

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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JACOB BOLTZ, Appellant,	)	CASE NO. 102397
and	)	
STATE OF IOWA (DEPARTMENT OF CORRECTIONS),	)	PROPOSED DECISION AND ORDER
Appellee.	)	

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Appellant, Jacob Boltz, 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. Boltz appeals the third-step response of the director of the Iowa Department of Administrative Services (DAS) denying the appeal of his termination.

Boltz worked as a Correctional Officer (CO) for the Iowa Department of Corrections (DOC). Boltz alleges the State did not have just cause to terminate his employment on September 4, 2019. The State denies that Boltz’s termination was not supported by just cause.

A closed evidentiary hearing was held on May 6, 2021. Amber Moats and Earlene Anderson represented Boltz. Anthea Hoth represented the State. The parties submitted post-hearing briefs on June 11, 2021. After considering the evidence and the arguments of the parties, I propose the following:

FINDINGS OF FACT

Jacob Boltz was a CO at the Iowa State Penitentiary in Fort Madison. He began working at the facility in July 2018. In the time he worked at ISP he met

expectations of the position of CO. In the category of his evaluation regarding Professional Characteristics, management determined that Boltz exceeded expectations. In that category, management noted that Boltz did not use sick leave.

While at ISP Boltz received the State of Iowa Handbook. This handbook includes the Policy Prohibiting Sexual Harassment. Boltz also completed the sexual harassment prevention online training modules.

Boltz generally worked in Housing Unit 1, Bravo pod or Charlie pod. ISP's Housing Unit 1 consists of five pods. The pods have different ratings or population groups. Either one or two COs work in the various pods depending on the needs and the population.

The pertinent events to this appeal took place while Boltz worked on Charlie pod. Charlie pod contains offenders that are in the long-term restricted housing program. The offenders are only allowed out one hour per day. This pod contains difficult offenders or those that still need to go through the program and are housed here first.

Two COs work on the same shift in Charlie pod. If a female CO works this unit, she will be paired with a male CO due to the population at issue in this pod. Every time an offender is taken out of the cell, the COs conduct a strip search. The male COs are required to do the strip search while the female CO assists. Additionally, the male CO would take the inmate to shower, while the female CO assists. Consequently, two female COs were never paired to work together in Housing Unit 1, C pod.

Every thirty minutes one of the COs completes rounds, which takes approximately five minutes. The rest of the shift is spent sitting at the officer's station. The two COs sit side-by-side at the officer's station. This station contains two computers.

For roughly four to five weeks prior to his administrative leave and ultimately, his termination, Boltz worked primarily with female CO, KB. Boltz and KB worked in Housing Unit 1, C pod. KB began employment at ISP less than six months prior to the incident at issue in this case. Boltz worked at ISP for less than one year. Boltz and KB worked the 1:30 p.m. to 9:30 p.m. shift. They worked together four to five days per week for four or five weeks in April and May 2019.

KB claimed that Boltz had a negative attitude. She alleged that Boltz complained every day that he was not the assigned Activities Officer. Boltz, meanwhile, stated that he and KB did not get along. Boltz stated they disagreed on whose turn it was to conduct rounds. The two COs had no contact outside of ISP.

#### *KB's Allegations*

KB alleges that on or around Sunday, May 19, 2019, Boltz made several inappropriate comments of a sexual nature to her during their shift. First, KB alleges that within the week prior to May 19, while on shift and just before she was going to conduct rounds Boltz said, "You know what would be funny right now?" She said she did not know and he said, "If you got your period right now" ("period comment"). This comment made KB feel embarrassed and she told him she did not find it funny.

