

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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| GARY WEAVER, Appellant, |) | |
| |) | |
| and |) | CASE NO. 102386 |
| |) | |
| STATE OF IOWA (DEPARTMENT OF CORRECTIONS), |) | |
| Appellee. |) | |

PROPOSED DECISION AND ORDER

The Appellant, Gary Weaver, 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. Weaver asserts that the Iowa Department of Corrections—Fort Dodge Correctional Facility did not have just cause to terminate his employment on August 28, 2019, for his alleged violations of work rules and policy.

Pursuant to notice, an evidentiary hearing on the merits of the appeal was held before the undersigned administrative law judge on November 24, 2020. The hearing was closed to the public in accordance with section 8A.415(2)(b). Anthea Hoth represented the State and Matthew Butler and Melissa Speed represented Weaver. Both parties filed post-hearing briefs on February 5, 2021.

Based upon the entirety of the record, and having reviewed and considered the parties' briefs, I conclude the State has established just cause existed to support its termination of Weaver's employment.

FINDINGS OF FACT

Background

The Fort Dodge Correctional Facility (FDCF), part of the Iowa Department of Corrections (IDOC), is a medium-security men's correctional institution housing approximately 1,400 incarcerated individuals located in Fort Dodge, Iowa. Gary Weaver began employment at FDCF on June 1, 2007. Throughout his tenure, Weaver worked as a Correctional Officer, but also served as a member of FDCF's CERT team and as a Firearms Instructor.

The primary duty of a Correctional Officer is to maintain a safe and secure institutional environment for offenders and staff. This responsibility includes ensuring compliance with FDCF rules and security procedures, taking appropriate action to correct disruptive behavior, and demonstrating prosocial modeling to the offenders. The record shows Weaver received copies of DOC's work rules, policies and procedures and he received annual training on the duties and expectations of his position.

Weaver's two most recent annual performance reviews, covering the periods of July 2017—July 2018, and July 2018—July 2019, were submitted into evidence. The records show that while Weaver met his overall performance expectations, in each review, Weaver failed to meet expectations for one of his performance goals. In 2017-2018, Weaver did not meet expectations in Safety and Security Operations due to his failure to perform pat or cell searches and in 2018-2019, Weaver failed to meet expectations in Professional Characteristics.

Although Weaver was a predominantly satisfactory employee, prior to his termination, Weaver was the recipient of other workplace discipline. In June 2015, Weaver received a one-day suspension for an unaccounted gun left inside a van brought onto FDCF grounds. In May 2019, Weaver received a five-day paper suspension and final warning for violation of IDOC Work Rule AD-PR-11.

The suspension notice stated, in relevant part:

This letter is to serve as a Five-Day Paper Suspension and a Final Warning...This action is being taken as a result of your violation of this Department's work rules regarding Employee Conduct (Iowa D.O.C. Policy AD-PR-11), as outlined below.

On May 12, 2019, you were viewed at the Grove Unit officers' desk looking at your computer with an Incarcerated Individual (I/I). This I/I should've been locked down. He was let out of his cell at approximately 10:48 p.m., until approximately 12:35 a.m., when he was locked back down. During your investigatory interview on May 20, 2019, you stated you had received an e-mail from a co-worker requesting you to check on this I/I as he appeared depressed. You admitted you had the I/I come to the control center desk, and the two of you looked at guns on the computer monitor. Video evidence shows the I/I was at the control center desk for one hour and forty-five minutes.

Your actions are a serious violation of the Department's rules regarding Employee Conduct (AD-PR-11), and could've put the security of the rest of the unit in jeopardy. This type of behavior will not be tolerated. Further incidents of this nature will result in more severe disciplinary action being taken, up to and including discharge.

The termination at issue in this appeal arose from Weaver's interactions with three inmates while working the night shift on FDCF's Boone Unit. The Boone Unit houses offenders transitioning from disciplinary detention back into the general offender population. The unit consists of two wings: the disciplinary detention/segregation wing and the privilege-level 1 wing. When inmates commit

serious rule violations, FDCF places the inmates in disciplinary segregation. After inmates complete disciplinary segregation, FDCF moves the inmates to the privilege-level 1 wing, where the inmates obtain more on-unit privileges but remain segregated from the general inmate population.

