

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

EDDIE JONES, Appellant,)	CASE NO. 102343
and)	PROPOSED DECISION AND ORDER
STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.)	

Appellant, Eddie Jones, filed this state employee grievance appeal with the Public Employment Relations Board (PERB) pursuant to Iowa Code section 8A.415(1)(b) following a third-step response by the Iowa Department of Administrative Services (DAS) denying his grievance. Jones contends the State failed to substantially comply with DAS rule 11—60.2. Jones claims the State lacked just cause, as required by DAS rule 11—60.2, to issue him a written reprimand.

An evidentiary hearing was held on December 12, 2019. Adam Swihart represented Jones. Anthea Galbraith represented the State, Iowa Department of Corrections (DOC). The parties submitted post-hearing briefs on January 29, 2020.

Based upon the entirety of the record, and having reviewed and considered the parties' arguments, I conclude Jones has not established the State failed to substantially comply with DAS rule 11—60.2. Jones has not demonstrated the State lacked just cause to issue him a written reprimand for his conduct on April 24, 2019.

FINDINGS OF FACT

Eddie Jones has worked for the State for approximately twenty-two years. At the times relevant to this appeal, he worked for the DOC at the Newton Correctional Facility (NCF) as a correctional officer. In this role, Jones conducts rounds, performs counts of the offenders, and ensures the overall security of the facility.

In his twenty-plus years with the State, Jones has not been disciplined. In the evaluation period immediately prior to the incident at issue, the State determined that Jones' performance exceeded expectations.

At the Correctional Release Center (CRC), where Jones was working the day of the incident in question, there are six different assignments for correctional officers. These assignments include the lower CRC control officer (lower officer) and the activities officer (AO). The CRC officers' duties include monitoring offenders as the offenders leave and return to the facility. Offenders may leave the facility for work release. Offenders on work release are assigned to a work crew at a specified work site location.

All staff at NCF, regardless of assigned position, are responsible for maintaining the security and orderly operations of the NCF and generally responsible for keeping an accurate account of all offender movement. Jones states that his job is essentially "custody and control, so the biggest portion of that is my count." He describes the count as "the primary duty" of an officer in this setting.

Keeping an accurate count of offenders leaving and returning to the facility is critical as the failure to do so leads to the possibility of an offender escaping. If an inmate leaves the facility, and the count does not reflect that, not only could that lead to escape, but also the facility would not have knowledge of that escape.

Jones provides that keeping an accurate count of inmates is “generally the responsibility of anyone that works in corrections.” However, the officer’s assignment for the shift dictates the officer’s responsibilities as it relates to the count. The DOC tasks officers in certain assignments with performing the formal count and entering the information into the Iowa Correctional Offenders Network (ICON), which is the statewide database for the correctional facilities to keep reports and notes on offenders.

At the CRC, when preparing for offenders on work release to leave the facility, the facility pages the offenders by announcing the work site location and commands the offenders in that work crew to report to R&D. When the offenders arrive at R&D the AO pats them down, and the offender goes through a Radiscan machine. The lower officer scans the offenders’ IDs, verifies the offenders are scheduled to leave the facility against the off-grounds sheet that lists the offenders assigned to each particular work site, and counts the offenders to ensure the correct number of offenders leave the facility. The offenders pick up a meal and board the vehicle to depart for the work site. Generally, the NCF does not transport the inmates, but instead the work site facility provides the transportation and the staff during the inmates’ work release.

The lower officer serves a vital function in the departure process as indicated in the lower officer's "Post Order."¹ The lower officer is responsible for recording "incoming and outgoing off-grounds workers in ICON under Institutional Ins/Outs." The lower officer is also responsible for logging pat downs, Radiscan screenings, and strip searches on ICON, and checking ICON Institutional Ins/Outs against the off-grounds sheets. The lower officer may, but does not always, follow up with the employee from the work site to verify the count of offenders leaving grounds prior to the work crew departing for the assigned work site.

The post orders for the AO position do not contain explicit instructions regarding counts, and do not assign the AO responsibility for logging offenders' movements. The AO position does not have access to the off-grounds sheet and does not know which offenders are scheduled to leave the facility.

On April 24, 2019, Jones was assigned to work at CRC as the AO. The AO relieves other officers during breaks. The AO also assists the lower officer in that person's duties as offenders go off grounds. Generally, the AO assists by conducting pat searches of the offenders leaving the facility. Officer Renfro was assigned as lower officer that morning.