KB also alleges that on May 19, Boltz made the following types of inappropriate statements to her during their shift:

- “Pod comment”: Boltz told her, using inappropriate language, she worked in the C pod with him because she was female. KB alleges she told him that was inappropriate.
- “Promotion comment”: When speaking of future goals Boltz told her he wanted to leave ISP to become a police officer and state trooper within five years. KB told Boltz that within that time period she would like to promote to sergeant at ISP. KB then alleges Boltz told her, using vulgar language, that she would never promote because she was female. KB claims she asked whether Boltz was serious and then told him his comment was so inappropriate.
- “Friends comment”: KB alleges that Boltz told her, using inappropriate language, that a fellow CO was only friends with her because he wanted to sleep with her.
- “Bad CO comment” and “IDs comments”: KB alleges that on or around May 19, Boltz went through the IDs of fellow COs on the computer at the officer station. She alleges he would call fellow COs names. When looking at her ID on the computer he said, using inappropriate language, she was a bad CO because she was a female. She claims he also pointed out other female COs and called them inappropriate names.

Boltz denied making the above statements. Boltz does admit that he and KB had a conversation about promotions, but he asserted that he never said she would not promote because she is female. Boltz claims he told KB it would take her longer to promote because she did not have a bachelor’s degree.

KB found Boltz’s comments inappropriate for multiple reasons. She claims that COs need to serve as role models for the inmates, and a CO making these types of comments could not hold the inmates accountable. KB stated that it was possible inmates could overhear them when they were at the officer’s station. Accordingly, she did not want to show any emotion. She stated that Boltz had a negative influence in that environment. She also stated she never expected a

coworker at a prison to say those things to her, and it made her question herself. KB also stated that when a coworker says these types of comments and treats her this way she cannot trust them. KB contends she will carry this incident with her for the rest of her life.

On or shortly after May 19, the date KB alleges Boltz made the above statements, Boltz asked to work on a different pod. Boltz claims he requested to work a different pod because he and KB did not get along. He asked to be moved to Alpha pod, and he did actually switch with a fellow CO for the next shift. KB claims that almost a week later, approximately May 28, an inmate told her that Boltz had told them that he and KB got married and that is why Boltz was no longer working on C pod.

No witnesses overheard Boltz make any of the alleged statements to KB as the COs worked in the pod alone during their shift. However, witnesses testified that in video footage from that shift, KB does not appear to be visibly upset at any point.<sup>1</sup> Additionally, at least one coworker at ISP did see KB and Boltz during this shift. A nurse, KF, went into this pod during the shift to deliver medications to the offenders. She stopped at the officer's desk after delivering the medications and had a conversation with Boltz and KB. She claimed to see no hostility, tension, or discomfort.

At least three coworkers expressed surprise or disbelief that Boltz would use such crass or inappropriate language. The abovementioned nurse, KF noted that she always found Boltz to be polite, although she did not work with him in

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<sup>1</sup> The record reflects the video footage did not contain audio.

the same capacity as a fellow CO, and noted that she did not know him very well. A female CO, CH said that Boltz was always professional. However, she only worked with Boltz once or twice on overtime on the yard. CH also saw Boltz when she delivered pills to the pod where Boltz worked. CH did not believe Boltz would use the vulgar or inappropriate terms that KB alleged he used. Finally, male CO, MB expressed disbelief to the point of laughter when asked whether Boltz would use the type of vulgar or inappropriate language that KB alleged. MB stated he and Boltz worked together for two to three months prior to when Boltz began working more with KB. MB testified that Boltz presented himself as polite, and he never saw Boltz disrespect KB or anyone else.

#### Reporting of allegations

After May 19, KB spoke to two coworkers, RS and DC, whom she trusted. She spoke to RS about her frustration with Boltz, and told him some of what Boltz had said. KB alleges RS told her she needed to report it not just for herself, but for everyone else, especially because of Boltz's comments concerning the IDs. When she spoke to coworker DC, he told her that Boltz had also gone through coworkers' IDs when they had worked the same shift, but Boltz's comments at that time were not targeted at the females.

KB sent an email to ISP management on the evening of Tuesday, May 21. In the email, she stated she did not want to come across as a "tattletale," but said "this issue has been boggling my mind since Sunday." KB noted that she had not reported it to a supervisor because neither a captain nor sergeant had been present at the facility.

KB claimed that Boltz had made inappropriate remarks on May 19. She specifically mentioned the “Pod comment,” the “promotion comment,” and the “bad CO comment.” In the email, KB also alleged that Boltz made other sexual remarks throughout the night that she ignored.