In the center of Boone Unit is a secured room known as the control center. The control center runs all of Boone unit's operations and, pursuant to post orders, "Only staff assigned to or having official institutional business [are] allowed in the Control Center." The control center has bulletproof glass windows looking out onto each wing, secured doors, and two approximately two-foot wide, four-inch tall pass-through slots used to pass items from inside the control center to officers on each wing. Inside the control center are desks, computers, and a variety of items used by officers on the unit such as writing utensils, keys, radios, batteries, pepper spray, leg irons, handcuffs, padlocks, bandages, and inmates' medications.

During day shifts, four officers staff the Boone Unit, with one officer stationed on each wing, another in the control center, and a final officer who travels back-and-forth as needed. However, during the night shift, only three officers staff the unit, with one officer on each wing and one in the control center.

Because there is reduced staff on night shifts, when officers remove inmates from their cells to perform cell searches, the officer assigned to the control center is responsible for watching and supervising the inmates until the search is completed. To assist the control center officer, before conducting the search, the wing officers notify the officers stationed in FDCF's Master Control

Center so that the officers in Master Control can use Boone Unit's surveillance cameras to help observe the inmates.

Events giving rise to Weaver's termination

On July 27, 2019, Weaver was working the Boone Unit night shift with Officers Shawn Miller and Hilary Jones. Weaver staffed the control center and Officers Miller and Jones were stationed on each wing.

Shortly before 3:00 A.M., Officer Miller observed two privilege-level 1 inmates tattooing each other in their cell. FDCF's rules prohibit tattooing and Miller was required to search the inmates' cell for related contraband. Miller radioed Officer Jones to come to the cell-front to assist and then informed Master Control Officers Todd Oleson and Josh Stone of the search. Oleson and Stone accessed Boone Unit's surveillance cameras and watched the inmates for the duration of the search.

When Jones arrived at the cell front, the officers removed inmates D.F., J.M., and T.B. from their cell and instructed them to go to the common area outside the control center. When the inmates arrived in the common area, they walked up to the control center and began conversing with Weaver. While they were talking, Weaver tossed a pen into the control center pass-through and J.M. took the pen and slid it into his shorts.

A few minutes later, Officers Miller and Jones walked through the common area on their way to conduct the 0300 count. When Miller and Jones entered, the inmates left the pass-through and sat down at the tables. However, as soon as Miller and Jones left, D.F. returned to the control center pass-through and

continued talking to Weaver. While they were talking, D.F. reached through the pass-through multiple times and tried to grab a padlock from a shelf above the pass-through. Weaver watched while D.F. attempted to get the padlock.

After pacing around for a few minutes, J.M. joined D.F. at the control center, stuck his entire arm through the pass-through, and pulled out a small rectangular object. J.M. then again reached through the pass-through and pulled down a paper menu from the control center window.

Around this time, Officers Stone and Oleson called the shift supervisor, Captain Dave Andersen, and told him the offenders were “all over the place, they were reaching into the bubble and doing strange things that weren’t normal.” Officer Stone asked Captain Andersen to pull up the Boone Unit camera to see for himself what was going on, which Anderson did.

After J.M. pulled down the menu, Weaver gave each of the inmates a small candy bar and continued talking with the inmates until receiving a call on the control center phone. While Weaver was on the phone, J.M. reached through the pass-through, pulled out an object, turned around and put the object down his shorts. Seeing this, Andersen called Officer Miller and instructed him to strip search J.M. before sending J.M. back to his cell.

Several minutes later, while still talking to Weaver, D.F. reached through the pass-through and pulled out two ceramic snowman salt and pepper shakers. D.F. took the shakers to the table, showed them to T.B., and then pretended to smash the shakers together before giving them back to Weaver.

After retrieving the salt and pepper shakers, Weaver gestured toward the server area behind the control center and J.M. walked back to the server area and returned carrying two enclosed trays of food. T.B. and D.F. each took some food and ate while pacing around the common area. J.M. then threw away the remaining food and returned the trays to the server area.

At approximately 3:23 A.M., Officer Miller returned to the common area, grabbed a set of gloves, and took J.M. into a separate room to be strip-searched. When interviewed after the incident, Miller said he found a handful of Band-Aids and a pen in J.M.'s shorts. After searching J.M., Miller took the contraband to the control center and sent the inmates back to their cell.

Concerned by what he had observed, Captain Andersen extracted and saved the surveillance footage and sent it to the Security Director, Tony Comp, and the Deputy Warden, Don Harris. Harris reviewed the footage later that morning and then met with the Warden to discuss the incident. The Warden determined an investigation was necessary and assigned Harris and Comp to investigate the incident.

