

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

WYATT WARD, Appellant,)	
and)	CASE NO. 102396
STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.)	

PROPOSED DECISION AND ORDER

The Appellant, Wyatt Ward, 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. Ward asserts that the Iowa Department of Corrections—Mount Pleasant Correctional Facility did not have just cause to terminate his employment on August 19, 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 October 21, 2020. The hearing was closed to the public in accordance with section 8A.415(2)(b). Anthea Hoth represented the State and Justin Cole represented Ward. Both parties filed post-hearing briefs on or before December 11, 2020.

Based upon the entirety of the record, and having reviewed and considered the parties' briefs, I propose the following:

FINDINGS OF FACT

Background

The Mount Pleasant Correctional Facility (MPCF), part of the Iowa Department of Corrections (DOC), is a minimum-security men's correctional institution housing approximately 850 incarcerated individuals located in Mount Pleasant, Iowa. MPCF focuses on preparing incarcerated individuals for reentry into the community.

MPCF assigns each incarcerated individual to one of twelve housing units. MPCF's larger units house approximately one-hundred incarcerated individuals. Incarcerated individuals must remain in their assigned housing unit unless they receive specific authorization to leave the unit. If an incarcerated individual leaves their unit without authorization, they are deemed "out of place of assignment" and can be subject to discipline.

Wyatt Ward began employment at MPCF as a Correctional Officer on October 3, 2008. In his position, Ward worked primarily as a Unit Officer in charge of supervising inmate-housing units. The duties of a Unit Officer include maintaining order among the approximately one-hundred inmates on the unit, ensuring compliance with MPCF rules, correcting disruptive behaviors, and generally caring for the well-being of the individuals on the unit. The record shows Ward received copies of DOC's work rules, policies and procedures and he received annual training on the duties and expectations of his position.

Throughout Ward's nearly eleven-year tenure with MPCF, Ward consistently met, and occasionally exceeded expectations in his annual

performance reviews. In his most recent performance review, covering the period from July 3, 2017, to July 3, 2018, Ward's supervisor rated him overall as meeting expectations but exceeding expectations in "Safety and Security Operations" and "Problem Identification and Resolution."

Although Ward consistently met performance expectations, prior to his termination, Ward was the recipient of other workplace discipline. In January, April, and June of 2019, Ward received a written reprimand, a one-day paper suspension, and a three-day paper suspension, respectively, for using unauthorized leave without pay.

The termination at issue in this appeal arose from Ward's conduct on July 26, 2019, which involved Ward's use of the Iowa Corrections Offender Network (ICON) while in close proximity to incarcerated individuals. Ward's conduct ultimately spawned a broader investigation that reviewed his ICON activity over an extended period.

Each inmate-housing unit at MPCF has an Officer's Station located near the center of the unit. The Officer's Station is a small room with windows looking out onto the unit. The stations serve as correctional officers' "home base," each containing desks and a computer where officers can sit, check email, enter reports and generic notes into ICON, and look up work-related information on inmates assigned to the unit.

ICON is an electronic offender management system utilized by staff in the Iowa corrections system. ICON contains an array of information relating to the background of all incarcerated individuals in the State corrections system.

Relating to offenders' case management, ICON contains information such as generic notes, major disciplinary reports, major hearings reports, and charge information. Additionally, ICON contains confidential personal information, such as offenders' social security numbers, relationships, contact information, and birth records.

Correctional officers generally use ICON daily to enter and review generic notes and major reports on offenders. However, officers may also use ICON to search for work-related information on offenders under their supervision, such as charge information, gang affiliation, "keep separate" orders, and reception reports.

Although not all information on ICON is strictly confidential, DOC work rule AD-PR-11(F)(3) instructs officers to "Treat all information as confidential unless it is specifically known to be otherwise, and follow all established security procedures to maintain that confidentiality." Moreover, rule AD-PR-11(F)(1) states, "Employees Shall...Use and disseminate incarcerated individual/client information only between authorized staff for approved security or professional use."

In addition to these rules, when logging into ICON, the following confidentiality statement appears on the screen:

Offender information is confidential, unless otherwise specified by Iowa Code Section 904.602. Staff should only access information which is necessary to do their job. All activities are recorded and audited. Unauthorized access or dissemination of material may result in a criminal prosecution pursuant to Iowa Code Section 904.602(11).

