

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

EDDIE JONES,)	
)	
Appellant,)	CASE NO. 102453
)	
and)	
)	
STATE OF IOWA)	DECISION AND ORDER
(DEPARTMENT OF CORRECTIONS),)	
)	
Appellee.)	

Appellant Eddie Jones (“Mr. Jones”) filed a state employee grievance appeal with the Public Employment Relations Board (“PERB”) pursuant to Iowa Code section 8A.415(1)(b) and PERB Administrative Rule 621—11.2. Mr. Jones claims that the State of Iowa, Department of Corrections – Newton Correctional Facility (“State”) failed to substantially comply with Iowa Code section 8A.415 and/or the Department of Administrative Services’ (“DAS”) administrative rules and the Department of Corrections’ COVID-19 Master Action Plan (“MAP”) when the State prohibited Mr. Jones from returning to work until after he received a second negative COVID-19 test despite being allowed to return to work by his doctor and, therefore, requiring him to use sick leave rather than placing Mr. Jones on administrative leave following Mr. Jones’ displaying of COVID-19 related symptoms and until he received two (2) negative COVID-19 tests.

An evidentiary hearing was held on the above-captioned matter on January 18, 2023 via video conference. Present for the Grievant was Matt Butler and Grievant Eddie Jones. Representing the State of Iowa was Andrew Hayes. Present for the Board was Member of PERB, Erik Helland, and Member Cheryl

Arnold. Also present were PERB legal counsel, Allison Steuterman and Certified Shorthand Reporter Eddie Spriggs Daniels. The matter was presided over by Administrative Law Judge Dawn Boucher.

Having heard the testimony of Mr. Jones, reviewed the exhibits and pleadings submitted by the Parties, and heard the arguments of the Parties, pursuant to Iowa Code 8A.415(1), the undersigned find as follows:

FINDINGS OF FACT

Mr. Jones is and was at all times relevant to this matter employed as a Correctional Officer with the Iowa Department of Corrections at the Newton Correctional Facility in Newton, Iowa. On or about May 5, 2020, Mr. Jones experienced symptoms consistent with COVID-19, including headache, fever greater than 100 degrees, muscle aches, and chills. On that same day, Mr. Jones was tested for COVID-19 and called in to work at the Department of Corrections stating he had developed symptoms consistent with COVID-19 and was given a COVID-19 test. He felt better within a day or two and on May 8, 2020 he received a negative COVID-19 test result. Mr. Jones' doctor released him to return to work on May 10, 2020.

After speaking with Human Resources on May 11, 2020 or May 12, 2020, he was informed that he was required to retest after receiving a negative test and if he received a second negative test he could return to work. Mr. Jones testified he believed he had to retest seven days after his first negative test. His Grievance Form, submitted on May 28, 2020, indicates that he was told he would have to retest for COVID and if he was negative he could return on May 17, 2020. Mr.

Jones received a second negative COVID-19 test result on May 14, 2020 and returned to work on May 17, 2020 for his next scheduled shift.

Mr. Jones testified that the State had several different COVID-19 MAPs throughout the COVID-19 Pandemic and that he believed the MAP guideline on May 5, 2020 only required one (1) negative COVID-19 test before returning to work. Mr. Jones testified when he called in to inform the State that his COVID-19 test was negative on May 8, 2020 or May 9, 2020 and that he was informed that the current MAP guidelines required two (2) negative COVID-19 tests before returning to work. He testified that he believed the MAP guidelines changed between May 5, 2020 when he first experienced symptoms and May 8, 2020 or May 9, 2020 when he called in to the State to inform them of his negative test result. However, Mr. Jones was not sure exactly when the MAP guidelines changed. Exhibit SE-A offered into evidence is a May 8, 2020 MAP and it is the only MAP admitted into evidence and before PERB. He testified that he did not see the May 8, 2020 MAP until May 17, 2020. Mr. Jones was off work and was required to use sick leave May 5-7, 2020 and May 10-14, 2020, for a total of eight (8) days.

The May 8, 2020 MAP provides, in relevant part:

COVID-19 presents unique challenges for containment in the confined correctional environment. Knowledge about COVID-19 and public health guidance for responding to this Pandemic is evolving quickly.

This COVID-19 Master Action Plan is based upon current guidance from the CDC that is adapted for the correctional setting. It is anticipated that the CDC guidance will continue to change so the plan will require updating accordingly.

...

What should an employee do if they are exposed (either at work or at home)?