After sending the email, KB claimed that a sergeant pulled her into his office and told her that her complaint did not surprise him. KB alleged the sergeant told her that Boltz says some pretty crazy stuff. KB’s assertion about this conversation is bolstered by an email sent to ISP management from a correctional supervisor. In the email the supervisor said that he had multiple conversations with staff about Boltz’s attitude. He stated that the conversations had not required him to correct Boltz’s actions, but the consensus of the staff was that Boltz was “vain” and bragged “about his abilities, knowledge, and experiences.” Boltz made statements minimizing physical skills and requirements of the DOC. Staff found him difficult to work with. Boltz did not take direction or mentoring well. However, the supervisor noted that he had not heard anything about Boltz “being openly unprofessional or inappropriate.”

On May 22, 2019, John Fedler, the warden of security at ISP, and Phyllis Porter pulled KB aside to fill out a DAS complaint form to send to Des Moines. On that form, KB marked that she was alleging a coworker’s violation of the Sexual Harassment policy and the Violence Free Workplace policy. KB again provided a description of Boltz’s alleged statements during his shift on May 19.<sup>2</sup>

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<sup>2</sup> KB inadvertently stated that Boltz made these remarks on May 26. This clearly is a mistake as KB filled out the form on May 22.

KB alleged Boltz made the “pod comment.” She claimed that two hours later Boltz made the “promotion comment.” She then alleged that an hour after that Boltz made the “IDs comments” and the “bad CO comment.” KB also alleged that throughout the rest of the shift Boltz made the “friends comment.”

Due to KB’s complaint, ISP management placed Boltz on administrative leave on May 22.

### Investigation

As the complaint alleged a violation of certain State of Iowa policies, DAS conducted the investigation. DAS was provided with the above-mentioned email from the correctional supervisor. Originally, DAS interviewed KB, another female CO at ISP,<sup>3</sup> as well as RS, the CO that KB spoke with before reporting Boltz’s alleged comments. DAS also interviewed Boltz.

During DAS’s interview with KB she alleged that Boltz made the “pod comment” early in the shift. She alleged a couple of hours later Boltz was complaining about his job when he made the “promotion comment.” KB claimed that Boltz knew the comment made her uncomfortable. KB then alleged that an hour later Boltz made the “ID comments” and the “bad CO comment.” KB claimed Boltz made the “friends comment” several times throughout the night. KB also claimed Boltz made the period comment on May 18. KB told the investigator that Boltz’s alleged comments made her feel frustrated and insulted.

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<sup>3</sup> Based on the interview in the record it does not appear this other female CO had knowledge of the alleged comments at issue. It is not clear whether she worked with Boltz or KB.



In RS's interview, he said KB did talk to him about the situation with Boltz and whether to report it. RS stated that KB told him about the "promotion comment" and repeated what he remembered although he acknowledged it was not word-for-word. RS noted that KB was not outwardly emotional when she described Boltz's alleged comments. RS also described Boltz as "socially awkward" and an "immature" kid.

In his interview, the investigator asked Boltz about the specific comments at issue, even using the inappropriate or vulgar language that KB claimed Boltz used. The investigator did not tell Boltz who filed the complaint and did not tell him whom he allegedly made the comments to. The investigator provided Boltz with a summary of the complaint, which stated "Comments and conduct by CO Boltz that allegedly violate the State of Iowa's Violence-Free Workplace Policy and the State of Iowa's Policy Prohibiting Sexual Harassment." The investigator also gave Boltz the warning that the investigation could result in discipline and his failure to be truthful could result in discipline.

Boltz denied making remarks about his feelings on whether women should be COs. Boltz denied telling a CO it would be funny if they got their period. Boltz denied telling an officer she was assigned to work with him because she was female. Boltz denied telling a female officer she would not advance because she was female. Boltz denied telling a female officer that she was a bad CO. Boltz admitted to sharing his career goals with people at the facility and related that he did have a goal of being a police officer.

The investigator asked Boltz, “Have you had any problems working with any females at ISP, any female Correctional Officers?” Boltz responded that he did not believe so. When asked about a female character witness at ISP, he provided the name of CH.