As noted in the confidentiality statement, ICON automatically records all employees' ICON activity in usage reports. The reports document the employee's user name, the type of information viewed, the search method, the first name, last name, and seven-digit code of the offender searched, and the date and time the information was accessed. Management uses the reports to audit employees' ICON activity to ensure compliance with DOC's work rules and procedures.

Events giving rise to Ward's termination

On July 26, 2019, Ward was stationed as the Unit Officer overseeing and supervising Housing Unit 2C. At approximately 12:30 p.m., Sergeant Rick Jeffrey entered Housing Unit 2C to deliver a disciplinary sanction to an incarcerated individual on the unit. As Jeffrey approached the Officer's Station, he noticed Ward sitting in a chair in front of the station's computer. Seated on the desk approximately one-foot away from Ward was inmate C.W., who was hunched forward talking closely with Ward.

Sergeant Jeffrey announced his presence then walked down a hallway to deliver the disciplinary sanction. After delivering the sanction, Jeffrey spoke with the incarcerated individual for approximately two-minutes before walking back to the area outside of the Officer's Station.

When Jeffrey returned to the area, C.W. was still seated on the desk hunched over talking closely with Ward. As Jeffrey approached, C.W. saw him, got up and left the station. Ward followed C.W. out and met Sergeant Jeffrey at the door to the Officer's Station. Ward jokingly asked Jeffrey, "Why are you

always picking on my guys?” Jeffrey spoke briefly with Ward about the disciplinary sanction and then left the unit.

At some point after leaving Housing Unit 2C, Jeffrey ran into Sergeant Todd Garrison. Garrison told Jeffrey, “I just saw something really weird...I just saw an inmate sitting on the desk right next to Officer Ward.” Jeffrey responded, “Let me guess, C.W.?” Garrison asked Jeffrey how he knew it was C.W. and Jeffrey told him he had seen the same thing.

Jeffrey then went to Captain Mark Boatman’s office to report Ward’s behavior. Jeffrey told Boatman he witnessed inmate C.W. sitting on the Officer Station desk next to the computer very close to Ward. Jeffrey said he found Ward’s behavior odd and that it made him uncomfortable. Jeffrey also mentioned that Sergeant Garrison observed the same behavior.

Concerned about Jeffrey’s allegation, Boatman contacted MPCF’s Associate Warden of Security, Troy White. After discussing the complaint, White determined an investigation was necessary and assigned Boatman to investigate the complaint.

Boatman began his investigation on July 31, 2019, by interviewing Sergeant Garrison. In his interview, Garrison explained he had gone down to Unit 2C to find an inmate who needed to have an exit photo taken. When Garrison arrived on the unit, he saw Ward in the Officer’s Station sitting in his chair in front of the computer. Garrison told Boatman:

Inmate [C.W.] was sitting on the desk closest to the computer and he was kind of hunched over a little bit like he was talking to Ward...I stared at him a little bit, just so—like holy cow dude, what’s—you know, what the heck.

Garrison said he left the area around the Officer's Station for a few minutes to find the inmate, but when he returned, C.W. was still in the Officer's Station talking to Ward. When asked if Ward and C.W. were whispering, Garrison responded:

It sure seemed like—I mean, he was hunched over. So, he was hunched over, you know, almost whispering to him. So, I—he kind of—when I—When I came on and said, hey, where's this guy at, he kind of leaned back a little bit, but it was—I mean, I—I—there's no way I could've heard what they were saying.

After interviewing Garrison, Boatman interviewed Sergeant Jeffrey. In the interview, Jeffrey elaborated on the allegations in his complaint and provided his account of events, which are consistent with the findings discussed on pages five and six above.

After interviewing Jeffrey, Boatman accessed the camera outside of the Unit 2C Officer's Station and reviewed the July 26, 2019, surveillance footage. The surveillance footage corroborated Garrison and Jeffrey's accounts, as it showed C.W. sitting near Ward in the Officer's Station for extended periods while Ward used the computer.

Boatman extracted and saved three separate videos of Ward and C.W. together on July 26. Boatman then downloaded Ward's ICON usage report, which revealed Ward had accessed ICON information in C.W.'s presence on two separate occasions: first at 12:32:46 P.M. and again at 12:52:09 P.M. Matching Ward's ICON activity with the time stamps on the videos, Boatman determined Ward accessed the information while C.W. was leaned forward talking closely with Ward.

Specifically, the surveillance footage shows that shortly after 12:28 P.M., C.W. entered the Officer's Station and sat down on the desk approximately two-feet away from Ward, who was seated in front of the computer. The computer monitor cannot be seen in the video because it was situated inside a short cubical box.