Jones was in the hallway patting down the inmates as they were called to leave the facility. After the pat down, the inmates would pass through the Radiscan machine. The lower officer had a desk or station on the opposite side

¹ The Post Orders are a set of rules that govern an officer's actions in a certain position. The NCF communicates the post orders to staff via the intranet website. NCF reminds staff annually to review the post orders.

of the Radiscan machine from Jones. Jones was unable to see Renfro from where he was located. After the inmates passed through the Radiscan machine, Renfro verified their identities against the off-grounds sheet to confirm the inmates that were set to leave the facility.

Prior to the work crews arriving, Jones and Renfro discussed whether to focus on the Maintenance work crew or the Camp Dodge work crew first. In that conversation, Renfro told Jones the Camp Dodge work crew had five inmates that morning.² The off-grounds sheet indicated that only five inmates were to leave for Camp Dodge that day, and the sixth inmate that is normally on that work crew, RL, had a hold for counseling. The officers decided to address the Camp Dodge work crew first.

When patting down the individuals for the Camp Dodge work crew, Jones counted six inmates. Although Jones did not have access to the off-grounds sheets and was not assigned to count and verify the identities of the inmates, the record is clear, he knew only five individuals were scheduled to depart for Camp Dodge. Jones noticed the discrepancy.

After discovering this discrepancy, Jones positioned himself where he could see Renfro, who was sitting at a desk. Renfro had Officer Vanmanen physically counting the inmates because she had problems with her foot that morning. Jones told Renfro that he thought she said there were only five on the

² Although Renfro does not discuss or corroborate this particular conversation in her investigatory interview, Renfro stated that she said, to no one specific, that there were five people on the Camp Dodge work crew. Regardless of the particular nature of the conversation, it is clear from the record that Jones knew five inmates were on the Camp Dodge work crew that morning.

crew, but he counted six. Renfro did not respond, and Jones did not think anything of it. Jones did not confirm that Renfro heard him. Jones mentioned in his investigatory interview that it is not uncommon for the off-grounds sheet to be incorrect.

When questioned, Renfro claims she did not hear Jones tell her that he patted down six offenders for the Camp Dodge work crew that morning. Six inmates departed for Camp Dodge that morning. Renfro logged five of the six Camp Dodge work crew members out on the ICON system at 7:00 a.m. Renfro logged the sixth inmate, RL, out on the ICON system at 9:47 a.m. after she learned he had left the facility as well.

After patting down the Camp Dodge work crew, Jones immediately patted down the Maintenance work crew, which had approximately twenty people. The Camp Dodge work crew was gone by the time Jones finished patting down the maintenance work crew.

After the work crew departed, around 8:30 a.m., Sergeant Newell with Camp Dodge called the control center at the CRC. Jones answered the call as he was relieving the assigned control center officer, Vanmanen, during Vanmanen's break. Sergeant Newell explained that he had six people when only five inmates were assigned to Camp Dodge that day. Sergeant Newell believed that based on the paperwork, inmate RL was to have remained at NCF for a meeting with his

counselor. Jones immediately followed up with other NCF staff, and the staff at NCF determined inmate RL could remain at Camp Dodge.³

Renfro, the assigned lower officer that day and the officer tasked with recording incoming and outgoing off-grounds workers in ICON, called Camp Dodge and spoke with Sergeant Newell around 9:00 or 9:30 that same morning. She called Camp Dodge, to double check the count of offenders on the Camp Dodge work crew that day. Although others in the facility knew, no one informed Renfro prior to her phone call to Camp Dodge that six inmates, rather than five, had departed for Camp Dodge that day. After verifying with Sergeant Newell, and talking to Jones, Renfro then logged inmate RL out on the ICON system.

After logging RL out on ICON, Renfro emailed Bill Lehman, a correctional supervisor, to let him know that RL went off-grounds to work at Camp Dodge and was not logged out with the other offenders. She stated that Camp Dodge and Jones verified that RL left the facility.

Lehman forwarded this on to Scott Miller, the facility's security director, and Justin Ringler. Lehman asked, "How does someone who is on hold go off grounds and then not get checked out on ICON?????" Miller responded to inquire whether the facility should investigate and appears to include Kris Weitzell, the interim deputy director, and Jeremy Larson in the email chain. Weitzell asked, "Yes, who checked the crew out???? Are they not looking at the schedule of who is to go to work and who is not?" Miller responded, "Looks like Eddie Jones. I

³ It is unclear from the record who made the determination of whether RL could stay at Camp Dodge or needed to be transported back to the facility.

would have to say no, he didn't look at the schedule or completely missed this guy being on hold. The OG [off-ground] sheet is clearly marked with HOLD in bold next to this guys name."

Miller then forwarded this email chain to Darrell Morris to investigate. Morris investigated Jones, Renfro, and Vanmanen, as those were the correctional officers involved that morning. When beginning the investigation, Morris looked at the ICON database and the sign out sheets.

