

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

GAVIN HALTERMAN, Appellant,)	CASE NO. 102374
and)	PROPOSED DECISION AND ORDER
STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.)	

Appellant, Gavin Halterman, filed a state employee disciplinary action appeal with the Public Employment Relations Board (“PERB”) pursuant to Iowa Code section 8A.415(2)(b) and PERB rule 621—11.2. Halterman appeals the third-step response of the director of the Iowa Department of Administrative Services (DAS) denying his appeal of his suspension. Halterman alleges that just cause does not support his suspension. The State denies that Halterman’s suspension was not supported by just cause. After a review of the record, I conclude the State has shown just cause to issue the one-day suspension.

1. Findings of Fact

Halterman works as a correctional officer for the Iowa Department of Corrections (DOC) at the Iowa State Penitentiary (ISP) in Fort Madison. Halterman works on the day shifts and goes on transports multiple times a week. At the time of the incident at issue, Halterman had worked at ISP for approximately nine months. Early in his employment he acknowledged receipt of the Iowa Department of Corrections General Rules of Employee Conduct.

1.1. June 2, 2019, Incident

The incident at issue occurred the morning of June 2, 2019. Halterman and fellow correctional officer David Rashid transported offender, JH, from the hospital in Iowa City back to ISP. Rashid had worked at ISP for approximately 16 years as of 2019. Rashid worked as the “irons officer” on this transport, meaning he dealt with the offender’s restraints, drove the vehicle, and stayed by the offender. Halterman worked as the “weapons officer” during the transport. He could not be within the offender’s reach during the transport because he had weapons on his person.

Offender JH required an armed escort. JH is in his mid-50s, and is a wheelchair-bound offender. JH is housed in the assistance with daily living (ADL) wing of ISP. JH needs assistance with the orientation of the ISP facility, filling out forms, showering, setting up his breakfast tray, and other daily activities. ISP’s health services staff describe JH as a poor historian as his memory is not always accurate.

JH’s overall health is poor to average. JH can stand and walk only short distances, meaning a couple of feet. He also has a history of seizures.

On June 1, 2019, the health services staff at ISP directed that JH be transported to a hospital in Iowa City. Rashid and Halterman did not transport JH to Iowa City. The doctors at the hospital in Iowa City released JH on June 2.

Once Rashid and Halterman received notice from the doctor that JH could leave, they escorted JH to a handicapped van. Rashid pushed JH’s wheelchair into the back of the van so JH was facing forward close to the Plexiglas that separated the back and front of the van. Rashid secured all four points of the wheelchair. Rashid could not find the seatbelt to secure JH into the wheelchair. Rashid asked

Halterman whether he could see how to secure JH. Halterman approached the van, keeping his weapon outside the van, and confirmed that he could not locate the seatbelts either. At the time, neither Rashid nor Halterman were trained on how to secure a wheelchair into the van or how to secure the offender in the wheelchair while transporting the offender.

Rashid and Halterman closed the back of the van. As Rashid closed the side door of the van, JH asked for a puke bag in case he got sick on the ride. Rashid retrieved a bag for JH.

During the transport from Iowa City to ISP, Rashid drove and Halterman sat in the passenger seat. On the way to ISP, JH dropped the puke bag multiple times and Rashid and Halterman gave JH the directive not to bend over. Rashid and Halterman knew JH's actions created a security risk as JH could be trying to loosen his irons or restraints.

At approximately 8:30 a.m., around ten miles from ISP, Rashid approached an intersection at a moderate speed and turned left onto Highway 103 towards West Point. At the same time, JH leaned over, possibly to retrieve his puke bag. Rashid and Halterman heard a thump. Rashid pulled the van to the side of the road. Halterman and Rashid got out of the van and Rashid opened the side door of the van.