At 12:32:46 P.M., Ward accessed information on ICON about a female who was not incarcerated at MPCF. At the time of the search, the video shows C.W. hunched forward only inches away from Ward. From his position, it appears C.W. would have been able to see around the cubical box and view the computer screen. Approximately two-minutes later, at 12:34:50 P.M., the video shows C.W. stand behind Ward, lean over Ward's left shoulder, and look towards the computer screen for approximately 90-seconds.

As to Ward's second ICON search, at 12:49 PM, the surveillance footage shows C.W. returned to the Officer's Station and sat down on the desk approximately two-feet away from Ward, who was still seated in front of the computer. At 12:52:09 P.M., Ward accessed C.W.'s information on ICON. At that time, the video shows C.W. leaning forward only inches away from Ward. From his position, it appears C.W. would have been able to see the computer screen.

After reviewing Ward's July 26 interactions with C.W., Boatman cross-referenced several of Ward's other ICON searches from that day and the preceding week. Boatman selected several searches from Ward's ICON usage report, looked up where Ward was stationed when he made the searches, and then reviewed the surveillance footage to see if the incarcerated individuals were

near Ward when he accessed their information. Boatman's investigation revealed the following interactions:

Interactions with Inmate D.D.

On July 26, 2019, between 7:05 A.M. and 8:06 A.M., Ward completed nine searches pertaining to inmate D.D. The surveillance footage shows that during at least four of the searches, inmate D.D. was in the Officer's Station with Ward. However, inmate D.D. stood several feet away from Ward.

That afternoon at 1:46 P.M., inmate D.D. returned to the Officer's Station and talked to Ward for approximately four-minutes. During their conversation, inmate D.D. leaned in close to Ward and appeared to look at the computer screen several times. Approximately thirty-seconds after D.D. left the Officer's Station, Ward looked up D.D.'s wife in ICON. D.D.'s wife was not an incarcerated individual at MPCF.

Interaction with Inmate N.B.

On July 26, 2019, between 11:11 AM and 11:29 AM, Ward completed eight searches pertaining to Inmate N.B. On that day, Ward was supervising Unit 2C and N.B. resided on Unit 2D. Thus, N.B. was not under Ward's supervision and was Out of Place of Assignment when Ward accessed N.B.'s information. The surveillance footage shows that when Ward accessed the information, N.B. was in the Officer's Station talking with Ward. What is more, at 11:27 A.M., N.B. stood next to Ward and appeared to look at the computer screen while Ward looked up N.B.'s disciplinary notice and summary in ICON.

Interaction with Inmate J.J.

The record shows on July 25, 2019, between 9:06 A.M. and 9:10 A.M., Ward completed five-searches pertaining to inmate J.J. The surveillance footage shows that at the time of the searches J.J. was in the Officer's Station talking with Ward. At 9:06 A.M., the surveillance footage shows J.J. crouch down and lean in close to Ward, appearing to look at the computer while Ward searched J.J.'s generic notes in ICON.

Interaction with Inmate J.B.

The record shows that on June 27, 2019, between 1:48 P.M. and 1:51 P.M., Ward completed five-searches of inmate J.B. On that day, Ward was supervising Unit 3C and J.B. resided on Unit 3D. Thus, J.B. was not under Ward's supervision and was Out of Place of Assignment when Ward searched his information in ICON. The surveillance footage shows that at the time of the searches J.B. was in the Officer's Station talking to Ward. However, from the video, it appears J.B. remained near the entrance of the of the Officer's Station throughout their conversation.

On August 9, 2019, Boatman and White conducted an investigatory interview with Ward. Correctional Officer David Shotz was present as Ward's peer representative. Before questioning Ward, Boatman provided Ward a copy of his Officer Bill of Rights and a summary of the complaint, which stated, "You, C/O Wyatt Ward, have used Iowa Department of Corrections computer systems for non-work related activities."

The interview began with Ward affirming that he was familiar with DOC work rules AD-PR-11—the General Rules of Employee Conduct, and AD-PR-27—Information Technology. Boatman then questioned Ward about each of the incarcerated individuals discussed above and whether Ward ever accessed their information in ICON. Ward recalled interacting with most of the inmates and acknowledged he might have looked them up in ICON. However, Ward denied accessing information on the inmates' behalf or having shared ICON information with the inmates.

