [M.R.'s property], I'd know I have it, cause I, that's just the way I have the room set up" and Bratland told Morris he could not recall ever having seen M.R.'s property.[5] Finally, Bratland explained that property sometimes went missing because "the system [at CRC]...isn't so good for property getting to me," acknowledging officers did not always pack and deliver inmate property to the CRC property room, as post orders require.

Regarding H.R.'s missing property, Bratland acknowledged marking the property as "discharged" on ICON was likely an oversight on his part. However, when asked what he might have done with H.R.'s property if he discharged it, Bratland explained, "Well I would have never received it if I was discharging it...Because I would have assumed that [H.R.] had taken it with him." Bratland

[5] Bratland also told Morris he would not throw away an inmate's property if they were at court. However, Bratland mistakenly believed if an inmate was released from the institution and had not claimed their property in more than a year, he could dispose of the property.

explained, "My best guess is that I thought maybe he had left over my weekend...because I have to come back and then I have to look back through the records to see who had left." Although it is not entirely clear from Bratland's answers, it appears he mistakenly assumed another officer had already inventoried and returned H.R.'s property during Bratland's day off.

Morris also interviewed Sargent Brenda Edmunds to explain how she had run the CRC property room when she was the CRC R&D Sergeant. In addition, Edmunds informed Morris that after she was reassigned, Waller took over as CRC R&D Sergeant and was in the position until the end of August or end of September 2017.

Despite learning Sergeant Waller was likely the CRC R&D Sergeant at the time M.R. transferred to court, Morris chose not to interview Waller.[6] Rather, Morris concluded his investigation finding, "Jered [Bratland] had thrown away property of H.R. and M.R. and none of the property he threw away should have been thrown away because the Warden hadn't ordered it." Morris submitted a written report and documents from his investigation to a supervisory review committee.

The committee reviewed the report, the witness statements, NCF policies, and Bratland's prior discipline and determined Bratland should receive a one-day paper suspension. The committee sent their recommendation, along with the investigative report, to the Warden, who agreed with the recommended one-day paper suspension.

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[6] As discussed in footnote 1, Waller was the CRC R&D Sergeant until November 3, 2017.

On August 27, 2018, Bratland's supervisor provided Bratland a letter advising him was receiving a one-day paper suspension and noting that while the paper suspension does not reduce his pay, seniority, or other benefits, it carries the same weight as if he had been subject to a one-day suspension. The letter continued, in relevant part:

> ...The investigation determined that your conduct violated work rule(s):
>
> IS-RO-03 Incarcerated Individual Personal Property
> U. – Disposition of Personal Property
> 1. – Release from Custody
> Upon release of an incarcerated individual from confinement, all personal property belonging to the incarcerated individual is to be returned to the incarcerated individual along with a final property inventory form...The incarcerated individual must remove all personal property when released from custody. Any property left behind by the incarcerated individual may be discarded or donated to charity, at the option of the warden.
>
> IS-RO-03 (NCF) Offender Personal Property
> I. Temporary Transfers/Storage of Personal Property
> 1. Each institution shall develop procedures designed to protect the offender's property during temporary transfer to hospital, court order, etc...This shall be documented in ICON property by using the Property Inventory Change report. This may involve locking the personal property in the offender's locker or inventory and movement to a secure central storage area and utilizing the Property Storage Label Inventory report.
>
> On 6/21/2018 at 10:35am an incarcerated individual left the Correctional Release Center with a Sioux County Sheriff's Deputy for court. At 7:15am on 6/21/2018, over three hours prior to him leaving, you documented his personal property as "discharged" in ICON. When the incarcerated individual received a shock probation on 6/25/2018, he contacted the NCF property Sergeant by phone and requested his property. When the property sergeant contacted you concerning this, you told her that you had thrown the property

> away. During interview you stated that you were never in possession of the property but may have mistakenly documented it as "discharged" on ICON.
>
> On July 10, 2018 an incarcerated individual who had been at court for approximately 10 months returned to the Correctional Release Center. He contacted the NCF property Sergeant and requested his property. When the Property Sergeant contacted you regarding this, you told her that you had thrown the property away. During interview you stated that you did not know if there was an actual policy explaining the storage of property for incarcerated individuals who are at court for an extended period of time. You stated that the "general rule of thumb" is that property can be thrown away after it has been stored for over one year. Policy clearly states that property may not be discarded without the approval of the Warden.
>
> As a result of this infraction, you are hereby subject to this written notice of alternative discipline in lieu of a suspension without pay....
>
> On previous occasions, you have been disciplined as follows:
>
> 5/26/2018 – Failed to sign out an incarcerated individual on ICON...

