

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

JULIE HOTCHKIN, Appellant,)	
)	
and)	CASE NO. 102489
)	
STATE OF IOWA (IOWA VETERAN'S HOME),)	
Appellee.)	

PROPOSED DECISION AND ORDER

The Appellant, Julie Hotchkin, 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. Hotchkin asserts that the Iowa Veteran's Home did not have just cause to issue her a three-day paper suspension on September 3, 2020, for her alleged violation of IVH work rules and policies.

Pursuant to notice, an evidentiary hearing on the merits of the appeal was held before the undersigned administrative law judge on April 28, 2021. The hearing was closed to the public in accordance with section 8A.415(2)(b). Attorney Annie Myers represented the State and AFSCME representative Matthew Butler represented Hotchkin. Both parties filed post-hearing briefs on June 18, 2021.

Based upon the entirety of the record, and having reviewed and considered the parties' briefs, I conclude the State has established just cause existed to support its issuance of a three-day paper suspension.

FINDINGS OF FACT

Background

Julie Hotchkin began employment with the Iowa Veteran's Home (IVH) on July 19, 2013. In her first year, Hotchkin worked as a Licensed Practitioner Nurse (LPN) while at the same time attending and completing Registered Nurse (RN) training. After completing the training, IVH promoted Hotchkin to RN and she has worked in that position in IVH's Resident Support/Employee Services Division for the past seven-years.

As an RN, Hotchkin's work duties include overseeing residents in a 30-bed unit, providing direct care to residents, ensuring LPNs correctly administer plans of care, and providing leadership and direction to LPNs. In her position, Hotchkin spends approximately half of her shift administering licensed treatment to residents.

Hotchkin receives annual copies of IVH's work rules, policies and procedures and she receives regular training on the duties and expectations of her position. In January 2020, Hotchkin signed a receipt acknowledging she was familiar with IVH's policies and work rules. In the receipt, Hotchkin acknowledged that she understood her failure to comply with policies or work rules could result in disciplinary action.

Throughout Hotchkin's tenure, management has regarded Hotchkin as a good, if not exceptional employee. However, despite her positive reputation, prior to her three-day paper suspension, which precipitated the instant appeal, Hotchkin was the recipient of other workplace discipline. In July 2020, Hotchkin

received a written reprimand for failing to wear appropriate personal protective equipment (PPE) when entering a quarantined resident's room. In August 2020, Hotchkin received a one-day paper suspension for inserting a catheter without a provider's order.

Events giving rise to three-day paper suspension

In March 2020, the COVID-19 virus began circulating in Iowa communities. Throughout the spring, the number of infected Iowans steadily increased. Due to the worsening pandemic, in the spring of 2020, IVH restricted residents from entering and exiting the institution; residents could only leave the institution for emergencies. As staff were the only individuals allowed to leave the institution, and thus, were the only individuals who could potentially expose residents to the virus, IVH issued Policy No. 153 requiring staff to wear proper PPE at all times when inside the institution to safeguard the residents' health.

Throughout the spring and summer, IVH regularly updated Policy No. 153 to reflect best practices for mitigating exposure and transmission of the virus. Each time IVH updated its policy, management emailed the staff to inform them of the changes. Additionally, management saved the updated policies in an electronic file available to all staff, discussed significant changes at staff meetings, and reminded staff of the updates when doing rounds.

Pursuant to Policy No. 153, whenever a resident left the facility for a medical appointment or hospitalization, upon the resident's return, IVH would place the resident in quarantine for 14 days. While residents were quarantined,

staff were required to wear a gown, surgical mask, goggles, and gloves every time they entered quarantined residents' rooms.¹

To notify staff when residents were quarantined, IVH identified quarantined residents in Nursing Reports, which staff reviewed prior to each shift. Further, IVH posted signs on the residents' doors stating, "This Resident is in Quarantine...All Staff Must Don PPE Prior to Entering their Room." The sign included a list with pictures of the PPE required to enter, *i.e.*, gloves, gown, goggles, and mask. Finally, IVH placed yellow isolation carts outside each quarantined resident's room, which contained the PPE required to enter.