Morris, along with Justin Ringler, began conducting investigatory interviews that morning. At minimum, Morris interviewed Sergeant Newell, Valerie Renfro, and Eddie Jones.⁴ Morris and Ringler interviewed Renfro prior to interviewing Jones.

At the start of Jones' interview, he was provided a summary of the complaint. It stated "Sent [RL] off grounds to Camp Dodge when he was on hold. Didn't sign out on ICON, Caught during count."

Jones had a migraine during the course of the interview, and he explained that to Morris and Ringler. Jones told them that he recalled everything, but did not feel well. Ringler and Morris paused to give Jones a break, before proceeding. Several times throughout the interview, it appears Jones struggled to remember a name or place and at one point Jones even said, "I'm spacy" and "my brain is just fried, I'm sorry." The interview lasted approximately twenty-five minutes.

During the investigatory interview, Jones stated he had a conversation with Renfro and he knew at the time of the pat down that only five people were

⁴ It is unknown from this record whether anyone else was interviewed related to this matter.

to leave the facility for Camp Dodge. However, because of his position as AO, he did not have access to the off-grounds sheet. He also stated that he attempted to alert Renfro to the situation, but she did not respond and Jones admitted that it was possible Renfro did not hear him.

After Morris completed the investigation, a committee at NCF discussed and recommended discipline. The disciplinary committee varies but usually includes the deputy warden, Jeff Panknen, and Darrell Morris. Security Director Miller was also involved in the disciplinary committee for this matter. Morris, as the investigator, was present to provide information, but did not offer an opinion. The committee evaluates using the just cause analysis when determining the level of discipline. The warden has the final decision on the discipline.

In Jones' situation, the committee recommended a written reprimand. The committee chose this level of discipline because it is the lowest level of discipline and was consistent with past instances. The committee recommended the written reprimand because this was an escape risk since an offender left the facility and was not accounted for in the facility's records. The committee took into account Jones' lack of disciplinary history and his length of service. Miller, a member of this committee stated that although Jones was not responsible for logging offenders in and out of ICON that does not absolve Jones of responsibility, as Jones is a correctional officer with senior experience. Miller believed that Jones should have stopped the process to correct the situation.

As a result of the April 24 incident, the State issued written reprimands to Jones, Renfro, and Vanmanen.⁵

The State issued Jones a written reprimand on May 7, 2019. The reprimand stated that on April 24, 2019, Jones was pat searching off grounds workers prior to their departure. The letter stated the lower officer informed Jones that five inmates were to leave for Camp Dodge, and Jones noticed six. The letter also acknowledged that Jones told the lower officer there were six inmates, but when she did not respond, Jones stated he did not think anything of it and when questioned later Jones admitted he was not sure whether the lower officer heard him. The letter then provides that six incarcerated individuals were allowed to leave grounds when only five were scheduled to go. In the letter, the State provides that Jones' actions are in violation of Post Order #6 that provides "Keep an accurate account of all offender movement."

Jones submitted his grievance at Step 1 on May 8, 2019, and received an answer the following day. Jones filed his grievance at Step 2 on May 10, 2019, and the grievance was answered May 15. Jones filed his grievance with DAS on May 21, and DAS issued the third step response on June 18, denying the grievance.

Jones argues the State did not have just cause to issue him a written reprimand. Jones also contends he was not treated similarly to other similarly situated employees. Less than a month after he was disciplined, a similar

⁵ It is unknown on this record the precise nature of the alleged work rule violations for the other two officers that were disciplined because of this incident.

incident occurred, and the facility did not conduct an investigation and the staff member at issue was not disciplined. In that instance, a staff member transported an inmate off grounds without logging that person out on ICON. The State contends that on May 21, a trip officer transported an inmate that was scheduled to go off grounds, but failed to fulfill the clerical requirements of logging the person out of the facility. The State maintains the May 21 incident is different from what occurred on April 24, as the security risk was far lower. The State argues the May 21 incident was merely a clerical failure as the inmate was scheduled to leave and other staff persons knew that.

Jones filed the instant appeal with PERB on July 15, 2019.

CONCLUSIONS OF LAW

Jones filed this appeal pursuant to Iowa Code section 8A.415(1), which states, in part:

1. *Grievances*

a. An employee except an employee covered by a collective bargaining agreement which provides otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty days following receipt of the third step grievance.

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. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department. Decisions by

the public employment relations board constitute final agency action.