DAS originally closed the investigation on or before July 9, 2019. However, the DOC requested that DAS reopen the investigation as they had some concerns. The DOC felt the character witness that Boltz mentioned should be interviewed.<sup>4</sup> The DOC also provided information to DAS that DOC’s IT department had reviewed Boltz’s information and did not find that Boltz accessed the ID file on May 19, as claimed by KB.

In August, a different investigator with DAS conducted a second interview with KB, an interview with CH, and an interview with DC, a CO that KB mentioned during her second interview. Boltz was not interviewed a second time.<sup>5</sup>

In the interview with KB, the investigator asked KB whether Boltz was logged in under his own user ID and password, and KB confirmed that he was. The investigator then told KB that DOC’s IT department found no record that IDs were accessed from that date and shift. KB then stated she was “pretty sure” it was that day, but she worked with Boltz a few days in a row, so maybe it was one of those other days. KB then mentioned that she also talked to coworker, DC, before she reported Boltz’s alleged comments. KB claimed Boltz had also

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<sup>4</sup> DAS had chosen not to interview this person originally as she was not a witness to the alleged conduct.

<sup>5</sup> All interviews conducted during the investigation were phone interviews.

looked at people's IDs and made inappropriate comments while working with DC.

When interviewing DC, also a CO at ISP, DC confirmed that when he worked with Boltz, Boltz looked at IDs and made inappropriate comments. DC does state that Boltz's alleged comments were not directed at women, however. DC confirmed that KB had told him about Boltz's alleged "promotion comment." DC also stated that he had respect for Boltz when they first worked together, but in the last month or two they worked together, Boltz had a bad attitude and expressed discontent that he was not assigned as the Activities Officer. DC could not remember if he told KB to report Boltz's alleged behavior.

On August 23, 2019, DAS issued its investigative findings. DAS determined the complaint was founded as there was sufficient evidence to conclude that Boltz violated the State of Iowa Policy Prohibiting Sexual Harassment. In the report, DAS indicated it found KB more credible than Boltz.<sup>6</sup> DAS reached this conclusion despite noting that DOC's IT records showed Boltz had not accessed the employee photo ID file on May 19.

DAS determined KB's version of the events was more credible than Boltz. DAS found KB more credible because she was consistent, her email reporting the incident was close in time to the date of the incident, KB answered all questions directly although she was not emotional, and Boltz did not mention

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<sup>6</sup> The first investigator authored the report, but the second investigator confirmed she agreed with the credibility determination as well as the outcome of the report.

KB when he was asked if there were female employees he worked with, and he neither mentioned KB nor mentioned that he did not get along with KB.

### Discipline

After receiving DAS's investigative findings, ISP management discussed the appropriate level of discipline. Fedler, the warden of security, ISP's warden, and possibly the deputy warden discussed the discipline. DOC also produced an investigation report template to give an overview of the situation and help make the determination of discipline. ISP management considered Boltz's length of employment, his lack of disciplinary history, and his various training and acknowledgements. Management was unaware of other similar disciplines for violation of the sexual harassment policy. Management determined termination as the appropriate discipline due to the egregiousness of the comments made, DAS's determination that the allegations were founded, and ISP's zero tolerance policy of any sexual harassment. Management believed the comments were especially egregious considering the professionalism expected in this type of workplace. COs have a duty to model prosocial behavior in all their daily activities and interactions with offenders. Additionally, coworkers in a correctional facility must be able to maintain trust with each other for safety and security reasons.

Fedler conducted a *Loudermill* interview with Boltz. Boltz again denied making the alleged comments. On September 4, 2019, ISP terminated Boltz's employment. The termination letter stated the DAS investigation determined that Boltz violated "the State of Iowa Policy Prohibiting Sexual Harassment on May

19, 2019, when [he] made several comments of a sexual nature that created an intimidating, hostile and offensive working environment. This egregious misconduct warrants summary discharge.”