Rashid and Halterman saw JH on the ground in the back of the van. Rashid helped JH back into his wheelchair. Rashid checked and did not see that JH had any injuries. Halterman observed from a distance. He asked JH multiple times, "Are you all right?" or "Are you hurting?" The first few times, JH said he was fine. Then on the fourth or fifth time Halterman asked, JH said he felt like he had a bruise on

his leg. Halterman also asked JH if he was dizzy or if he had hit his head, and JH said he had not. Halterman did not see any blood and could see no noticeable injury. Halterman does not believe that JH lost consciousness. Neither Rashid nor Halterman reported to the shift captain or anyone else at ISP during the transport that they stopped the van or that JH fell out of the wheelchair.

After getting JH back into the wheelchair, Rashid and Halterman proceeded with the transport back to ISP. Upon arrival at ISP, Rashid went to the stockade where they were processed and where Halterman disarmed by putting the weapons in a lockbox. Then Rashid drove the van into the garage for receiving and discharge (R&D). Rashid and Halterman got out of the vehicle. Rashid removed JH from the van and wheeled him into R&D. Correctional Officer Nick Scott relieved Halterman of the duty to transport JH. Neither Rashid nor Halterman told Scott about stopping on the side of the road or about JH falling out of the wheelchair.

Scott took JH into a side room and started changing his clothes. JH's nose started to bleed. Rashid got paper towels for JH and to wipe up the drops of blood on the floor. An offender, GH, also helped clean up the room, and noticed very little blood on the floor.

After being relieved of his duty to transport JH, Halterman returned to the stockade. He obtained his gear, including his weapons, and filled the van up. Halterman parked the van. Halterman then proceeded to master control where he unarmed all his things and his gear. The shift captain would have been near this master control area.

Halterman did not report the incident with JH to his shift captain or anyone else. He assumed Rashid, being the senior officer and the irons officer that stayed

with JH longer and saw some of the health services staff, would report the incident. Halterman did not ask Rashid about whether he was going to report the incident.

Later that morning while bathing JH, an ADL aide, who happened to be an offender, noticed that JH had injuries. The ADL aide contacted Nurse Fedler. Fedler documented JH's report that he was thrown from his wheelchair in the van. The health services staff did not hear about the incident from either Halterman or Rashid.

Captain Benda served as the shift captain the morning of June 2. Benda did not hear about the incident with offender JH from Halterman or Rashid. Benda believes he heard it from RN Fedler. Benda updated the critical incident report on June 2 around 10:30 a.m. to record that during transport JH leaned forward when the van turned and he fell out of his wheelchair causing abrasions to both knees and a bloody nose.

1.2 Events after June 2

The nursing services director, Tasha Whalen saw Benda's critical incident report. She did not see nursing documentation in the record so she followed up with JH when she returned to work on Monday June 3. A health policy requires a DOC member to fill out a form any time an offender is involved in an accident. A DOC member must fill out the form so the health services staff can follow up on an injury and treat the injury appropriately. Either the witness to the accident or the person to whom the accident is reported fills out the form. If the form is not completed, the patient or offender may have serious health repercussions from the lack of appropriate treatment. Neither Rashid nor Halterman nor any command staff filled out this form.

After ISP management found out about the incident, ISP management directed Halterman and Rashid to fill out an incident report. John Fedler, the warden of security testified Halterman and Rashid should have completed this form prior to the end of the shift on June 2, the day the incident occurred. Halterman completed and signed his witness statement on June 11, 2019.

On June 3, ISP management also directed Captain Birdsell to coach and counsel Halterman and Rashid about using the seat belt to secure an offender in the van during transport. Birdsell told Halterman he would be further trained on how to secure the wheelchair and secure the person in the wheelchair so no further incident would occur. Rashid also stated he was coached on calling ISP management for directives on how to secure an inmate if problems arise. ISP management coached and counseled Halterman on June 16.

After June 2, JH made a phone call to his sister and told her about falling out of his wheelchair during transport and mentioned filing a lawsuit because of it. His sister said she would look into the incident. On June 5, JH's sister contacted Whalen and they spoke about the June 2 incident. Whalen included JH in that conversation so she could clear up any inconsistencies. During the call, JH said he did not want anyone fired, but again asked his sister about getting a lawyer. JH also spoke of the pain he had. JH claimed he lost consciousness when his head hit the Plexiglas. He also stated that his handcuffs came off when he fell, but he put them back on before Halterman or Rashid could see.