When asked specifically about inmate C.W., Ward explained, “[C.W.] always comes up whenever—whenever I’m working, he always comes up and just sits right beside me.” Ward said they just talked about “life in general.” Ward denied showing C.W. anything on the computer, but acknowledged, “[C.W.] might’ve been—you know, he might’ve been sitting right next to me when I was on the computer, but it was—I wasn’t saying, hey, you know.”

Ward explained that he often accesses ICON to satisfy his own personal curiosity, stating:

Just out of curiosity I might’ve looked up something, you know. Anytime I go on there on ICON I go on there to just, you know, I know—I don’t—I don’t know at that time, you know, you’re not supposed to do that, but I just do it for my personal, you know, general knowledge. I think that helps me.

Boatman then asked Ward about a series of other individuals whose information Ward accessed on ICON during the preceding month. Ward recognized three of the individuals Boatman asked about because all three

worked for Ward's brother. Ward explained that his brother either mentioned the individuals or asked Ward about them, so Ward looked them up in ICON.

The list of individuals also included three women. When asked about each, Ward said the name "Doesn't ring a bell," but acknowledged he might have looked the women up in ICON explaining, "Well, sometimes you know if I'm reading a newspaper or something and somebody did something, you know, I'll look—I'll look their name up then."

Boatman concluded the interview by again asking Ward whether he ever shared any ICON information with incarcerated individuals or ever looked an individual up while they were in the office with him. Ward denied ever having done either, then stated:

And—and I wouldn't do it intentionally to have them be looking at the screen with me, man. That's not—I'm not...Not—not to my knowledge with me knowing that they're doing it, no, I wouldn't know that...I wouldn't have them do that, no.

After Ward's interview, Boatman and White summarized their findings in a report, which included Ward's employment history, past discipline, an overview of the investigation, DOC work rules at issue, their findings, and a just cause analysis. The report did not include a discipline recommendation, but in its findings, the report detailed several instances wherein Ward accessed non-work related ICON information while in the presence of inmates. The report also found that in several of these instances, inmates could be seen looking at Ward's computer screen.

The investigators submitted their report to an executive committee consisting of the Warden, Deputy Warden, Treatment Director, Associate Warden

of Security, and Nursing Department Supervisor.¹ The committee reviewed the investigation report, Ward's ICON and internet usage reports, surveillance videos, interviews, and Ward's employment history and prior discipline. Additionally, White testified that in determining the appropriate level of discipline, the committee also considered prior similar cases.

At the hearing, the State submitted into evidence documentation of three prior disciplinary cases, each involving improper ICON use. Each case resulted in termination. From a review of these disciplinary cases, the undersigned finds two of them involved sufficiently similar circumstances to be informative in the instant case.²

The first informative case involved the termination of an officer in 2019. The employee had previously received a one-day suspension. DOC terminated the officer's employment for failing to report contact with previously incarcerated individuals; looking up family and associates on ICON without authorization; and looking up an inmate's girlfriend on ICON in the presence of the inmate.

The second informative case involved the termination of an officer in 2015. It is unclear whether the officer had any prior discipline. DOC terminated the officer's employment for accessing confidential ICON information and sharing

¹ Although White was a member of the executive committee and was present during the committee's deliberations, White did not actively participate in its recommendation due to his involvement in the investigation.

² While all three cases involved improper ICON use, the second case the State cited—and to which White testified—primarily involved an officer's long term, unreported friendship with a former offender and the officer's receipt of a gift and misuse of authority during their friendship. The apparent primacy of these other violations distinguish the State's second case from the alleged violations in the case at hand.

the information with a friend; failing to be truthful during their investigatory interview; and discussing the investigation with others.

Based on its review, the committee determined Ward's actions were egregious, violated DOC's confidence, and violated the public trust. For this reason, the committee recommended summary discharge. The Warden then sent the investigation report and committee recommendation to the DOC Human Resources Director, DOC's Department of Administrative Services (DAS) Personnel Officer, and the DOC Deputy Director. These individuals reviewed the report and recommendation and concurred that termination was appropriate.

On August 19, 2019, Boatman and White conducted a *Loudermill* interview with Ward. Boatman and White advised Ward of MPCF's intent to terminate his employment, but explained he had the opportunity to present mitigating circumstances for the Warden to consider. Ward did not provide any mitigating circumstances and the Warden determined to proceed with termination.

On August 19, 2019, DOC issued Ward a termination letter. The letter stated, in relevant part:

This letter is to inform you that effective immediately, Monday 8/19/2019, you are being terminated from employment at the Mount Pleasant Correctional Facility following an investigation. The investigation found that you repeatedly allowed incarcerated individuals in the unit officer station while you accessed confidential information in ICON. Video shows incarcerated individuals sitting next to you and viewing the computer.