Boltz appealed his termination on September 4, 2019. His appeal was denied at Step 3. Boltz filed an appeal of the Step 3 decision on December 13, 2019.<sup>7</sup>

#### Credibility Determination

One of the parties’ primary disputes in this case is whether KB’s allegations are true. Boltz has denied the veracity of KB’s claims throughout the investigatory stage and appeal procedure of this case.

Boltz claims that events subsequent to his termination demonstrate that KB is not credible. Approximately one year after ISP terminated Boltz’s employment, ISP investigated allegations about KB and terminated her employment as well. ISP’s investigation into and ultimate termination of KB’s employment bore no relationship to Boltz or the allegations at issue in this case. However, KB was disciplined for issues involving contraband and confidential

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<sup>7</sup> The Appellant raised the issue in his post-hearing brief that he and the State had reached a settlement, or at least the State had made a settlement offer. Evidence of this offer is inadmissible and will not be considered as part of this decision. See Iowa Administrative Code 621—2.24.

information. Witnesses stated that KB was untruthful and evasive during her investigatory interview.<sup>8</sup>

Despite this evidence, I agree with the credibility determination made by DAS and find the record before me demonstrates that KB's version of the events is more credible than Boltz's denial of the allegations.

"Credibility determinations must be supported by such relevant evidence that reasonable minds would accept as adequate to support a conclusion. Credibility determinations also require an analysis of all relevant evidence collected." *Miers and State of Iowa (Dep't of Corrections)*, 2020 ALJ 102116, at 79. When evaluating credibility, PERB uses evidence which was most reasonable and consistent with the record as a whole given the established criteria for making credibility determinations such as corroboration or contradiction by witnesses, other established facts, and the plausibility of the allegations when all the evidence is considered. *Id.*

Although no one overheard Boltz make the alleged comments at issue other than KB, several other points of KB's allegations are corroborated. Boltz admitted that he did have a conversation with KB regarding promotions and acknowledged during the investigation that he did have a career goal of becoming a police officer. DC corroborated KB's claim that Boltz had a negative attitude in

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<sup>8</sup> Boltz also contends that KB was untruthful during her testimony as she stated that the union represented her during this disciplinary process. The evidence demonstrates that KB had a union representative or steward present with her during her investigatory interviews, but the union did not assist KB in grieving the discipline. I cannot find that KB was untruthful during her testimony on this point. The union did assist her with the investigatory interview and did provide guidance to her when discussing whether it would provide assistance in grieving the discipline. Thus, the union did provide assistance, which KB may have interpreted as representing her when answering questions during her testimony.

the last month or two of his working tenure at ISP and that Boltz expressed frustration about failing to be assigned as Activities Officer. DC also corroborated that Boltz viewed coworkers' IDs and made negative comments about his coworkers, although DC does not contend that Boltz singled out the female coworkers.

The record is devoid of evidence regarding KB or DC's motivation to lie about their allegations. Although KB may have been dishonest or evasive during an investigation into her own conduct, I cannot find a causal link between her potential dishonesty in a case where her own employment was at stake a year later, and the instant situation with Boltz. The investigations were unrelated and I find any diminishment of her credibility due to her actions during an investigation into her own conduct insignificant.

Boltz also notes in his post-hearing brief that KB did not raise a complaint about him until after he requested to switch pods due to his concern with KB's work ethic. Based on the facts in the record it is unclear that KB or management knew why Boltz requested to switch pods. Additionally, Boltz does not address why after four to five weeks of working with KB, he suddenly decided that her work ethic so poor that it required him to immediately switch pods. The more plausible rationale is that Boltz requested to switch pods after he realized that his comments, whether they were meant in jest or in earnest, crossed the line and had upset KB.

Additionally, KB's story has remained consistent throughout the last couple of years. RS and DC's versions of what KB told them matches what she

told ISP management in the email in which she reported the allegations. Her DAS complaint, investigatory interviews, and her testimony all remain consistent in detailing the comments Boltz allegedly made, although not entirely consistent on when the incidents occurred.