After the phone call Whalen spoke to Deputy Warden Tripp and housing manager Ensminger to figure out how to proceed. They determined she should take pictures of JH's injuries. The pictures show superficial abrasions to JH's right knee

and shin. The pictures also show a couple of lacerations to the left knee and shin area. The pictures show that JH had a very small superficial abrasion on his head and some bruising on his head. JH also had a blood blister on one of his toes, but the blister had scabbed over. JH claimed all the injuries were the result of his trip from the hospital to ISP on June 2. Whalen agreed the injuries were consistent with a person falling out of a wheelchair.

1.3 Investigation

John Fedler, the warden of security at ISP at the time of the incident, ordered an investigation into the June 2 incident with JH. Fedler was not involved in the investigation. Randy VanWye, an investigator for DOC, conducted the investigation.

VanWye began the investigation on June 5 and concluded the investigation on June 17. VanWye interviewed JH, Rashid, Halterman, Scott, Birdsell and offender GH. VanWye also reviewed security videos from the facility.

VanWye conducted the investigation to determine how and why JH fell out of his wheelchair, if JH received any injuries when he fell, and what Rashid and Halterman did in response. During interviews with Halterman and Rashid, VanWye discussed the fact that JH was not secured to the wheelchair using a seatbelt, but noted Halterman and Rashid were coached and counseled about the use of seat belts.

VanWye interviewed Halterman on June 17. Halterman had a union representative present. VanWye asked general questions about the June 2 incident and allowed Halterman to provide an account of the incident. VanWye did not ask any specific questions about whether Halterman reported that JH fell out of the wheelchair and that Rashid and Halterman had to pull the van over.

VanWye did ask both Rashid and Scott about whether JH's fall was reported and determined that neither Rashid nor Halterman told anyone in the health services staff.

VanWye issued the investigation report on July 10, 2019. The investigative report included facts surrounding the June 2 incident and listed actions or omissions by Halterman, Rashid, and Scott.

VanWye did not determine whether a policy violation occurred in his investigation, and the investigation report reached no such conclusions. VanWye instead listed the facts he found relevant and policies that may be at issue. VanWye was not involved in the determination of discipline.

1.4 Discipline

Upon receiving and reviewing the investigation report, ISP management, including Fedler, and most likely the deputy warden and the warden, talked about the investigation report. In this case, ISP management determined Halterman failed to report that JH fell out of his wheelchair during the transport, Rashid had to pull over, and JH was injured. ISP management determined Halterman violated DOC policies regarding reporting an accident of this type. ISP management determined that regardless of the assigned tasks during the transport both Rashid and Halterman had an obligation to report pulling the van over and JH's fall. ISP management determined the initial training for correctional officers that Halterman and Rashid would receive would include training on reporting.

ISP management decided that a one-day suspension was appropriate for Halterman's policy violations. ISP management stated a one-day suspension was appropriate given Halterman's negligence of failing to report. ISP management also

found Halterman's failure to report and thus the failure to have timely documentation about the incident serious due to the potential security risk of pulling an armed escort vehicle over on the side of the road, the risk to the health of JH, and the potential for a lawsuit. ISP determined just cause existed to issue a one-day suspension to Halterman for the June 2 incident with JH. ISP management also issued a one-day suspension to Rashid for the June 2 incident.

ISP management issued Halterman a one-day suspension on July 23, 2019. In the suspension letter, ISP stated the investigation "determined that [Halterman] did not report that Offender [JH] was injured during a transport back to ISP from UIHC." In the suspension letter, ISP management stated Halterman violated the following rules and policies:

- Iowa DOC Policy AD-PR-11, General Rules of Conduct, C. Code of Conduct #2: Requiring employees to comply with work rules.
- Iowa DOC Policy AD-PR-11, General Rules of Conduct, C. Code of Conduct #3: Expecting employees to be familiar with their job description, essential functions, performance standards and job duties.
- Iowa DOC Policy AD-PR-11, General Rules of Conduct, E. Personal Ethics #1: Requiring employees to conduct themselves in a professional manner that maintains respect for the institution.
- Iowa DOC Policy AD-PR-11, General Rules of Conduct, E. Personal Ethics #4: Requiring employees to obey all policies of the Iowa DOC.
- Iowa DOC Policy IO-SC-12 Escorted Trips
- Iowa DOC Policy IO-SC-19 Restraints
- Iowa DOC Health Services Policy
- State of Iowa Employee Handbook.