You were in violation of the following:

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

Code of Conduct

- Employees are charged with the responsibility of complying with the IDOC's Institution, and Judicial District Department's work rules, orders, policies...etc.
- 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.

Personal Ethics Employee Shall:

- Obey all applicable federal, state, and local laws and the policies of the IDOC, institutions, or judicial districts.

Information and Communication Employees Shall:

- Use and disseminate incarcerated individual/client information only between authorized staff for approved security or professional use.
- Treat all information as confidential unless it is specifically known to be otherwise, and follow all established security procedures to maintain that confidentiality.

Professional Demeanor Employees Shall:

- 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.

Computer Security Employees Shall:

- Not allow incarcerated individuals/clients access to computer terminals without authorization.
- Use IDOC computer system(s) and programs only for Department of Corrections business.

AD-PR-27, Iowa DOC Utilization of Information Technology Resources

User Responsibilities

Internet Use:

- Internet access via IDOC shall be used for job-related activities.

- Contacting an internet site that would not be considered work related can be cause for discipline.

Electronic files

- Any electronic files or software applications, including but not limited to DOC Web files, ICON, ICON Medical, CIR, ICON Banking, ICON Food, KRONOS, etc. should be treated as confidential.
- Access to files and/or software applications shall be work related only and consistent with/related to the job duties performed by the person accessing the information. Staff shall not attempt to access information when not related to job duties without specific supervisory approval.

Prohibited Uses

IDOC's email and internet shall not be used for:

- Intentionally seeking out information or obtaining copies of revealing, publicizing, or modifying files or other data that are private, confidential, proprietary, or not open to public inspection or release is not permitted unless specifically authorized to do so.

In previous occasions, you have been disciplined as follows:

1/17/2019-Written Reprimand for Unauthorized Leave without Pay

4/9/2019-One-day paper suspension for Unauthorized Leave without Pay

6/14/2019-Three-day paper suspension for Unauthorized Leave without Pay

On August 23, 2019, Ward appealed his termination to DAS claiming he was "terminated without just cause...and no regard for progressive discipline..."

On November 15, 2019, the DAS director's designee denied Ward's appeal. On December 12, 2019, Ward filed the instant appeal with PERB.

At the hearing, Ward chose not to testify nor call any witnesses. However, Ward's representative argued that the State's evidence failed to prove Ward

actually shared confidential information with inmates. Moreover, he argued Ward's discipline was excessive and disparate from how DOC has treated other similar violations. To support this latter contention, Ward submitted into evidence fourteen exhibits documenting other DOC employees' past discipline.

From a review of the exhibits, in three of the cases, the similarity of the circumstances and violations cannot be determined because the exhibits do not describe the employees' misconduct.³ Moreover, in eight others, the violations at issue are not similar to the alleged violations in the instant case, as the past disciplinary cases do not involve improper ICON use or the sharing of confidential information.⁴

As for the remaining three cases, although none involves the sharing of confidential information, each involved improper use of ICON. The first informative case involved the reprimand of an officer in 2016 for accessing his stepson's information several times in ICON. The second informative case involved a ten-day suspension of an officer in 2015. It is unclear if the officer had prior discipline. DOC suspended the officer for failing to restrain an inmate after discovering contraband and for inappropriately accessing 19 female offenders' files in ICON. The third informative case involved a ten-day suspension of an officer in 2014. The officer had previously received a two-day suspension. DOC

³ Appellant's exhibits F, J, and L.

⁴ Appellant's exhibits D, E, G, H, K, M, N, and Q. The cases involved: accessing non-work related websites; watching T.V. while on duty; sending inappropriate messages via work email; failing to securely store confidential information; mistreatment of an inmate; discussing aspects of an ongoing investigation; and socializing with inmates in the office, failing to make rounds, and non-work related use of email and internet.

suspended the officer for inappropriately accessing the ICON information of approximately seventy female inmates.

CONCLUSIONS OF LAW

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

2. Discipline Resolution

a. A merit system employee...who is discharged, suspended, demoted, or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

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

DAS rules provide specific disciplinary measures and procedures for disciplining employees:

11—60.2(8A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge....Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's

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

Just cause must exist to support the disciplinary action taken. The State bears the burden of establishing that just cause supports the discipline imposed. *Harrison & State of Iowa (Dep't of Human Servs.)*, 05-MA-04 at 9.