- Exposed employees should home quarantine for 14 days from the day of the most recent exposure.
- Follow “returning to work from quarantine” guidelines What should an employee do if they receive a positive COVID-19 test?
- Home quarantine for 14 days from the date the test was administered.
- Follow “returning to work from quarantine” guidelines.

....

What should an employee do if they experience COVID-19 symptoms (as outlined in the “Symptoms of COVID-19” Section [any one of the major symptoms, or the combination of a 2 of the minor symptoms])?

- Employee should home quarantine for 14 days from the day of the most recent symptoms.
- Follow “returning to work from quarantine” guidelines.

Returning to Work from Quarantine *, **

- Prior to the end of their 14-day quarantine, (on/after day 12 of quarantine) the employee shall have a COVID-19 test administered.
- If that test result is negative, employee shall have a second COVID-19 test administered. If negative, employee may return to work.
- If either of the end-of-quarantine tests are positive, employee shall continue to quarantine for 7 days from date of test. On day 5 of new quarantine, employee may have new COVID test. If negative, employee can have second COVID test. If negative, employee can return to work. If positive, repeat 7-day quarantine/test cycle.

....

** Districts are using a different policy for return-to work process for staff with symptoms. This can be found further in the MAP in the CBC-specific section.

....

USE OF LEAVE

What type of leave do I use if I have COVID-19? *

Staff are able to use any available leave balances if they contract COVID-19. Once sick leave is depleted, staff may be advanced up to 80 hours of leave. If it is determined that the employee likely contracted the virus due to viral spread at the workplace, they will be eligible for paid administrative leave while they recover.

What type of leave do I use if someone in my household has COVID-19?

Staff may use sick-leave to care for a family member diagnosed with COVID-19 OR other available leave as part of their 14-day quarantine period. Once sick leave is depleted, staff can be advanced up to 80 hours of sick leave.

What type of leave do I use if my daycare closes?

Staff may use sick-leave to care for children. Once sick leave is depleted, staff can be advanced up to 80 hours of sick leave.

What should I do if I believe I have COVID-19 due to a work-related exposure?

- Employees should notify their supervisor immediately and call their primary care provider if they believe they have a potential exposure. Employees should NOT report to the Workers Compensation physician.
- An employee should file a first report of injury (FROI) after a confirmed diagnosis and Sedgwick CMS/DAS will make a determination regarding causation and whether the claim is compensable.

What type of leave do I use if I have COVID-19 due to a work-related exposure? *

An Appointing Authority shall advance sick leave to cover absences directly related to COVID-19. Full-time employees shall be offered up to 80 hours of sick leave when they have exhausted their paid sick leave balance. Part-time employees shall be eligible for advanced sick leave on a prorated basis. If it is determined that the employee likely contracted the virus due to viral spread at the workplace, they will be eligible for paid administrative leave while they recover.

Employees may also request unpaid leave in accordance with DAS-HRE

....

14. For staff displaying symptoms of COVID-19, whether they were tested or not: Return to Work Process: Screen all employees by taking their temperature and assessing for cough, sore throat, difficulty breathing or any other respiratory symptom at the beginning of each shift. Exclude all employees reporting fever or respiratory symptoms (these cases will be directed to stay home and isolate themselves from other people and animals in the home) until they:

- Have had no fever for at least 72 hours (that is three full days of no fever without the use of medicine that reduces fevers) AND
- Other symptoms have improved (for example, when your cough or shortness of breath have improved) AND
- At least 10 days have passed since your symptoms first appeared. Exclusion criteria must be followed with all symptomatic employees, regardless of whether the testing is completed (even if the employee tests negative for COVID19 infection).

Exhibit SE-A pp. 2, 17-18, 25.

Mr. Jones also testified that some employees who were exposed to COVID-19, but did not show symptoms, were allowed to return to work with only one (1) negative COVID-19 test, which he believed to be contrary to the MAP requirements. He testified that the MAP was not, in his opinion, administered equally or equitably but gave no further explanation or examples. However, Mr. Jones did not dispute that the State's requirement that he obtain a second negative COVID-19 test result and not return to work until May 17, 2020 was based upon the MAP guidelines. He also did not dispute that the State can require someone to stay home or be confined from the facility if there was a threat that they could have COVID-19. Instead, Mr. Jones asserts that he was entitled to paid administrative leave rather than be required to utilize sick leave because (1) the MAP guidelines changed while he was off work initially on May 5, 2020

and (2) he was released to return to work by a doctor on May 10, 2020 but not allowed to return to work by the State until May 17, 2020.