Although DOC's records demonstrated that Boltz did not access employee IDs on May 19, 2019, I do not find this to be enough evidence to discredit KB's allegations. KB acknowledged that she may have been wrong on the date of when this occurred as she and Boltz worked together multiple times that week. Additionally, DC confirms that Boltz engaged in the same sort of behavior of negatively commenting on coworkers' IDs when he worked with him. DC's confirmation corroborates KB's allegation that Boltz engaged in such behavior when he worked with her although she may not have the correct date.

The appellant cites KB's demeanor on May 19 as evidence that Boltz did not make the alleged comments. Testimony demonstrates that KB did not outwardly express any frustration and was not upset on May 19 during her shift with Boltz. I find this evidence of little value as I do not believe KB would necessarily express her frustration or discomfort with Boltz in an outward display of emotion. KB herself stated she tried to remain unemotional so the inmates would not notice anything. One of the investigators also noted that KB has a "flat affect." In watching the testimony, I agree with that description. I do not find KB's outward appearance of her emotional state to be relevant to this credibility determination.



I find that Boltz is less credible than KB. Unlike KB, RS, and DC, Boltz has great incentive to be untruthful as his employment is at stake. During his interview, the investigator asked Boltz, "Have you had any problems working with any females at ISP, any female Correctional Officers?" Boltz replied, "I do not believe so." In testimony, however, Boltz said he and KB did not get along. In fact, Boltz stated he requested to switch pods on May 19 because he did not want to work with KB. He had never requested to switch pods due to problems with any other coworker, thus demonstrating Boltz did have a problem working with KB. Yet, Boltz never mentioned KB during his interview. Boltz's answer about having a problem with any female COs was evasive or untruthful.

Boltz did have several coworkers testify that he appears polite and would not use some of the inappropriate or coarse language that KB alleges he used. However, two of those coworkers were females who rarely worked with Boltz, and certainly were not working with him for 8 hours a day for four to five days a week for four or five weeks straight. Boltz certainly might act differently around coworkers he rarely interacted with versus KB. I do not find these accounts of Boltz's character persuasive as the coworkers did not know Boltz very well.

The male CO, MB, who claimed Boltz would not use that type of coarse or inappropriate language stated that Boltz presented himself as polite. Unlike the two female coworkers listed above, MB did work with Boltz for two to three months prior to Boltz's stint working with KB. However, MB had not worked with Boltz in the weeks prior to the incident at issue. KB alleged that Boltz was frustrated that he was not Activities Officer because he thought he had more

seniority than other COs. DC testified that Boltz became increasingly frustrated and he developed a bad attitude in his last month or two working at ISP. MB had not worked with Boltz in the month prior to the incident at issue. For that reason, I do not find MB's characterization of Boltz as persuasive as KB and DC who worked with Boltz more recently in April and May 2019.

For all the reasons listed above, I find KB's account of the statements Boltz made more credible than Boltz's denial of the allegations.

### CONCLUSIONS OF LAW

Boltz 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.

. . . .

60.2(4) Discharge. An appointing authority may discharge an employee. Prior to the employee’s being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

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 PERB 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.

Boltz contends there is not sufficient proof that he made the alleged inappropriate comments. He further argues the investigation into his alleged conduct was not fair or impartial. Boltz noted the investigators interviewed KB twice due to the inconsistency between her claim regarding the IDs comment and the DOC IT department's finding. Boltz states that despite that, DAS still found KB more credible and claimed her story was consistent. Boltz also claimed the investigation was not conducted with due diligence as it did not uncover that Nurse, KF, was present at some point during KB and Boltz's shift on May 19.

Based on the hearing and the parties' arguments, the primary issues on this appeal concern whether the State had sufficient proof of guilt of the offense and whether the State conducted a sufficient and fair investigation.

In the termination letter, the DOC stated "The investigation found that you violated the State of Iowa Policy Prohibiting Sexual Harassment on May 19, 2019, when you made several comments of a sexual nature that created an intimidating, hostile and offensive working environment. This egregious misconduct warrants summary discharge."