In the absence of a definition of just cause, PERB has long considered the totality of circumstances and rejected a mechanical, inflexible application of fixed elements in its determination of whether just cause exists. *Wiarda & State of Iowa (Dep't of Human Servs.)*, 01-MA-03 at 13-14. In analyzing the totality of circumstances, examples of factors that may be relevant to a just cause determination include, but are not limited to:

Whether the employee has been given forewarning or has knowledge of the employer's rules and expected conduct; whether a sufficient and fair investigation was conducted by the employer; whether reasons for the discipline were adequately communicated to the employee; whether there is sufficient proof of the employee's guilt of the offense; whether progressive discipline was followed, or is not applicable under the circumstances; whether the punishment imposed is proportionate to the offense; whether the employee's employment record, including years of service, performance, and disciplinary record, have been given due consideration; and whether there are other mitigating circumstances which would justify a lesser penalty.

Gleiser & State of Iowa (Dep't of Transp.), 09-MA-01 at 16-17.

PERB also considers the treatment afforded other, similarly situated employees relevant to a just cause determination. See *Woods & State of Iowa (Dep't of Inspects. and Appeals)*, 03-MA-01 at 2. All employees who engage in the

same type of misconduct must be treated essentially the same unless a reasonable basis exists for a difference in the penalty imposed. *Id.*

A preliminary issue in this case concerns the stated reasons for Ward's discipline. 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 reasons for Ward's discharge contained in the termination letter are that Ward violated DOC work rules AD-PR-11 and AD-PR-27—relevant sections quoted in full above—when, “[Ward] repeatedly allowed incarcerated individuals in the unit officer station while [he] accessed confidential information in ICON. Video shows incarcerated individuals sitting next to [him] and viewing the computer.” The letter provides no other reasons for Ward's termination.

As such, the existence of just cause for Ward's termination must be determined upon these grounds alone (*i.e.*, Ward accessed ICON information while in the Officer's Station with inmates and allowed inmates to view the computer screen), rather than upon other reasons suggested in the DAS third-step response or in testimony elicited at hearing.⁵

⁵ At points in the record, the State indicated Ward's discipline was based, in part, on his non-work related ICON activity during the preceding six-months and for non-work related internet activity on July 26, 2019. As these allegations were not included in the letter of termination, they were not considered as potential bases for just cause in this decision.

Of first note, the parties do not dispute, and the record establishes, that Ward had knowledge of DOC's work rules and expected conduct. This is evidenced by Ward's acknowledgments of receipt of DOC's work rules, the records of his annual trainings, and the fact that ICON itself warns employees that offender information is confidential and that personnel should only access the information necessary to perform their job.

Moreover, the parties do not dispute, and the record establishes, that DOC adequately communicated to Ward the reasons for his termination. This is evidenced by Ward's *Loudermill* interview and termination letter. The letter provided Ward the rules he allegedly violated and, although brief, the conduct that lead to his termination.

Rather, Ward advances arguments challenging other aspects of the State's case. Specifically, Ward challenges the fairness of the State's investigation, the sufficiency of the State's evidence, and the consistency and proportionality of the discipline imposed. Ward's arguments will be addressed independently and in succession.

Sufficient and fair investigation

Ward challenges the fairness of the State's investigation. Specifically, Ward contends the investigation was unfair because, when interviewed, Boatman provided Sergeant Garrison C.W.'s name and the housing unit upon which Garrison observed C.W. talking with Ward. Ward argues that it was improper for

Boatman to provide Garrison this information and that it resulted in an unfair investigation.⁶ The undersigned disagrees.

Although Boatman prompted Garrison's recollection about these details, Boatman also reviewed the surveillance footage, which corroborated Garrison's account. Specifically, the video evidence showed Ward talking with C.W. in the Unit 2C Officer's Station at the same time Garrison was on the unit, just as Garrison described in his interview. Therefore, because video evidence separately confirms Garrison's account, it is clear Boatman's reminders to Garrison of C.W.'s name and location did not mislead Garrison nor result in unreliable information. As such, Boatman's actions did not materially affect the accuracy or outcome of the investigation and, therefore, were harmless.