Mr. Jones submitted his grievance to Step 1 of the State Employee Grievance procedure on May 28, 2020, which was denied by management on May 29, 2020. He submitted his grievance to Step 2 of the State Employee Grievance procedure on May 29, 2020 and it was denied on June 1, 2020 by management. Mr. Jones submitted his grievance to the DAS on June 1, 2020. The State Employee Grievance Answer denying the grievance was issued July 1, 2020 by the Director of DAS. Mr. Jones filed his Appeal of the July 1, 2020 denial on July 8, 2020. The State filed its Answer on August 7, 2020.

Mr. Jones testified that he was not sure, but believes he did not realize his sick leave was being used for the time he was off until it came out of his account as shown on his paystub/paycheck on or about May 28, 2020. However, his Grievance Form submitted May 28, 2020 suggests that he knew on or about May 11 or May 12 when he spoke with Human Resources. Further, Mr. Jones did not testify that the State's use of sick leave for COVID-19 required quarantine changed between May 5 and May 8, only that the requirement for two (2) negative COVID-19 tests changed.

CONCLUSIONS OF LAW

Mr. Jones filed an appeal of his grievance pursuant to Iowa Code section 8A.415(1), which provides:

8A.415 Grievances and discipline resolution procedures.

1. Grievances.

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

b. If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department. Decisions by the public employment relations board constitute final agency action.

Iowa Code § 8A.415(1) (2020). As previously noted by the Board in other cases, the standard for PERB decisions in grievances such as this is whether the State has substantially complied with Subchapter IV of Iowa Code Chapter 8A and the rules of DAS. See Iowa Code § 8A.415(1)(b) (stating “[d]ecisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department”).

Although chapter 8A does not define “substantial compliance,” the Board has endorsed the following definition used by the Iowa Supreme Court in other contexts:

“Substantial compliance” with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case.

McCandles & State of Iowa (Dep't of Corrections), 2021 WL 6337878, *3, 2021-PERB-102483, 102484, & 102485 (Iowa PERB Dec. 21, 2021) (quoting *Frost & State*, 2007-MA-04 at 5 (Iowa PERB 2007) (quoting *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988))). Pursuant to this standard, literal compliance with a rule or statute is not required. *Id.* Instead, substantial compliance means compliance in respect to those essential matters necessary to assure the reasonable objectives of the statute. *Id.*; *Residential & Agric. Advisory Comm., LLC v. Dyersville City Council*, 888 N.W.2d 24, 48 (Iowa 2016). Further, PERB does not evaluate the effectiveness or fairness of an applicable rule. *Id.* In the instant case, Mr. Jones bears the burden of establishing the State failed to substantially comply with some provision of Iowa Code Chapter 8A, Subchapter IV, or DAS rules. *Id.*; *Fulton & State of Iowa*, 2010-MA-03 at 8-9 (Iowa PERB 2010). Mr. Jones did not cite to any specific rule that the State failed to comply with in either his Section 8A.415(1) Appeal nor at hearing.

As set forth above, Mr. Jones asserts that the State failed to substantially comply Chapter 8A, Subchapter IV, or DAS rules, by requiring him to utilize sick leave rather than provide him with id administrative leave for the eight (8) days of work he missed from May 5, 2020 through May 14, 2020 because (1) the MAP guidelines requiring a second negative COVID-19 test changed on May 8, 2020, after he was initially off work on May 5, 2020 when he began exhibiting symptoms of COVID-19 and on the same day he received his first negative COVID-19 test result; and (2) he was released to return to work by a doctor on May 10, 2020 but not allowed to return to work by the State until May 17, 2020.

Mr. Jones' argument appears to be that the State's determination to require him to remain off work until a second negative COVID-19 test was obtained despite him having one negative test and a doctor returning him to work is the employer's decision, akin to a lockout, that should be compensated as administrative leave—that the State should be responsible for such leave rather than the employee. He also testified that he believes the State applied its COVID-19 policy unequally and inequitably.

Timeliness of Step 1: Grievance Submittal

On the outset, the Board notes that Iowa Administrative Code rule 621-61.1(1) requires that a grievant file submit a grievance within fourteen (14) day of when the grievant became aware, or with exercise of reasonable diligence, should have become aware of the grievance issue. Iowa Admin. Code r. 621.61.1(1)(2020). Further, rule 61.1(2) provides that if the grievant fails to proceed within the time limits set forth, the grievant shall be deemed to have waived any right to proceed further and the grievance shall be deemed settled. *Id.* r. 61.1(2). The burden is on the grievant to establish timeliness of the initial filing of the grievance and the Board may dismiss a grievance for failure to file the initial grievance at step one in a timely fashion. *Ehrich & State of Iowa (Dep't of Transp.)*, 2022 WL 2208564, 2022-ALJ-102667 (Iowa PERB May 25, 2022).