To have sufficient evidence of the employee's proof of guilt in sexual harassment cases, the State needs to prove by a preponderance of the evidence that Boltz made the alleged inappropriate statements. *See* ABA Section of Labor and Employment Law, *Discipline and Discharge in Arbitration* § 8, at 37 (Norman Brand and Melissa H. Biren, eds., 3d ed. 2015) (stating the standard today for discipline cases arising out of alleged sexual harassment is likely to be a preponderance of the evidence, the same as in civil rights law). A preponderance

of evidence standard means “evidence ‘that is more convincing than opposing evidence’ or ‘more likely true than not true.’” *Martinek v. Belmond-Klemme Cmty. Sch. Dist.*, 772 N.W.2d 758, 761 (Iowa 2008) (quoting *Holliday v. Rain & Hail L.L.C.*, 690 N.W.2d 59, 63–64 (Iowa 2004)). The State needs to present evidence that is superior in weight, influence, or force. *Id.*

Boltz argues the State has not presented any evidence to demonstrate that he actually made the alleged comments. However, Boltz overlooks KB’s testimony and her allegations that were documented prior to and throughout the course of the investigation. As discussed above, several pieces of KB’s testimony and allegations were corroborated by DC and by Boltz himself. Based on that and the credibility findings as discussed above, the State has shown KB’s allegations that Boltz made the alleged comments is more likely true than not true. The State has demonstrated sufficient proof of Boltz’s guilt of the offense.

Boltz also argues the investigation was not sufficient or fair in this case. The investigation as detailed in the record was not as robust as it could have been, but the standard is simply whether the investigation was sufficient.

In this case, the investigators interviewed the complainant, KB, and the appellant, Boltz, as well as the coworkers the two of them cited as having relevant information to the allegations at issue. Also, the investigators, while not revealing the name of the complainant or the person at whom the comments were directed, relayed the alleged comments at issue. The investigator even used the inappropriate and vulgar language that KB alleged Boltz had used. Thus, the investigators provided Boltz the opportunity to respond to the allegations at

issue. Boltz provided the name of a character witness. Despite that witness having no direct knowledge of the incident at issue, the investigators interviewed that witness.

The investigation did reveal that, in conflict with KB's allegation, Boltz had not logged in and accessed his coworkers IDs during his shift on May 19. Boltz claims this shows KB's lack of credibility and yet the investigators overlooked this, which may demonstrate a lack of impartiality. The investigators noted this inconsistency in their report and interviewed KB a second time because of this inconsistency. In the second interview KB acknowledged she may have been wrong about the date that Boltz made the IDs comment. Nonetheless, I find the investigator's conclusion regarding KB's credibility plausible based on DC's interview in which he corroborated that Boltz had engaged in similar, although not identical, behavior when he worked with him in April or May.

Ultimately, Boltz's argument regarding the investigation is similar to his argument regarding the sufficiency of proof. Boltz believes DAS's credibility determination was incorrect. He also argues that one person's allegations against another is simply not enough to establish proof of guilt that results in discipline.

As stated above, I agree with the determination of credibility, and the rationale for such determination. The State needs to demonstrate the investigation was sufficient. The State has met this burden.

Additionally, the State has demonstrated it conducted a fair investigation. DAS served as a neutral investigator in the matter. Nothing in the record suggests the investigators or DAS generally was naturally inclined to agree or

disagree with the allegation at issue. The State has demonstrated it conducted a fair investigation.

Although Boltz had not been disciplined before, the DOC proceeded to terminate his employment based on the egregiousness of his comments. See *Phillips and State of Iowa (Dep't of Human Servs.)*, 12-MA-05 at App. 1, 13, 16-18 (stating progressive discipline may be inapplicable when the conduct underlying the discipline was such a serious offense). Boltz, through his comments, undermined the trust that is necessary between coworkers in this type of correctional setting. Boltz also failed to set an example for the inmates in his treatment of KB. Boltz's comments to his coworker in this setting were inappropriate and egregious. As such, the State has shown the level of discipline utilized in this case was appropriate.

The State has demonstrated just cause to terminate Boltz's employment.

I consequently propose the following:

#### ORDER

Boltz's state employee merit appeal is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$830.45 are assessed against the Appellant, Jacob Boltz, 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 Boltz'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 16th day of August, 2021.

/s/ Amber DeSmet

Administrative Law Judge

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