As to the sufficiency of the State's investigation, prior to interviewing Ward, management interviewed two witnesses to Ward's conduct, obtained Ward's ICON usage report and surveillance footage, verified the witnesses' accounts, and cross-referenced Ward's usage report with the video evidence. At Ward's investigatory interview, management provided Ward a peer representative and read Ward his Officer Bill of Rights. During the interview, Ward had the opportunity to respond to management's questions and explain his interactions with each of the inmates. Accordingly, the State conducted an investigation that was fair to Ward and, as will be discussed below, sufficiently garnered the facts

⁶ In addition to this argument, in his post-hearing brief, Ward also argued the investigation was insufficient because management did not interview the inmates with whom he allegedly shared ICON information. While the State chose not to interview the inmates, as will be discussed below, the State's investigation nonetheless sufficiently garnered the facts to determine whether Ward committed the alleged violations.

to determine whether Ward improperly accessed and shared ICON information with inmates.

Sufficient proof of employee's guilt

As discussed above, the State provided two separate, but related reasons for Ward's termination: (1) for allowing incarcerated individuals in the Officer's Station while accessing confidential information in ICON and (2), for allowing incarcerated individuals to view the computer. Ward does not dispute that he allowed inmates into the Officer's Station while accessing information in ICON. Rather, Ward denies that he ever shared ICON information with inmates or ever allowed inmates to view the computer.

As to the State's first basis for discipline, the State has provided sufficient proof Ward accessed non-work related ICON information while in the Officer's Station with inmates. As discussed above, by cross-referencing Ward's ICON activity with the time-stamps on the surveillance footage it is clear that on multiple occasions Ward accessed ICON information while in the Officer's Station with inmates.

Although this conduct, per se, may not violate a work rule, the record shows that on two occasions, the inmates whose information Ward accessed—N.B. and J.B.—were not under Ward's supervision. Moreover, on two other occasions, Ward accessed the ICON information of women who were not incarcerated at MPCF. As these individuals were not under Ward's supervision when he accessed their information, these searches were unrelated to Ward's job duties. As such, the State has provided sufficient proof Ward accessed ICON for

personal reasons in violation of DOC work rules AD-PR-11(F)(1), AD-PR-11(I)(5), and AD-PR-27(C)(5)(f).⁷

As to the State's second basis for discipline, Ward contends the State's video evidence is circumstantial and fails to prove inmates actually viewed his computer screen. Specifically, Ward claims that based on the location of the computer screen, which sits inside a cubical box, inmates could not have seen the screen unless they were directly in front of the computer. Ward argues the video evidence fails to show the inmates were ever in a position where they could see the computer. For this reason, Ward argues the State has failed to prove he shared ICON information with inmates.

Even accepting as true Ward's claim about the difficulty of seeing the computer screen, the video evidence leaves little doubt Ward shared ICON information with inmates. First, surveillance footage shows that when Ward accessed ICON for information concerning C.W. and the unincarcerated female, C.W. was seated on Ward's desk leaning forward only inches away from Ward. While it certainly appears that from C.W.'s position he would have been able to view the computer screen, even if he could not, the timing of Ward's ICON

⁷ AD-PR-11(F)(1) states, "Employees Shall...Use and disseminate incarcerated individual/client information only between authorized staff for approved security or professional use."

AD-PR-11(I)(5) states, "Employees Shall...Use IDOC computer system(s) and programs only for Department of Corrections business."

AD-PR-27(C)(5)(f) states, "Access to files and/or software applications shall be work related only and consistent with/related to the job duties performed by the person accessing the information. Staff shall not attempt to access information when not related to job duties without specific supervisory approval."

searches along with C.W.'s close proximity and body language supports the inference Ward was sharing with C.W. the information he accessed in ICON.

In addition to Ward's suspect interactions with C.W., the video evidence shows four other instances where inmates positioned themselves in line with Ward's computer. Specifically, as discussed on pages 8-10 above, the surveillance footage shows that over a two-day period, Ward allowed four different inmates to stand closely behind or beside him while he accessed information on the computer.⁸ In all four instances, the inmates appeared to be in position to see the computer screen, as the surveillance footage show them leaning over Ward's shoulder or crouching down next to Ward while looking in the direction of the computer screen. Finally, the record shows that in three of these instances, Ward actively performed, or had recently completed, ICON searches relating to the inmate who was with him in the Officer's Station.

Taken together, the video evidence showing the inmates' close physical proximity, clear body language, and suspect behavior occurring at the same time Ward accessed their information in ICON raises a strong inference the inmates

⁸July 25, 2019, at 9:06 A.M., video shows inmate J.J. crouch down next to Ward and look towards the computer while Ward searched J.J.'s generic notes in ICON.