Halterman acknowledged receipt of the suspension letter on August 5, 2019.

Halterman filed a grievance with DAS in early August, contending the State lacked just cause to issue him a suspension. DAS issued its third step response on September 9, 2019, denying the grievance. Halterman appealed DAS's denial of his grievance to PERB on October 8, 2019.

2. Summary of Arguments and Issue

Halterman claims he did not violate all the rules listed in the suspension letter. Halterman claims the timing of the investigation was off as ISP already knew the accident occurred and generally what happened as shown by the coaching and counseling that occurred prior to Halterman's investigatory interview. Halterman argues the State should be estopped from disciplining him as the State already disciplined him for this June 2 incident when Birdsell coached and counseled him. Halterman contends that even if discipline was appropriate, he should receive a less severe penalty. Halterman argues he should receive a lesser discipline than Rashid as Rashid was responsible for JH's restraints. Halterman also contends coaching and counseling would have corrected his behavior.

The State argues it had just cause to issue the one-day suspension. The State claims Halterman knew he had a duty to report the accident with JH, violated the rules, and a one-day suspension was appropriate given the egregious misconduct.

The issue in this case is whether the State had just cause to issue Halterman a one-day suspension. Specifically, the question is did the State demonstrate that Halterman violated the rules, that the investigation was sufficient and fair, and that a one-day suspension was appropriate given the circumstances.

3. Conclusions of Law and Analysis

Halterman filed this appeal pursuant to Iowa Code section 8A.415(2), which states:

2. Discipline Resolution

a. A merit system employee . . . who is discharged, suspended, demoted, or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass steps one and two of

the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

b. If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board . . . If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies.

DAS rules provide specific discipline measures and procedures for disciplining employees. Those rules are as follows:

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 of the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

Iowa Administrative Rule 11—60.2(8A). *See also* Iowa Administrative Code 11—60.2(1) (discussing suspension procedures).

The State bears the burden of establishing that just cause supports the discipline imposed. *Stein and State of Iowa (Iowa Workforce Development)*, 2020 PERB 102304 at 16. The term “just cause” when used in section 8A.415(2) and in administrative rule is undefined. *Stockbridge and State of Iowa (Dep't of Corr.)*,

06-MA-06 at 21 (internal citations omitted). Determination of whether management has just cause to discipline an employee requires case-by-case analysis. *Id.* at 20.

When determining the existence of just cause, PERB examines the totality of the circumstances and rejects “a mechanical, inflexible application of fixed elements.” *Stein*, 2020 PERB 102304 at 15. Although just cause requires examination on a case-by-case basis, the Board has declared the following factors may be relevant to the just cause determination:

While there is no fixed test to be applied, examples of some of the types of factors which may be relevant to a just cause determination, depending on the circumstances, include, but are not limited to: whether the employee has been given forewarning or has knowledge of the employer’s rules and expected conduct; whether a sufficient and fair investigation was conducted by the employer; whether reasons for the discipline were adequately communicated to the employee; whether sufficient evidence or proof of the employee’s guilt of the offense is established; whether progressive discipline was followed, or not applicable under the circumstances; whether the punishment imposed is proportionate to the offense; whether the employee’s employment record, including years of service, performance, and disciplinary record, have been given due consideration; and whether there are other mitigating circumstances which would justify a lesser penalty.

Hoffmann and State of Iowa (Dep’t of Transp.), 93-MA-21 at 23; see *Stein*, 2020 PERB 102304 at 15–16. The Board also considers how other similarly situated employees have been treated. *Stein*, 2020 PEB 102304 at 16.