As noted above, on July 9, 2020, Hotchkin inadvertently entered a quarantined resident's room without wearing the required PPE. Hotchkin self-reported the violation to her supervisor, Carrie Ortiz. IVH issued Hotchkin a written reprimand for this incident.

On August 17, 2020, a resident in Hotchkin's unit returned from the hospital after receiving stitches. Upon the resident's return, IVH placed the resident in a 14-day quarantine. Hotchkin was notified of the resident's return from the hospital and subsequent quarantine via a Nurse Report she regularly reviewed before each shift. Additionally, IVH posted a quarantine sign on the resident's door and placed a yellow isolation cart outside the resident's room.

On the evening of August 25, 2020, Hotchkin entered the quarantined resident's room to bring the resident dinner and to administer treatment to the

¹ IVH updated Policy No. 153 on August 24, 2020. However, the updates were non-substantive and did not modify the PPE required to enter quarantined residents' rooms.

resident's stitches. When Hotchkin entered the room, she wore a face mask, goggles, and gloves; however, Hotchkin did not wear a gown. Hotchkin set up the resident's tray table, served him dinner, and inspected the resident's stitches while he ate. After administering Vaseline to the resident's stitches, Hotchkin left the room. As she left, Hotchkin saw the quarantine sign on the resident's door and realized she was not wearing a gown as required by IVH policy. Hotchkin promptly walked to her office, called Ortiz, and self-reported the incident.

After speaking with Hotchkin, Ortiz called IVH Human Resources Director Melissa Sienknect to discuss the incident. Together, Sienknect and Ortiz determined an investigation into the incident was necessary.

The next day, Ortiz and Nurse Supervisor Judy Fowler interviewed Hotchkin. During the interview, Hotchkin explained she had entered the quarantined resident's room, applied Vaseline to his face, and as she walked out "saw the quarantine sign on the door,...put [her] hands up[,] and thought 'what was I thinking?'" Hotchkin said the only thing she did not do was put on a gown before entering the resident's room. When the investigators asked if she understood Policy No. 153, Hotchkin replied, "I do, yeah." When asked if she understood the importance of wearing PPE correctly, Hotchkin replied, "Yes."

After the interview, Ortiz and Fowler concluded their investigation because there was no material dispute concerning Hotchkin's conduct nor whether it violated IVH policy. Based on Hotchkin's interview responses, Ortiz determined Hotchkin violated IVH Policy No. 153 and, in doing so, violated the Commission of Veterans Affairs Work Rule B(8), which states, "You are required to follow all

safety, health, and sanitation rules and practices, including the use of protective equipment and clothing...”.

Ortiz discussed with Sienknect the seriousness of Hotchkin’s violation, her disciplinary history, and discipline IVH had issued other employees who failed to wear proper PPE. Because Hotchkin had previously received a written reprimand for the same violation, the violation posed a serious risk to residents’ health, and Hotchkin had also recently received a one-day paper suspension, Ortiz and Sienknect determined that just cause warranted issuing a three-day paper suspension, which was the next step of progressive discipline.

On September 3, 2020, IVH issued Hotchkin a three-day paper suspension, which stated, in relevant part:

REASON FOR CORRECTIVE ACTION AND ADDITIONAL COMMENTS: On August 25, 2020[,] you self reported that you did not wear all of the required personal protective equipment when you entered a quarantined resident’s room.

You have been in violation of Commission of Veterans Affairs Work Rule(s) B8 in part “You are required to follow all safety, health, and sanitation rules and practices, including the use of protective equipment and clothing.” And Administrative Policy #153 “COVID-19 Personal Protective Equipment.”