July 26, 2019, at 11:27 A.M., video shows inmate N.B. standing next to Ward while Ward accessed N.B.'s disciplinary notice and summary in ICON.

July 26, 2019, at 12:34 P.M., video shows inmate C.W. leaning over Ward's left shoulder looking towards the computer shortly after Ward accessed ICON information concerning a female who was not incarcerated at MPCF.

July 26, 2019, at 1:48 P.M., video shows inmate D.D. lean in close to Ward and look towards the computer screen several times. Shortly thereafter, Ward accessed ICON information concerning D.D.'s wife.

were viewing, or Ward was sharing with them, the ICON information on his computer. Consequently, this evidence provides sufficient proof Ward allowed incarcerated individuals to view ICON information on his computer in violation of DOC work rules AD-PR-11 and AD-PR-27.

Progressive discipline/punishment proportionate to offense

Having concluded Ward's actions violated DOC work rules AD-PR-11 and AD-PR-27 by accessing ICON for personal reasons and sharing confidential information with inmates, 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 Serv. 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.

However, progressive discipline may be inapplicable when the conduct underlying the discipline was a serious offense. *See Phillips*, 12-MA-05, App. A at 13, 16-18. When determining the appropriate discipline and the use or absence of progressive discipline, PERB considers the circumstances of the case. *See Hoffmann & State of Iowa (Dep't of Transp.)*, 93-MA-21 at 26. These circumstances include, but are not limited to, the severity and extent of the violation; the position of responsibility held by the employee; the employee's prior work record; and whether the violation has resulted in the employer's loss of trust and confidence in the employee's ability to continue in their position. *See Phillips & State of Iowa (Dep't of Corr.)*, 98-HO-09 at 15; *see also Estate of Salier & State of Iowa (Dep't of Corr.)*, 95-HO-05 at 17.

The State acknowledges that it did not follow progressive discipline. However, the State contends Ward's conduct was so egregious and violative of DOC's trust and confidence that progressive discipline was inapplicable and termination was appropriate. The State argues DOC has reinforced this notion by issuing similar discipline in the past. The undersigned agrees.

As a Correctional Officer, Ward was required to maintain the confidentiality of inmates' ICON information, a duty requiring a high degree of trust from his employer. Because this duty requires a high degree of trust, PERB has found both the intentional disclosure of confidential information, as well as the personal use of ICON, to be serious offenses. *See Kelley & State of Iowa (Dep't of Corr.)*, 2012 ALJ 102154 at 21-23; *See also Phillips*, 12-MA-05, App. A at 17-18 (finding an employee's breach of confidentiality a serious offense and

imposing a ten-day suspension when the employee knowingly disclosed the information and the employee's job description involved maintenance of confidential records).

A single instance of improperly accessing ICON or disclosing confidential information would be a serious violation of DOC's work rules. In this case, the State has established Ward improperly accessed ICON and disclosed its contents to inmates multiple times over the course of a single week. In doing so, Ward repeatedly violated a core job responsibility, risked compromising the safety of others, and breached his bond of trust with DOC. As the record shows Ward repeatedly committed serious work rule violations, I conclude DOC's mistrust in Ward's ability to continue performing his job duties as a Correctional Officer is reasonable. Accordingly, progressive discipline is inapplicable.

Ward's final contention is that DOC treated him disparately from other similarly situated employees. In support of this claim, Ward submitted evidence of two DOC employees who received ten-day suspensions for improperly accessing ICON for personal use. However, while those employees were suspended for improper ICON use, it does not appear those employees shared the ICON information with anyone.

On the contrary, the prior disciplinary cases the State submitted into evidence each involved employees who both accessed ICON for personal use and shared the ICON information with others, one of whom shared the information with an inmate. In both cases, DOC terminated the correctional officers' employment. Therefore, as the State's examples involve both of the violations at

issue in this case, I conclude the State's examples are more similar than the cases cited by Ward and sufficiently demonstrate the State did not treat Ward in a disparate manner.

Finally, the record shows DOC properly considered Ward's employment record prior to making its final decision to terminate his employment. Although Ward was a satisfactory employee for approximately eleven 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 Ward's employment. Consequently, I propose the following:

ORDER

Ward's State employee disciplinary action appeal is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$455.00 are assessed against the Appellant, Wyatt Ward, 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 Ward'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 5th day of August, 2021.

A handwritten signature in black ink, reading "Patrick B. Thomas", written over a horizontal line.

Patrick B. Thomas
Administrative Law Judge

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