Iowa Code section 8A.413(19)(b) and DAS rule require the State to provide the employee being disciplined with a written statement of the reasons for the discipline. See *Krieger and State of Iowa (Dep’t of Transp.)*, 2020 PERB 102243 at 6; *Hunsaker and State of Iowa (Dep’t of Emp’t Servs.)*, 90-MA-13 at 46, n.27.

PERB has determined the presence or absence of just cause rests on the reasons stated in the disciplinary letter alone. *Krieger*, 2020 PERB 102243 at 6. 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.

3.1 Proof of guilt

The State has shown Halterman violated some of the policies and rules at issue in the suspension letter. In the suspension letter, the State details Halterman's actions that formed the basis for the suspension. The letter provides that Halterman "did not report that Offender [JH] was injured during a transport back to ISP from UIHC." The suspension letter then goes on to list many different DOC policies and rules, only some of which directly apply to Halterman's actions on June 2.

In the suspension letter ISP states Halterman violated four different rules in DOC Policy AD-PR-11 regarding the code of conduct and personal ethics for employees. The letter also generally provides that Halterman violated the State of Iowa employee handbook without citing any particular provision. The State has not argued or shown any direct violation of these rules or policies. As the State has not argued a direct violation of these policies, Halterman would only have violated these policies indirectly if he failed to follow a different DOC policy or rule.

In the suspension letter, ISP also contends Halterman violated Iowa DOC Policy IO-SC-19 regarding restraints. This policy is not relevant and should not have been listed in the suspension letter. The State has failed to demonstrate that Halterman had any responsibility for placing restraints on the offender on June 2 since he served as the weapons officer. Further, the State specifically argues it did

not discipline Halterman for any failure to use seat belts to secure JH to the wheelchair. As the State is not arguing that Halterman had any duty regarding restraints, this cited rule violation is not applicable.

The State also contends in the discipline letter that Halterman violated Iowa DOC Policy IO-SC-12 regarding escorted trips. This rule states in pertinent part:

7. General Escort

k.2. Emergency Vehicle Stops

(a) If it is necessary to make an emergency stop, such as a vehicle breakdown, medical emergency, etc., transporting staff shall use state radio, MACH/TRACS or cellular phone to contact law enforcement for assistance as well as the Shift Supervisor.”

....

(e) Any unusual circumstances shall be reported immediately to the Shift Supervisor as outline above.”

During an armed escort on June 2, Rashid and Halterman pulled to the side of the road. JH had fallen out of his wheelchair and needed assistance. Halterman failed to report to his shift supervisor that he and Rashid stopped the vehicle on the side of the road or that JH fell out of his wheelchair. Halterman knew JH may be injured as he asked him repeatedly and JH did tell him he felt his legs were bruised. Halterman knew the accident should have been reported and failed to do so. Although Halterman believed Rashid, being the more experienced correctional officer, would report, he did not verify this with Rashid. Halterman did not fill out an incident report, did not call ISP at the time of the accident, did not report the accident upon arriving back to the facility, and did not verify that Rashid would report the accident. The record demonstrates that both Halterman and Rashid were responsible for reporting the events on June 2 to the shift supervisor, but neither of

them reported it. The State has shown Halterman violated the DOC's escorted trips policy.

In the discipline letter, the State claims Halterman violated the Iowa DOC Health Services Policy. That policy says Form HSF-618J needs to be completed by a DOC staff member that witnessed an accident, or a DOC staff member that took the report of the accident. The record demonstrates this type of report needs to be completed in a timely manner.

Halterman did not fill out the form or report the accident to anyone that would fill out such health services form. Halterman did not verify that Rashid was going to fill out the form or report the accident to someone that would fill out such health services form. The State has shown Halterman violated the health services policy by failing to complete the necessary health services accident form in a timely manner himself and failing to report the accident so the form could be completed in a timely manner.

Although many of the rules the State cited in the suspension letter were irrelevant or not directly applicable to the June 2 incident, the State demonstrated Halterman violated the Escorted Trips policy and the Health Services policy when he failed to report the June 2 transport incident and alternatively failed to ensure that Rashid reported the incident.