On September 26, 2018, following the third-step grievance, the Department of Administrative Services (DAS) Director's designee denied Bratland's grievance concluding the one-day paper suspension was supported by just cause. On September 27, 2018, Bratland filed the present appeal.

CONCLUSIONS OF LAW

Bratland 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.*

A preliminary issue in this case concerns the stated reasons for Bratland's discipline. As required by Iowa Code section 8A.413(19)*(b)*, DAS subrule 11—60.2(1)*(b)* requires the State to provide the employee being disciplined with a written statement of the reasons for the discipline. PERB has long held that the presence or absence of just cause must be determined upon the stated reasons in the disciplinary letter alone. *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.

The reasons for Bratland's discipline contained in the suspension letter are that he violated IS-RO-03(U)(1) and IS-RO-03(NCF)(I)(1) when, on June 21, 2018, Bratland erroneously documented an inmate's property as "discharged" in ICON and later told the NCF Property Sergeant he had thrown the property away. It further states that on July 10, 2018, when contacted about the property of an inmate who had been at court for approximately ten-months, Bratland told the property sergeant he had thrown the property away. Lastly, it states "Policy clearly states that property may not be discarded without approval of the Warden."

Therefore, the existence of just cause for Bratland's suspension must be determined upon these grounds alone (*i.e.*, Bratland's alleged disposal of H.R. and M.R.'s property without the Warden's approval and Bratland's incorrect labeling of H.R.'s property as "discharged" in ICON), rather than upon other reasons suggested in the DAS third-step response or in testimony elicited at hearing.

Even assuming Bratland's knowledge of NCF's work rules and post orders constituted sufficient forewarning or knowledge of the employer's rules and expected conduct, other considerations relevant to a just cause determination warrant the conclusion that the State has not established just cause for Bratland's one-day paper suspension. Each alleged violation contained in the suspension letter will be addressed independently and in succession, beginning

with Bratland's alleged disposal of M.R.'s property, then the alleged disposal of H.R.'s property, and finally the incorrect labeling of H.R.'s property as "discharged" in ICON.

Alleged disposal of M.R.'s property

The State has not provided sufficient proof Bratland failed to securely store M.R.'s property in violation of IS-RO-03(NCF)(I)(1) or disposed of M.R.'s property without the Warden's approval in violation of IS-RO-03(U)(1).

First, there is no evidence that M.R.'s property was stored in the CRC property room when M.R. transferred to court in early-September 2017. Sergeant Waller was in charge of the CRC property room at the time—Bratland took over the property room about two months later. Thus, it was the duty of either the upper post officer charged with packing and delivering M.R.'s property to the CRC property room or Sergeant Waller to document the property's storage. However, neither ever labeled M.R.'s property "stored" in ICON.

Further, Morris did not interview Waller during his investigation nor provide any other evidence with regard to this important aspect of M.R.'s missing property. Thus, aside from Bratland's initial comment to Burke, the State has provided no evidence M.R.'s property was ever stored in the CRC property room.

Although Bratland initially told Burke he was "pretty sure" he threw M.R.'s property away, in his interview, Bratland explained his initial belief that he might have mistakenly thrown the property away was just the only explanation he could think of when Burke called. He further explained he had no recollection of the property and said, "If I had it, I'd know I have it, cause I, that's just...the way

I have the room set up." At the hearing, Bratland testified that he could not remember precisely what he said to Burke, but that he had intended his statement to reflect only one possible explanation of what happened to the property.

I find Bratland's explanation for his statement to Burke credible. It is understandably why Bratland—having recently cleaned out the CRC property room then discovering M.R.'s property was missing—initially concluded that he must have mistakenly thrown M.R.'s property away when he cleaned and told Burke he was "pretty sure" he threw it away. It is also understandable that after having time to process the situation, Bratland realized M.R.'s property might never have been stored in the CRC property room and his theory of what happened to M.R.'s property changed. Under these circumstances, I find Bratland's explanation that his statement to Burke was just an initial assumption, not an admission of guilt, credible.