Pursuant to Iowa Code section 8A.415(1), PERB's decision "shall be based upon a standard of substantial compliance with this subchapter [subchapter IV of chapter 8A] and the rules of the department [of administrative services]." For an employee to prevail in a grievance appeal before PERB under this statutory standard, the employee must establish the State failed to substantially comply with Iowa Code chapter 8A subchapter IV or DAS rules. *Stratton and State (Dep't of Human Servs.)*, 93-MA-13 at 8 (citing a previous version of the statute). Under this statutory framework, the grievant, in this case Jones, bears the burden to establish the State failed to substantially comply with the cited statute or rule. *Studer and State (Dep't of Human Servs.)*, 98-MA-12 at 9.

Jones claims the State did not substantially comply with DAS rule 11—60.2 because there was not just cause to support the issuance of a written reprimand. The relevant DAS rule provides:

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.

Pursuant to the rule, just cause must exist to support the disciplinary action taken, a written reprimand. In the absence of a definition of just cause, PERB considers the totality of circumstances and rejects an inflexible application of fixed elements in its determination of whether just cause exists. Examining just cause requires an examination on a case-by-case basis. *Hunsaker and State*

of Iowa (*Dep't of Emp't Servs.*), 90-MA-13 at 40. While there is no fixed test, some factors that may be relevant include:

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. The Board has also considered how similarly situated employees have been treated. *Kuhn and State of Iowa (Comm'n of Veterans Affairs)*, 04-MA-04 at 42.

PERB has determined the presence or absence of just cause rests on the reasons stated in the disciplinary letter. *Eaves and State of Iowa (Dep't of Corr.)*, 03-MA-04 at 14. In order to establish just cause, the State must demonstrate the employee is guilty of violating the work rule, policy, or agreement cited in the termination letter. *Gleiser and State of Iowa (Dep't of Transp.)*, 09-MA-01 at 17–18, 21.

The State adequately communicated its reasons for disciplining Jones in the discipline letter. In the letter, the State detailed Jones' actions on April 24, 2019. The letter provided that Jones' actions were a violation of the following post order:

Cell House: CRC AO Post Orders Effective Date: July 2018
6. Keep an accurate account of all offender movement.

Jones argues that his actions do not constitute a violation of this rule, or alternatively, his actions do not necessitate discipline even if violative of the rule. Jones states that as he was not assigned to count the offenders departing from the facility, log the offenders out in the ICON system, or scan and verify the identities of the offenders departing, his actions should not amount to a rule violation that requires discipline. Jones argues that just as he would not be in violation of this rule for an inconsistency with an inmate count in Unit A while working in Unit B, he cannot be in violation of the rule under the circumstances of April 24.

The State claims that all correctional officers have a general duty of safety and security as indicated by the general rule for all positions in the post order to “Keep an accurate account of all offender movement.” The State argues the lack of a specific duty to count or track the offenders’ departure does not absolve Jones of responsibility in this matter.

Jones described his position as a correctional officer as “custody and control.” The DOC assigns correctional officers at NCF specific roles with varying duties, but the general duty of “custody and control” remains. Jones, as a correctional officer with senior experience understood the priority of safety and security and the necessity of an accurate count. Jones unsuccessfully attempted to correct the inaccuracy that arose on April 24 because he understood his role as a correctional officer. Jones, however, failed to ensure the inaccuracy was corrected.

Unlike the lower officer, the State did not require Jones to count the inmates leaving, verify inmates leaving, or log the departures that morning. However, the general rules of NCF always require Jones, whatever assignment he may have on a given day, to ensure safety by keeping account of offender movement.

The record reflects that Jones failed in that duty on April 24. Jones realized that five inmates were scheduled to leave for Camp Dodge and six inmates were lining up to depart. Because Jones recognized this dangerous situation, he attempted to alert the lower officer to the issue. Jones failed to follow through on his duty to ensure custody and control by keeping an accurate account of offender movement. He failed to cure the perceived inaccuracy with the lower officer or anyone else in the facility prior to the time of the offenders' departure for Camp Dodge. Jones has not demonstrated that he fulfilled the cited post order's requirements.

Jones has also failed to show the State's investigation of the April 24 incident was unfair or insufficient. The email directing Morris to commence the investigation and the summary of the incident presented to Jones at his interview suggest the State believed Jones had a specific duty to count and record offenders' movement on April 24. Based on the disciplinary letter and the testimony presented, it appears the State rectified this misconception in the course of the investigation. Morris testified that he gathered facts throughout the course of the investigation that led him to investigate other staff members beyond Jones for this incident. Additionally, the State did not discipline Jones for failing

to follow specific protocol or failing to enter data into the ICON system. The State's discipline letter reflected Jones' actions as stated in his interview. At the conclusion of the investigation and at the time of discipline, the State knew that Jones did not have the specific responsibility to count, record, or verify the identity of the offenders on April 24. The State disciplined Jones for failing in his general duty to keep an accurate account of all offender movement.