3.2 Sufficient and fair investigation

3.2A. Sufficiency of investigation

The State has shown the DOC conducted a sufficient and fair investigation. VanWye interviewed all three of the employees, Halterman, Rashid, and Scott, that knew or may have some knowledge of what occurred during the armed escort of JH

on June 2. VanWye interviewed JH, a direct witness to the incident. VanWye interviewed Birdsell as he had coached and counseled Halterman and Rashid about the seat belt issue that occurred prior to leaving the hospital in Iowa City. VanWye confirmed that was the extent of the coaching and counseling. VanWye also interviewed an inmate that helped clean up the blood on the floor from JH's nosebleed that occurred on his return to ISP on June 2. VanWye interviewed the people that had direct knowledge of the incident of the accident on the road during the armed transport.

During his investigatory interview, VanWye asked Halterman to describe what occurred during the transport on June 2. Although VanWye did not ask Halterman about reporting that JH fell out of his wheelchair and that Rashid and Halterman stopped the van on the side of the road, VanWye did ask Rashid about it. VanWye also asked Scott about whether Rashid or Halterman had told him that JH had fallen and they had to pull over during the transport.

VanWye investigated the incident rather than investigating a potential policy violation. Because of that, VanWye asked about the seat belt issue that occurred prior to leaving ISP, the events of the transport, and the events upon returning to ISP. VanWye did not focus on Halterman and Rashid's duty to report JH's fall or the duty to report pulling the van over. Even though those facts were not the focus of the investigation, VanWye did find out pertinent information about those facts.

Although the investigation could have been more robust, the State has demonstrated the investigation was sufficient.

3.2B *Fairness of investigation*

Halterman argues the investigation was unfair because it occurred after he Birdsell coached and counseled him for the events that occurred on June 2. Halterman claims the State decided he was guilty, disciplined him by coaching and counseling him and then proceeded to conduct an investigation and issue a one-day suspension.

The record is clear that Captain Birdsell coached and counseled Halterman on June 16, the day before Halterman's investigatory interview. Halterman acknowledged that Birdsell coached and counseled him regarding using seat belts when transporting offenders. Birdsell told Halterman he would be trained on how to properly secure a wheelchair bound offender into the van.

Halterman's contention that the investigation is unfair due to the coaching and counseling fails for two reasons. First, the State coached and counseled Halterman and then issued a one-day suspension to Halterman for different actions or different conduct. The discipline letter clearly cites that Halterman's conduct in failing to report led to the one-day suspension. The coaching and counseling was merely about securing an offender into the vehicle properly. These are two different actions. Though both actions occurred during the same transport, Halterman's conduct at issue is different in the coaching and counseling versus the investigation and discipline. The State did not coach and counsel Halterman for a certain action and then conduct an investigation and discipline him for the same conduct. The investigation and eventual discipline delved into Halterman's conduct during and after the transport whereas the coaching and counseling dealt with Halterman's conduct before the transport started. I cannot infer the State decided Halterman

was guilty of failing to report the incident that took place during the transport simply because Birdsell coached and counseled Halterman prior to the conclusion of an investigation about other actions that occurred the same day.

Second, coaching and counseling is not discipline. See Iowa Administrative Code 11—60.2(8A). Since the coaching and counseling was not discipline, Halterman was not disciplined twice for the same conduct. I cannot conclude the investigation was unfair simply because coaching and counseling occurred prior to the conclusion of the investigation. Coaching and counseling could be done without a determination of whether the employee had violated a policy or rule.

I conclude the State has established the investigation was sufficient and fair. During the investigation, the three witnesses to the accident, Halterman, Rashid, and JH were interviewed. Halterman was given the opportunity to discuss the events of June 2. The coaching and counseling that occurred prior to the conclusion of the investigation does not negate the fairness of the investigation or lead to an inference of unfairness. The State has established the investigation was sufficient and fair.