The burden of establishing just cause, and thus, providing sufficient proof of an employee's guilt, is on the State.[7] In this case, the record shows Bratland was not in charge of the CRC property room when M.R. left for court, Sergeant Waller was not interviewed during the investigation, there are no ICON entries showing M.R.'s property was ever stored in the CRC property room, and Bratland has no recollection of ever having seen M.R.'s property. Further, Bratland credibly explained why his initial statement to Burke was not an admission of

[7] As noted in *Stockbridge & State of Iowa*, in labor relations, the right to substantive due process assumes innocence on the part of an employee until facts prove otherwise. 06-MA-06 at 12.

guilt. Accordingly, as there is no evidence Bratland ever possessed M.R.'s property, the evidence is insufficient to prove Bratland disposed of M.R.'s property in violation of IS-RO-03(U)(1) and IS-RO-03(NCF)(I)(1). As proof of an employee's guilt is a necessary factor to establish just cause, it is unnecessary to address other potentially relevant factors with regard to this alleged violation.

Alleged disposal of H.R.'s property

The State has not provided sufficient proof Bratland failed to securely store H.R.'s property in violation of IS-RO-03(NCF)(I)(1) or disposed of H.R.'s property without the Warden's approval in violation of IS-RO-03(U)(1).

First, although Bratland was performing the duties of the CRC R&D Sergeant when H.R. transferred to court on June 21, 2017, the weight of the evidence suggests H.R.'s property was never delivered to the CRC property room. Bratland testified that he never had H.R.'s property in the CRC property room, which is consistent with the answers he gave during his interview. Specifically, in his interview, Bratland said that H.R.'s name "doesn't even ring a bell," and he told Morris, "Well I would have never received [the property] if I was discharging it...Because I would have assumed that [H.R.] had taken it with him."

Bratland's claim that he never possessed H.R.'s property is supported by inconsistencies in the State's theory concerning how and when Bratland allegedly disposed of H.R.'s property. From arguments presented at hearing and the State's post-hearing brief, it appears the State's argument is that Bratland threw away H.R.'s property when he cleaned out the CRC property room because

Bratland mistakenly mixed H.R.'s property with the other contraband. However, this argument is unpersuasive for two reasons.

First, the record shows Bratland could have possessed H.R.'s property for only four-days—from June 21, when H.R. transferred to court, to June 25, when H.R. was released. Thus, if Bratland possessed H.R.'s property, it is unlikely he would mistake it for years-old contraband, having just received the property within the past four-days. Second, Bratland testified he began cleaning out the contraband in the property room "close to summertime," which presumably means late-May or early-June. However, H.R. did not transfer to court until June 21. Although it is unclear exactly how long it took Bratland to clean the property room, it is likely Bratland had finished cleaning the CRC property room by the time H.R. transferred to court. For these reasons, it is unlikely Bratland mistakenly threw H.R.'s property away while cleaning.

To the extent the State argues in the alternative—that Bratland received H.R.'s property, marked it "discharged," then knowingly threw the property away—the argument is not supported by the evidence.

As discussed in the Findings of Fact, Bratland never told Burke he was "pretty sure" he threw H.R.'s property away and Bratland has consistently maintained that he never possessed H.R.'s property. Bratland's claim is supported by the fact that Bratland received R&D training in April 2018 and he was aware it is against NCF rules to throw away the property of recently released inmates. Moreover, the emails in the record demonstrate Bratland took his job, and in particular, his duty to securely store inmate property, seriously. Based

on this evidence, it is unlikely Bratland received H.R.'s property, marked it "discharged," and then knowingly threw the property away in violation of NCF rules after only four-days. Therefore, because it is unlikely Bratland disposed of H.R.'s property, either intentionally or unintentionally, I conclude the weight of the evidence supports Bratland's claim that he never possessed H.R.'s property.

As the evidence does not show Bratland ever possessed H.R.'s property, the evidence is insufficient to prove Bratland wrongfully disposed of H.R.'s property in violation of IS-RO-03(U)(1) and IS-RO-03(NCF)(I)(1). As proof of an employee's guilt is a necessary factor to establish just cause, it is unnecessary to address other potentially relevant factors with regard to this alleged violation.