Harris and Comp began their investigation on July 27, 2019, by reviewing the surveillance footage, creating a timeline of events, and determining the individuals involved. On August 8, 2019, FDCF placed Weaver on administrative leave with pay pending the completion of the investigation.

On August 12, 2019, Harris and Comp conducted an investigatory interview with Weaver. Correctional Officer Jim Hanson was present as Weaver's

peer representative. Before questioning Weaver, Harris provided Weaver a copy of his Officer Bill of Rights and a summary of the complaint.

After asking Weaver for his general recollections of the incident, Harris played Weaver the surveillance footage and asked Weaver to explain his actions at various points in the video. While watching the video, Weaver acknowledged that both D.F. and J.M. had reached through the pass-through multiple times, that D.F. had initially tried to grab a padlock, and that he had given J.M. a pen, which J.M. put in his shorts. Further, Weaver speculated that the rectangular object J.M. removed from the control center and placed in his shorts was a large bandage and Weaver acknowledged that he told the inmates they could take a dinner from the server area behind the control center.

When asked why he allowed the inmates to engage in this conduct, Weaver told Harris that he was initially amused seeing how far into the control center the inmates could reach and he admitted he should have stopped the conduct sooner. Weaver explained that he allowed the inmates get away with this conduct because he was familiar with them and “[knew] they [were] just joking around and we were all laughing...” Finally, when asked what he would have done had it been different inmates, Weaver stated:

I probably would have stopped them if I'd known, you know. I wouldn't let people reach into the bubble.

I know the guys are harmless and just talking and probably slight further abuse of it is [to] fight boredom in the middle of the night so probably just uh, I don't know why, but I wouldn't just let somebody I didn't know do that.

After Weaver's interview, Harris and Comp interviewed Officers Miller, Oleson, Stone and Captain Andersen. Each provided their recollection of events from that morning, which were generally consistent with the findings discussed on pages five through seven above. When the investigators asked Captain Andersen why he did not address the incident with Weaver, Andersen explained that shortly after the incident, several other urgent matters arose that required his attention and "it kind of fell through the cracks."

Harris and Comp summarized their findings in a report, which included an overview of the investigation, the documents reviewed, the policies at issue, their findings, past discipline, and a just cause analysis. In the report's summary of the evidence, the investigators wrote:

During the interview of Officer Gary Weaver, he admitted to allowing these two offenders to reach through the Boone Unit Control Center pass through multiple times, allowing them to remove items from the control center, giving candy to these offenders, and that he would have not allowed other offenders to do such. He also admitted to allowing the offenders to retrieve meals saved from earlier meal[s] for night shift staff.

Based on their findings and Weaver's prior discipline, the investigators recommended termination.

Harris and Comp submitted their report to FDCF's Warden, Robert Johnson. Warden Johnson, along with IDOC's Deputy Director and IDOC's Department of Administrative Services (DAS) Personnel Officer reviewed the investigation report and Weaver's employment history and prior discipline. In addition, Johnson testified that they considered other comparable discipline

from around IDOC. However, they were unable to find any prior cases that were substantially similar.

Based upon their review, the Warden, Deputy Director, and DAS Personnel Officer determined Weaver's actions demonstrated significant boundary issues similar to his prior misconduct and violated IDOC's trust in Weaver's ability to comply with the institution's rules in normal operational situations. For these reasons, they agreed that termination was appropriate.

On August 28, 2019, Harris and Johnson conducted a *Loudermill* interview with Weaver. Johnson informed Weaver that management had finished its investigation and was considering terminating his employment. Johnson provided Weaver an opportunity to explain why termination was not appropriate. Weaver responded that he did not have anything new to say, that he had told the investigators everything, and that he did not believe he had done anything wrong.

On August 28, 2019, IDOC issued Weaver a termination letter. The letter stated, in relevant part:

This letter is to inform you that effective immediately, you are being terminated from employment at the Fort Dodge Correctional Facility following an investigation into allegations that your conduct was in violation of the DOC General Rules of Employee Conduct policies and the mission of the Iowa Department of Corrections. The investigation found that you failed to insure the safety and security of the housing unit, staff and offenders.

On July 27, 2019, three incarcerated individuals were in the common area because their cell was being searched due to contraband. Between the hours of 2:59 a.m. – 3:25 a.m., you allowed two different incarcerated individuals to reach through the control center pass-through numerous times and take several items. You

also allowed one of the incarcerated individuals to take staff meals from the servery.