The Board finds that the evidence is unclear as to when Mr. Jones first had knowledge that his sick leave would be used to cover the period between his first negative COVID-19 test and the second. Mr. Jones' testimony that he did not know until he saw his paystub on May 28, 2020 lacks credibility as his grievance filings suggest he was informed by the State no later than May 12,

2020 that he was unable to return to work until he received a second negative COVID-19 test and there is no evidence that the State's policy of or requiring sick leave to be utilized changed between May 5, 2020 and May 8, 2020, only that the requirement of two negative COVID-19 tests was changed. His step one grievance was not filed until May 28, 2020.

That being said, the State has not challenged the timeliness of the grievance filing and has put on no evidence as to when Mr. Jones would have had notice or knowledge that his sick leave was being used for the time period in question. Accordingly, the Board makes no decision on whether Mr. Jones' step one grievance was timely filed. Instead, the Board's decision rests on the determination, as set forth more fully as follows, that the State's actions substantially complied with Chapter 8A and the State's rules.

Alleged Failure to Substantially Comply with DAS Rules

Mr. Jones does not set forth the specific Iowa Code section or DAS rule that he claims the State failed to substantially comply. However, as his complaint appears to stem from the use of sick leave, we assume his position is that the State failed to comply with Iowa Administrative rule 11-63.1.

Pursuant to Iowa Administrative Code rule 11-63.1, "[a]ll absences of probationary and permanent employees shall be charged to one of the leave categories provided for in this chapter." Iowa Admin. Code r. 11-63.1(8A). The types of leave provided for in Chapter 63 include: vacation leave; sick leave with pay; Family and Medical Leave Act leave; leave without pay; compensatory leave; holiday leave; military leave; educational leave; election leave; court appearances and jury duty; voting leave; disaster service volunteer leave; absences due to

emergency conditions; examination and interviewing leave; service on committees, boards and commissions; and blood bone marrow and living organ donation leave. *Id.* rr. 11-63.2-20. The rule regarding sick leaves provides:

63.3(1) Accrued sick leave may be used during a period when an employee is unable to work because of medically related disabilities; for physical or mental illness; medical, dental or optical examination, surgery or treatment; or when performance of assigned duties would jeopardize the employee's health or recovery. Medically related disabilities caused by pregnancy or recovery from childbirth shall be covered by sick leave.

Id. r. 63.3(1).

DAS' authority for such rule stems from Iowa Code section 8A.413 which grants DAS the authority to establish rules, in relevant part, "[f]or attendance regulations, and special leaves of absence, with or without pay, or reduced pay, in the various classes of positions in the executive branch, excluding positions under the state board of regents." Iowa Code § 8A.413(21). This includes rules regarding annual sick leave and vacation time in accordance with Iowa Code section 70A.1. *Id.* Accordingly, to substantially comply with subsection 8A.413(21)(b), the State must adhere to the provisions of section 70A.1.

Section 70A.1 provides, in relevant part,

5. Sick leave shall not accrue during any period of absence without pay. Employees may use accrued sick leave for physical or mental personal illness, bodily injury, medically related disabilities, including disabilities resulting from pregnancy and childbirth, or contagious disease, which result in any of the following:
 - a. The employee's confinement is required.
 - b. The employee is rendered unable to perform assigned duties.
 - c. The performance of assigned duties would jeopardize the employee's health or recovery.

Id. § 70A.1. Nothing in section 70A.1(5) provides who determines whether confinement is required. *Suthers & State of Iowa (Dep't of Corrections)*, 2022 WL 2208563, at *5, 2022-ALJ-102572 (Iowa PERB May 20, 2022).

Mr. Jones argues that the State failed to comply, presumably with Iowa Code section 8A.413(21)(b) and DAS rule 11—63.3(8A), with Iowa Code section 8A.413(21)(b) and DAS rule 11—63.3(8A) in requiring him to remain out of work (and utilize sick leave) until he obtained a second negative COVID-19 test, despite his doctor releasing him to return to work on May 10, 2020. Mr. Jones experienced symptoms of COVID-19, a highly contagious and transmissible virus, which required him to be quarantined and to obtain two negative COVID-19 tests before returning to work in order to prevent potential spread. The State's requirement that Mr. Jones use his accrued sick leave to cover the time period from when he first had symptoms until he received a second negative COVID-19 test complies with Iowa Code section 70A.1. Similar to the grievant in *Suthers*, even if his confinement was not required and he could perform his assigned duties, the circumstances are very similar to the listed statutory reasons for which an employee can use earned sick leave so as to result in substantial compliance. *Id.* (finding same when grievant had exposure but no symptoms). Accordingly, as subsection 8A.413(21)(b) requires the State grant sick leave in accordance with section 70A.1, we conclude the State substantially complied with Iowa Code section 8A.413(21)(b) and DAS rule 11—63.3(8A).