Incorrect labeling of H.R.'s property as "discharged" in ICON

The State did not follow the principles of progressive discipline and the one-day paper suspension is not proportionate to the offense. The State has proven, and Bratland has admitted, that at 7:15 a.m. on June 21, 2018, Bratland incorrectly marked H.R.'s property as "discharged" in ICON. Although Bratland admits he made a mistake, he argues the State has not followed progressive discipline because the conduct for which he received his prior written reprimand was unrelated to accidently marking H.R.'s property "discharged" in ICON. Further, he argues a one-day paper suspension is disproportionate to the relatively minor offense. The undersigned agrees with Bratland's arguments.

The concept of progressive discipline is embodied in the disciplinary action rules of the Department of Administrative Services. *See* DAS rule 11—60.2(8A). 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. *See Nimry & State of Iowa (Dep't of Nat. Res.)*, 08-MA-09, 08-MA-18, at App. 30. Progressive discipline is used to encourage employees to take corrective responsibility to follow work rules and employment obligations. *See Stockbridge & State of Iowa (Dep't of Corr.)*, 06-MA-06 at 28. PERB has long recognized that the purpose of employee discipline is to correct an employee's behavior, rather than to punish. *See Wullner & State of Iowa (Dep't of Corr.)*, 87-MA-16 at 4; *see also Bell & State of Iowa (Dep't of Corr.)*, 88-MA-11 at 7).

Although a one-day paper suspension is the next step in progressive discipline after a written reprimand, the purpose of progressive discipline is to apply increasingly severe disciplinary measures to convey to the employee the seriousness of his or her behavior while affording the employee an opportunity to improve. *See 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 order for an employee to have an actual opportunity to correct his or her behavior before receiving an increased level of discipline, there must be some commonality or nexus between an employee's past misconduct and a subsequent offense. Otherwise, the employee is precluded the opportunity to correct their behavior before receiving heightened discipline.

As discussed in the Findings of Fact, on April 19, 2018, Bratland received a written reprimand while working as a Lower Post Officer because Bratland was distracted and forgot to scan an inmate's badge when the inmate left the facility

to go work in the community. This error resulted in ICON not showing that the inmate had left NCF for work.

Although Bratland's prior conduct for which he received a written reprimand also involved ICON, his prior conduct is otherwise unrelated to the mistake at issue in this case. First, the written reprimand related to Bratland's duties as a Lower Post Officer, the reprimand had nothing to do with Bratland's duties administering and overseeing the CRC property room as he was performing a completely different job at the time. Thus, the job duties addressed by the written reprimand are distinct from the job duties at issue in this case.

Further, the magnitude of the error for which Bratland received the written reprimand was significantly greater than the error at issue in this case. Specifically, the duty of scanning inmates' badges when inmates leave the facility is likely a core responsibility of a Lower Post Officer because it allows NCF to keep track of when inmates are outside of the facility. Failure of a Lower Post Officer to scan an inmate's badge could create a risk to public safety were the error were not caught and the inmate tried to escape.

Here, the error at issue did not endanger Bratland's safety or the safety of others, the mistake was relatively minor, inadvertent, and reversible. The mistake was not a failure of a core duty; rather, Bratland's mistake was the type of human error that occasionally happens when performing a complex job. Finally, there is no evidence in the record suggesting Bratland's mistake was part of a pattern of poor job performance. As Bratland's ICON error is unrelated to the conduct for which he received the written reprimand, I conclude the State

did not comply with the tenets of progressive discipline and that the one-day paper suspension is not proportionate to the offense.

Although Bratland's error was unintentional, it nonetheless resulted from his inattentiveness, contributed to confusion about H.R.'s property, and was a violation of NCF work rules. While the error does not constitute just cause for a one-day suspension, consistent with the tenets of progressive discipline, I conclude just cause existed for the issuance of a written reprimand.

Having reached this conclusion, it is unnecessary to examine and discuss other issues raised by the parties or other factors which may be relevant to the just cause analysis concerning this alleged violation. I consequently propose the following:

ORDER

The State shall rescind and remove the original and all copies of the August 27, 2018, notification of Jered Bratland's one-day paper suspension, as well as any other documentation of the suspension, from all personnel files maintained concerning Bratland. The State shall also take all other actions necessary to place Bratland in the position he would now be in had he instead been issued a written reprimand on August 27, 2018.

The costs of reporting and of the agency-requested transcript in the amount of $413.25 are assessed against the Appellee, State of Iowa (Department of Corrections), pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the Appellee in accordance with PERB subrule 11.9(3).

The proposed decision and order will become PERB's final agency action on the merits of Bratland'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 13th day of February, 2020.

Patrick B. Thomas
Administrative Law Judge

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