You were in violation of the following:

AD-PR-11, Iowa D.O.C. General Rules of Employee Conduct:

IV.B. Mission

1. The IDOC, through its employees, is required by law to manage and rehabilitate convicted incarcerated individuals/clients in its care.
2. To achieve that mission, employees and volunteers carry our activities that protect the public; provide a safe, secure and humane environment for staff, incarcerated individuals/clients, and visitors; and provide opportunities designed to assist individuals/clients in eliminating future criminal behavior.

C. Code of Conduct

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

E. Personal Ethics

Employees Shall:

1. Conduct themselves in a professional manner that creates and maintains respect for the IDOC and the individuals served.

H. Professional Demeanor

Employees Shall:

4. Correct incarcerated individual/client behavior using appropriate level of corrective action when an incarcerated individual/client fails to follow rules and regulations.
5. Not be involved in boisterous or inappropriate discussion and behavior that would disrupt the orderly operation of the

institution/facility. Any acts of violence or horseplay are prohibited.

Your previous disciplines follows:

6/17/15: One-Day Suspension for an unaccounted gun and ammunition left inside a van brought on grounds[.]

5/24/19: Five-Day Paper Suspension and Final Warning for allowing an incarcerated individual out of his cell [] to show him pictures on a state computer.

On September 4, 2019, Weaver appealed his termination to DAS claiming he was “terminated from the Fort Dodge Correctional Facility without just cause.” On October 29, 2019, the DAS director’s designee denied Weaver’s appeal. On October 30, 2019, Weaver filed the instant appeal with PERB.

At the hearing, Weaver testified on his own behalf and called one witness in his defense, Correctional Officer Kevin Sells. In his testimony, Weaver acknowledged talking with the inmates and allowing them to reach through the pass-through because he knew them and knew they were joking around; Weaver said he would have stopped inmates he did not know from engaging in the same behavior. Further, Weaver said there was nothing dangerous within their reach, that the inmates gave back every item he asked them too, and that they kept only the items he gave them. Finally, Weaver testified that privilege-level 1 offenders are allowed to have pens and Band-Aids, that it is common practice to give away left over food trays before they are thrown away, and that FDCF does not have a written policy requiring inmates to sit at tables during cell searches.

In his testimony, Officer Sells confirmed that it was common practice at FDCF for officers on third shift to give extra meal trays to inmates to avoid

throwing them away. However, when asked whether it was common practice for offenders to reach through the control center pass-through windows and try to grab items, Sells stated, “Yeah. They tried it on first shift as well...There’s really nothing they can get at. As officers we’d scold them.”

On cross-examination, Sells elaborated on his answer in the following exchange.

Q. Okay. You mentioned that you scold or redirect inmates who reach through the pass-through. Do you recall that testimony?

A. Yes, I do.

Q. Why do you redirect or scold these inmates?

A. They’re not to do it.

Q. Why not?

A. It’s just a common practice that they shouldn’t be reaching either into the port or on top of a unit desk on other units.

Q. Okay. What are the consequences that could result from them doing that?

A. You lock them down for the rest of the day.

When asked whether FDCF had a written rule prohibiting inmates from putting their hands through the pass-through, Sells responded, “I think it’s just always been an unwritten rule. I could be incorrect. It may be in policy. I don’t recall seeing that myself.” Sells also stated that he was unaware of any written rule requiring inmates to sit at tables during cell searches.

CONCLUSIONS OF LAW

Weaver 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.*

Iowa Code section 8A.413(19)(b) and DAS subrule 60.2(1)(b) require the State to provide the employee being disciplined with a written statement of the reasons for the discipline. PERB has long held 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 46, n. 27.

The stated reasons for Weaver's discharge contained in the termination letter are that on July 27, 2019, "[Weaver] allowed two different incarcerated individuals to reach through the control center pass-through numerous times and take several items. [Weaver] also allowed one of the incarcerated individuals to take staff meals from the servery." The State contends Weaver's conduct violated six provisions of IDOC work rule AD-PR-11—quoted in full above—requiring employees to perform their job duties impartially, conduct themselves professionally, correct offender behavior with appropriate corrective action, and not engage in boisterous or inappropriate behavior.