Hotchkin timely appealed her three-day suspension to DAS contending the violation had simply been a mistake and requesting the three-day suspension be removed from her permanent record. On October 9, 2020, the DAS Director’s designee denied Hotchkin’s appeal. Hotchkin subsequently filed the instant appeal with PERB.

CONCLUSIONS OF LAW

Hotchkin 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. See *Woods & State of Iowa (Dep't of Inspects. and Appeals)*, 03-MA-01 at 2. All employees who engage in the same type of misconduct must be treated essentially the same unless a reasonable basis exists for a difference in the penalty imposed. *Id.*

Iowa Code section 8A.413(19)(b) and DAS subrule 60.2(1)(b) require the State to provide the employee being disciplined with a written statement of the

reasons for the discipline. PERB has long held the presence or absence of just cause must be determined upon the stated reasons in the disciplinary letter alone. See *Eaves & State of Iowa (Dep't of Corr.)*, 03-MA-04 at 14; see also *Hunsaker & State of Iowa (Dep't of Emp't Servs.)*, 90-MA-13 at 46, n. 27. 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 discipline letter. See *Gleiser*, 09-MA-01 at 17-18.

In this case, the parties do not dispute, and the record establishes, that Hotchkin knew of IVH's work rules and Policy No. 153's PPE requirements for entering quarantined residents' rooms. This is evidenced by Hotchkin's acknowledgment of receipt of IVH's work rules, her admission to Ortiz that she understood the policy, and her previous written reprimand for violation of the same policy. Moreover, the parties do not dispute the fairness of the State's investigation, the sufficiency of the State's proof, nor whether the State adequately communicated the reasons for discipline to Hotchkin.

Rather, Hotchkin's arguments concern the proportionality and fairness of the State's discipline. Specifically, Hotchkin asserts that because the violation was inadvertent and she self-reported her error immediately a three-day suspension was unfair and unnecessary to correct her behavior. Additionally and alternatively, Hotchkin argues that the State failed to follow progressive discipline because the circumstances underlying her previous one-day suspension were different from the violation at issue in this case. While I am sympathetic with Hotchkin's position and might have imposed a different level

of discipline had I been Hotchkin's superior, for the reasons discussed below, I nonetheless conclude the State has established just cause for Hotchkin's three-day paper suspension.

In the summer of 2020, COVID-19 posed a grave danger to the life and health of IVH's residents. For this reason, IVH deemed consistent, proper use of PPE imperative, which IVH made clear to staff through frequent policy updates, regular PPE audits, and discipline for improper PPE usage. Although mistakes happen, IVH had already warned Hotchkin about the seriousness of failing to wear proper PPE, as IVH had issued her a written reprimand for the same violation only one month prior. Under these circumstances, where the mistake could endanger a resident's life and health, I conclude IVH's decision to move to the next step of progressive discipline was not unreasonable.

As to Hotchkin's assertion that the conduct underlying her one-day suspension was completely different from the violation at issue in this case, I disagree. Although Hotchkin received her one-day suspension for violating different work rules, her prior misconduct nonetheless involved her failure to follow protocols while tending to a resident. Moreover, her prior failure to follow protocols occurred less than one month before the conduct at issue in this case. As Hotchkin's prior misconduct was recent and of a similar nature, I conclude IVH properly followed progressive discipline and that a three-day paper suspension is not disproportionate to the offense. As such, I conclude the State has establish just cause existed for Hotchkin's three-day paper suspension. I consequently propose the following:

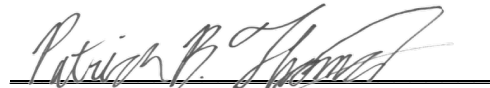
ORDER

Hotchkin's State employee disciplinary action appeal is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$471.00 are assessed against the Appellant, Julie Hotchkin, 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 Hotchkin'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 28th day of September, 2022.



Patrick B. Thomas
Administrative Law Judge

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