Jones has also not demonstrated the State's investigation was either unfair or insufficient due to his condition on the date of the interview. On April 24, Jones had a migraine. Jones told the investigators that at several points during the interview. The investigators did pause the interview, but then resumed. The record is devoid of evidence that indicates either Jones or the investigators believed that Jones was unable to continue due to his condition. Further, Morris interviewed Jones on April 24, but the State did not discipline Jones until May 7. Jones presumably could have followed up with Morris between the time of his interview and the discipline had he wanted to add to or clarify his statement. Jones has failed to demonstrate that his condition resulted in an unfair or insufficient investigation.

Jones has also failed to establish that his discipline was not proportionate to the offense given the nature of the offense, his years of service, his employment record, and other mitigating circumstances. Despite the serious nature of the incident, the State used progressive discipline when issuing Jones a written

reprimand. A written reprimand is the lowest form of discipline.⁶ The State reviewed Jones' employment history and lack of disciplinary record in determining to issue him a written reprimand.

Although there are mitigating factors in this case, I cannot find the State lacked just cause in its determination to issue Jones a written reprimand. The record reflects Jones had a migraine the day of the incident, Jones is a long-term employee with no disciplinary history, and Jones did attempt to alert the lower officer about the issue. Although mitigating factors exist, correctional officers are responsible for the custody and control of the offenders. Jones knew there was a problem, and disregarded a potentially dangerous situation. Jones has not established the State lacked just cause by issuing him the lowest form of discipline.

Jones also argues just cause does not exist for the reprimand as shown by the State's failure to treat him the same as similarly situated employees. The State argues Jones was treated the same as the other employees involved in the incident at issue. Jones, Renfro, and Vanmanen were all involved in the April 24 incident, and the State issued written reprimands to all three individuals.

⁶ Jones argues the discipline is actually more severe than simply a written reprimand. Jones contends that a written reprimand stays in his personnel file for a year and can form the basis for additional discipline in the future. Jones also asserts the written reprimand may go in his evaluation, which would remain in his file forever. Jones adds that he has heard a written reprimand may lead to an employee's loss of bid rights on jobs for six months. Additionally, Jones has heard that if the written reprimand goes on his evaluation, and results in an evaluation in which he does not meet expectations, he loses bid rights for one year. While Jones' allegations may be true, Jones' contentions are speculative at this time. Thus, the potential issue with Jones' evaluation and loss of bid rights is not properly before me at this time.

Jones bases his equal treatment argument on an incident that occurred less than a month after he received a written reprimand. In the May 21 scenario, the State failed to discipline or investigate a staff member that transported an inmate off grounds without logging the inmate out on ICON. The State contends the incident on May 21 did not involve the same level of risk to safety and security, as it was merely a clerical failure of the staff member to log an inmate out on ICON.

Although Jones' responsibility in the April 24 incident is not equal to that of the lower officer on April 24, the situation is more similar than the described May 21 incident. The May 21 incident did not involve the same potential danger as that inmate was scheduled to leave the facility and others in the facility knew the whereabouts of the inmate. Jones failed to prove the May 21 situation was anything more than a clerical oversight. When evaluating similar circumstances, I find the circumstances of the other correctional officers involved in the April 24 incident to be more similar than the circumstances that occurred on May 21. As such, Jones has not shown the State failed to treat him the same as similarly situated employees.

Jones argues, and I agree, the State experienced breakdowns and protocol failures at several levels on April 24 when an inmate departed for Camp Dodge without the knowledge of the NCF. Jones did not have a specific duty to count offenders, verify offenders' identities, or otherwise process the offenders in the departure to the work release site. Nonetheless, as a correctional officer working

in this environment, Jones always has a responsibility to maintain safety and security as demonstrated with the post order at issue and Jones' own testimony.

Jones has failed to demonstrate the State lacked just cause to issue him a written reprimand for his conduct on April 24. Thus, Jones has failed to demonstrate the State did not substantially comply with DAS rule 11—60.2.

I consequently propose the following:

ORDER

Jones' state employee grievance appeal is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$425.25 are assessed against the Appellant, Eddie Jones, pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the Appellant in accordance with PERB subrule 621—11.9(3).

The proposed decision and order will become PERB's final agency action on the merits of Jones' appeal pursuant to PERB rule 621—11.7 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 merits.

DATED at Des Moines, Iowa this 20th day of February, 2020.

/s/ Amber DeSmet

Administrative Law Judge

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