Weaver advances several arguments challenging the State's case. Weaver's primary contention is that the State has failed to show his conduct violated an IDOC work rule or policy. Additionally and alternatively, Weaver challenges the adequacy of notice provided by IDOC's work rules, the fairness of the State's investigation, the sufficiency of the State's proof, and the consistency and proportionality of the discipline imposed. Weaver's arguments will be addressed independently and in succession.

Notice of work rules

Weaver contends that no IDOC work rule, policy, or post order requires inmates to be seated at tables during cell searches or prohibits officers from giving inmates pens, Band-Aids, or extra meals. Additionally, Weaver argues that the work rules cited in the termination letter are merely broad standards of employee conduct that do not specifically prohibit his alleged misconduct. For this reason, Weaver contends IDOC failed to provide sufficient notice his conduct could result in discipline. The undersigned disagrees.

Even accepting as true Weaver's first contention—that no written IDOC policy requires inmates to be seated during cell searches or prohibits officers from giving inmates certain items—this conduct is not the primary reason for Weaver's termination. Rather, the primary reason for Weaver's termination is that he “allowed two different incarcerated individuals to reach through the control center pass-through numerous times and take several items.”

Although IDOC's work rules do not specifically address this conduct, the rules do prohibit officers from engaging in boisterous or inappropriate behavior and require officers to conduct themselves professionally, perform their duties impartially, and to correct offender behavior using appropriate corrective action. Further, post orders explicitly state that access to the control center is restricted to “only staff assigned to or having official institutional business in the control center.” As offenders are prohibited from entering the control center, it is clearly inappropriate for offenders to reach through the pass-through and remove items from the control center.

In addition to the work rules and post orders, the record shows that FDCF staff, and Weaver himself, knew it was inappropriate for offenders to reach through the pass-through. The staff's general understanding of this rule is demonstrated by the concerns raised by Master Control during the incident and by Officer Sells' testimony stating, "It's just a common practice that [inmates] shouldn't be reaching...into the [control center]..." Moreover, Weaver's admissions to the investigators that he should have stopped the inmates' behavior sooner and would not have allowed other inmates to engage in the same behavior demonstrates Weaver's awareness the inmates' conduct was inappropriate.

As discussed above, the record shows Weaver received copies of IDOC's work rules and training on the expectations associated with his position. As Weaver knew, or should have known, the inmates' conduct was inappropriate, the work rules provided Weaver sufficient forewarning that his engagement with/failure to correct the inmates' misconduct could subject him to discipline. Consequently, the State has established Weaver had sufficient notice of IDOC's work rules and expectations.

Sufficient and fair investigation

Weaver challenges the fairness of the State's investigation. Specifically, Weaver contends the investigation was unfair because, in the investigation report, Harris wrote that one of the items the inmates removed appeared to be a pill pack. However, no pill pack was found during the strip search. For this

reason, Weaver argues the report was misleading and resulted in an unfair investigation. The undersigned disagrees.

Although the investigator wrote that one of the items the inmates removed appeared to be a pill packet, in most references to the item in the report, Harris qualified this finding, describing the item as a “possible pill packet.” Further, the report properly included Weaver’s explanation of the item stating, “Officer Weaver explained that this was not an offender pill pack but a large bandage.” Finally, the report includes the fact that Officer Miller did not find any pill packets during the strip search.

As the report presented the pill packet as merely a possibility, it properly conveyed the speculative nature of Harris’ finding. Moreover, by including Weaver’s explanation and the results of the strip search, the report properly addressed all of the evidence. As the report properly presented the relevant evidence, I conclude its findings were not misleading and did not adversely affect the outcome of the case.

As to the sufficiency of the State’s investigation, prior to interviewing Weaver, Harris and Comp reviewed the surveillance footage, created a timeline of events, and determined the individuals involved in the incident. At Weaver’s investigatory interview, management provided Weaver a peer representative, his Officer Bill of Rights, and a summary of the complaint. During the interview, Weaver had the opportunity to review the video evidence, respond to management’s questions, and explain his interactions with the inmates. Finally, after interviewing Weaver, management interviewed four other individuals who

were privy to the incident. Accordingly, the State conducted an investigation that was fair to Weaver and, as will be discussed below, sufficiently garnered the facts to determine whether Weaver violated IDOC work rule AD-PR-11.

Sufficient proof of employee's guilt

The State provided sufficient proof Weaver violated IDOC Work Rule AD-PR-11. The record shows, and Weaver admits, that on July 27, 2019, he allowed inmates J.M and D.F. to reach through the control center pass-through numerous times and remove items, such bandages, salt and pepper shakers, and a menu. Weaver acknowledged he found the inmates' conduct amusing and chose not to stop the inmates nor reprimand them for their actions. Finally, Weaver admitted that he would not have allowed other inmates to engage in this conduct.