Mr. Jones argues that the State failed to comply, presumably with Iowa Code section 8A.413(21)(b) and DAS rule 11—63.3(8A), in requiring him to remain out of work (and utilize sick leave) until he obtained a second negative

COVID-19 test despite the fact that such was not the MAP guideline or rule on May 5, 2020 when he first was off work due to COVID symptoms and did not become the MAP guideline or rule until May 8, 2020 when he received his first negative COVID-19 test result. Mr. Jones claims the MAP guideline on May 5, 2020 required only one negative COVID-19 test though no such MAP guideline was submitted into evidence. Regardless, the State's alleged failure to follow an existing policy, cannot form the basis for Mr. Jones' grievance. *See Suthers & State of Iowa (Dep't of Corrections, 2022 WL 2208563 at *4 (citing Pierce & State of Iowa (Dep't of Human Servs.), 2016-ALJ-100728 at 5 (Iowa PERB July 15, 2016) (concluding a grievant must establish the State's lack of substantial compliance with the specified Code or DAS rule rather than a department or State policy))*¹. PERB has no authority to grant a remedy when a department changes a practice, absent a rule prohibiting such change. *Kleis & State of Iowa (Iowa Dep't of Personnel, Dep't of Corr., & Anamosa State Penitentiary), 2002-MA-03 at 6-7 (2002 Iowa PERB)*. Finally, PERB lacks the authority in grievance appeals to evaluate the fairness of the State's decisions absent a statutory provision or administrative rule requiring the State to be fair in taking such an action." *Brooks & State of Iowa (Dep't of Educ.), 2015-MA-01 at 8-11 (Iowa PERB 2015); Jacobs & State of Iowa (Dep't of Nat. Res.), 2016-ALJ-100086 at 8 (Iowa*

¹ While PERB is without authority to determine whether a grievance exists as a result of the State's failure to follow the MAP, PERB would note that the May 8, 2020 MAP states that only work-related exposures entitle an employee to paid administrative leave when it is determined that the virus was likely contracted due to viral spread at the workplace. No evidence was presented at the hearing or in any of the pleadings or exhibits on whether Mr. Jones was exposed to COVID-19 at the workplace.

PERB April 1, 2016). Mr. Jones has cited no authority that prohibits the State from revising the MAP nor requiring the MAP to be administered fairly.

Mr. Jones testified that he showed COVID-19 symptoms, that the State required him to take sick leave in the period that they had a concern that he could be contagious, and that he returned to work once, pursuant to the State's MAP guidelines, and he presented two (2) negative COVID-19 tests and was safe to return to work. He agreed that the State made the determination of when he could return to work based upon the MAP that was in place on May 8, 2020.

As the State allowed Mr. Jones to use his accrued sick leave in a situation similar to what is listed in Iowa Code section 70A.1(5), we conclude the State's actions assured the reasonable objectives of Iowa Code section 8A.413(21) and Iowa Administrative Code rule 11-63(3). Mr. Jones has not established that the State failed to substantially comply with Iowa Code chapter 8A, subchapter IV, or DAS rules. This finding is consistent with the Board's ruling in *McCandles & State of Iowa (Dep't of Corrections)*, 2021 WL 6337878, 2021-PERB-102483, 102484 & 102485 (Iowa PERB December 21, 2021) as well as the ruling in *Suthers & State of Iowa (Dep't of Corrections)*, 2022 WL 2208563, 2022-ALJ-10247 (Iowa PERB May 20, 2022).

Accordingly, we issue the following:

ORDER

Appellant Eddie Jones' state employee grievance appeal is DISMISSED.

Pursuant to Iowa Administrative rule 621-11.9, costs of the certified shorthand reporter are assessed to Appellant Eddie Jones. Appellant shall pay

the total of \$267.65 within thirty (30) days of service of the Bill of Costs by PERB upon Appellant Eddie Jones via electronic filing through E-Flex.

This constitutes final agency action.

DATED at Des Moines, Iowa, this 7th day of March, 2023.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik Helland, Board Member



Cheryl Arnold, Board Member