3.3 Level of discipline imposed

3.3A Disparate treatment

Halterman argues that he and Rashid should not have received the same discipline. Halterman claims he should receive a less severe discipline than Rashid should because Rashid was responsible for securing JH into the vehicle and failed to do so properly.

The State contends Rashid and Halterman were given the same discipline because they both were responsible for reporting that they pulled over on the side

of the road during an armed escort, and the offender fell out of his wheelchair during the transport.

The record does not contain enough evidence to find that Halterman was treated disparately than other employees in similar situations. Rashid and Halterman were both responsible to report the incident and neither of them did. They were subsequently given one-day suspensions. The record does not contain evidence that Rashid was also disciplined for failing to properly secure JH in the vehicle. Thus, I cannot conclude that Halterman should have been given a lesser discipline than Rashid.

I conclude there is inadequate evidence the State treated Halterman disparately from other employees in similar circumstances.

3.3B Progressive discipline

The State did not follow progressive discipline in this case as the DOC did not issue the lowest level of discipline in this case. Halterman contends the one-day suspension is too severe as coaching and counseling would have corrected his behavior, which is the purpose of progressive discipline. I conclude the State established just cause in issuing the one-day suspension given the circumstances of the case.

Progressive discipline is a system where measures of increasing severity are applied to repeated offenses until the behavior is corrected or it becomes clear that it cannot be corrected. *Nimry and State of Iowa (Dep't of Nat. Res.)*, 08-MA-09, 08-MA-18, at App. 30. The purpose of progressive discipline is to correct an employee's behavior, rather than merely to punish the employee. *Stein and State of Iowa (Iowa Workforce Dev.)*, 2020 PERB 102304. Progressive discipline

addresses employee's behavior over time through escalating penalties. When using progressive discipline, the discipline imposed should correct the unacceptable behavior of an employee and convey the seriousness of the behavior while still affording the employee an opportunity to improve. *Phillips and State of Iowa (Dep't of Human Servs.)*, 12-MA-05 at App. 16 (citing Norman Brand, *Discipline and Discharge in Arbitration* at 57 (BNA Books 1998)). Progressive discipline may be inapplicable when the conduct underlying the discipline was a serious offense. *See Phillips and State of Iowa (Dep't of Human Servs.)*, 12-MA-05 at App. 1, 13, 16-18. When determining the appropriate discipline and use of progressive discipline, PERB considers the circumstances of the case. *Hoffmann and State of Iowa (Dep't of Transp.)*, 93-MA-21, at 26.

Although the State did not provide the lowest level of discipline, which would be a written reprimand, the State did not skip multiple steps in the progressive discipline ladder. After discussing the facts, the State found a one-day suspension appropriate given the circumstances. I agree.

Halterman failed to report pulling over on the side of the road during an armed transport and failed to report that an offender fell out of a wheelchair while the vehicle was in motion during the transport. Halterman's failure to report is serious and could have had serious consequences. An armed escort vehicle on the side of the road creates a security risk for the correctional officers as well as the people in the surrounding area.

Additionally, Halterman's failure to report JH's fall from the wheelchair created a serious health risk for JH. Halterman asked JH if he hit his head and

JH said no. Although JH said no, Halterman knew it was a possibility that JH had a head injury. Further, JH told him that he believed he had bruises on his legs. Halterman had knowledge that JH could have medical issues and failed to report that to medical staff. Without this report, medical staff would not know what treatment JH may need, or that he needed treatment at all. JH could have had serious health issues due to Halterman's failure to report that JH fell out of the wheelchair while the vehicle was in motion.

Halterman created a security risk for failing to report the vehicle had pulled over and created a serious health risk for JH by failing to report that JH had fallen during the transport. Due to the severity of the circumstances, I conclude forgoing the first step of progressive discipline and proceeding to issue a one-day suspension is appropriate.

The State has established just cause to issue Halterman a one-day suspension.

ORDER

Halterman's state employee merit appeal is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$690.20 are assessed against the Appellant, Gavin Halterman, 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 Halterman'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 merits.

DATED at Des Moines, Iowa this 4th day of November, 2021.

/s/ Amber DeSmet

Administrative Law Judge

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