AD-PR-11(H)(4) prohibits officers from involving themselves in boisterous or inappropriate behavior and (H)(5) imposes upon officers a duty correct offender behavior with appropriate corrective action when offenders fail to follow rules and regulations. As discussed above, Weaver knew it was inappropriate for J.M. and D.F. to reach through the pass-through and remove items from the control center, yet he allowed the inmates to engage in this behavior for nearly twenty-minutes. By joking around with the inmates and permitting this behavior, Weaver involved himself in their inappropriate behavior and failed to correct their misconduct in violation of AD-PR-11(H)(4) and (5).

AD-PR-11(C)(3) requires officers to perform their job duties in an impartial manner. In his interview and at hearing, Weaver admitted that he allowed J.M.

and D.F. to reach through the pass-through because he knew them and Weaver acknowledged he would not have allowed other inmates to engage in the same behavior. By allowing J.M. and D.F. to engage in misconduct because he knew them, Weaver afforded the inmates favorable treatment. Accordingly, the State has provided sufficient proof Weaver failed to act in an impartial manner in violation of AD-PR-11(C)(3).

Progressive discipline/punishment proportionate to offense

Having concluded Weaver's actions violated IDOC work rule AD-PR-11 for engaging in inappropriate behavior and failing to stop or reprimand inmates for reaching through the control center pass-through, the next inquiry is whether the penalty imposed is proportionate to the offense. *See McClanahan & State of Iowa (Dep't of Transp.)*, 2021 ALJ 102394 at 15; *see also Krieger & State of Iowa (Dep't of Transp.)*, 2020 PERB 102243, App. A at 7.

It is well established that the State's disciplinary policy contemplates a system where penalties of increasing severity are applied to repeated offenses until the behavior is either corrected or it becomes clear the behavior cannot be corrected. *See Nimry & State of Iowa (Dep't of Nat. Res.)*, 08-MA-09, 08-MA-18 at App. 30. PERB has held that when discipline is required, the discipline should be progressive and proportional to the violation. *See Wilkerson-Moore & State of Iowa (Dep't of Human Servs. Fiscal Mgmt. Div.)*, 2018 PERB 100788, App. A at 20; *See also Phillips & State of Iowa (Dep't of Human Servs.)*, 12-MA-05, App. A at 16. The purpose of progressive discipline is to convey the seriousness of the

behavior while affording an employee the opportunity to improve and take corrective responsibility. *See Phillips*, 12-MA-05, App. A at 16.

In this case, the discipline imposed was progressive and proportional. The record shows that on May 24, 2019, Weaver received a five-day suspension and final warning for letting an inmate out of his cell and allowing the inmate to view his computer. The suspension letter informed Weaver that his actions were a serious violation of work rule AD-PR-11, could have jeopardized the unit's security, and that future violations would result in more severe disciplinary action up to and including discharge.

Despite having recently received this five-day suspension and final warning, on July 27, 2019, Weaver again violated work rule AD-PR-11 by allowing inmates to repeatedly reach through the pass-through and remove items from the control center. Like in his prior discipline, Weaver's misconduct involved treating select inmates favorably, failing to maintain professional boundaries, and risking compromising the unit's security.

As the misconduct is similar and occurred only two-months after Weaver received a five-day suspension and final warning, I conclude IDOC's mistrust in Weaver's ability to comply with institutional rules in operational situations is reasonable. Therefore, as termination is the next step in progressive discipline, I conclude the State appropriately followed progressive discipline and that termination is proportionate to the offense.

Finally, the record shows IDOC properly considered Weaver's employment record prior to making its final decision to terminate his employment. Although

Weaver was a predominantly satisfactory employee for approximately twelve-years, his employment record is not enough to outweigh the gravity of his actions in this case. Accordingly, the State has established just cause existed to terminate Weaver's employment. Consequently, I propose the following:

ORDER

Weaver's State employee disciplinary action appeal is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$662.25 are assessed against the Appellant, Gary Weaver, pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the Appellant in accordance with PERB subrule 11.9(3).

The proposed decision and order will become PERB's final agency action on the merits of Weaver'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 8th day of October, 2021.



Patrick B. Thomas
Administrative Law Judge

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