

Based upon the entirety of the record, and having reviewed and considered the parties' arguments, I conclude Jones has not established the State failed to substantially comply with DAS rule 11—60.2.

1. Findings of Fact

1.1 Background Information

The Iowa DOC operates multiple institutions across the state, including Newton Correctional Facility (NCF). NCF is a low and medium security correctional institution housing male inmates. The Correctional Release Center (CRC) part of NCF is a low security area of the institution.

Jones has been employed by the Iowa DOC as a correctional officer (CO) since August 1998. He has been at NCF since March 1999. Jones regularly works first shift, which is from 6:00 a.m. to 2:00 p.m.

In the instant appeal, Jones grieves a written reprimand he received on June 14, 2021, for failing to complete a required inventory tool for his assigned post that day. The record does not reveal any prior disciplinary actions Jones received during his tenure with the DOC. However, evidence in the record does show Jones was coached and counseled on two separate occasions—January 8, 2021, and February 2, 2021—for inadequacies in performing inventory-related responsibilities. Former NCF Treatment Services Director Jeff Panknen verbally coached and counseled Jones on both occasions, and subsequently documented the same in an electronic log for supervisory notes. Panknen retired from the

DOC in January 2022, and was not involved in the investigation underlying the written reprimand.

Panknen's written supervisory notes show the January 8, 2021, coaching and counseling occurred after Jones failed to complete half of a required daily tool control inventory for his assigned post during a shift on January 6. When Panknen discussed it with him, Jones told Panknen he had not turned the inventory sheet over to know anything was on the back side.

Panknen's written supervisory notes show the February 2, 2021, coaching and counseling was held after Jones failed to complete the required inventory of barber equipment on his assigned unit. When Panknen discussed it with him, Jones told Panknen he had not completed the barber equipment inventory because he did not check any equipment out. Panknen reminded Jones the post order requires that inventory be completed daily.

1.2 Incident Underlying Discipline

The infraction underlying Jones' written reprimand occurred on May 12, 2021. Jones was assigned to the Lower Officer Post at the CRC. As outlined on post orders, part of his assigned duties included completion of a Central Tool Control Inventory. The purpose of that the inventory is to maintain and manage the tools and equipment in CRC housekeeping, a total of one-hundred items including brooms, mops, buckets, snow shovels, and garden tools. The inventory sheet has six columns, three of which are pre-filled with information with the item name, inventory number and specific location. The remaining three

columns are separated into three shifts that are required to conduct the inventory. These three columns have blank bubbles that the officer should mark or check off as part of completing the inventory checklist.

On May 12, 2021, Jones was assigned to conduct the CRC central tool inventory check for the 6 a.m. to 2 p.m. shift. On the inventory sheet, he signed and dated the bottom of the sheet. Jones' signature on the form certified that all the tools were accounted for. However, he did not make any marks for the inventory items. The officers who conducted inventory on the other two shifts for May 12, marked off each item, signed and dated the checklist.

When the Treatment Services Director Justin Ringler reviewed the May 12 inventory sheet, he noticed Jones failed to complete the required paperwork for the inventory. Ringler asked Jones about the inventory. Jones stated he conducted the inventory but forgot to mark off the items. NCF has a practice of coaching and counseling officers twice for similar inventory infractions before resorting to disciplinary action. Since Jones had already been coached and counseled twice for inventory-related infractions, NCF determined to formally investigate Jones' failure to complete CRC tool inventory on May 12.

1.3 Investigation and Discipline Decision

NCF conducted an investigatory interview with Jones on June 2, 2021. Jones stated he completed the required inventory but forgot to mark off the items on the sheet. Jones explained he did not physically check off items as he conducted the inventory because he was holding multiple items in his hands at

the time. Although he signed and dated the sheet, Jones recalled he set the clipboard down to complete the rest of the inventory, but forgot to go back to it to mark off each item before turning the sheet in. Jones did not dispute he should have marked the items, but maintained that he did complete the inventory. He further indicated that when he explained this to Ringler, Ringler stated he believed Jones that he actually did the inventory.

During his investigatory interview, Jones disputed that Panknen coached and counseled him on two prior occasions.

Jones recalled Panknen called him about the barber equipment inventory, which pertains to the February 2 coaching and counseling Panknen documented. Jones stated he told Panknen the barber equipment sheet was not an inventory sheet, but a check in/check out sheet. Jones explained that since he did not check equipment out, he did not complete the sheet. He acknowledged Panknen told him he was supposed to complete the sheet, but disputed Panknen told him their conversation was still a coach and counsel even after Jones stated the form was not an inventory sheet. Jones stated NCF changed the barber equipment sheet a few weeks after his conversation with Panknen.

Email documentation in evidence shows NCF updated its post orders in June 2020 to clarify that an inventory of the barber equipment must be done regardless of whether the equipment is checked out or not. The barber inventory form was updated to include a spot for each shift officer to sign off that the

inventory was conducted. This update was implemented six months prior to Panknen's February 2, 2021, coaching and counseling with Jones.

Jones stated that he did not recall a January 6, 2021, coaching and counseling with Panknen. Jones stated he was being treated for post-concussion syndrome in January and February, 2021. While he did not attribute his lack of recollection to this condition, Jones provided that information to the investigators during his interview.

At hearing, Jones testified and provided documentation showing he was diagnosed with post-concussion syndrome following a work injury to the head he sustained in August 2020. Jones returned to work with a restriction that he cannot push/pull or lift items heavier than 30 pounds. He was determined fit for full duty without these restrictions on March 15, 2021. Jones testified that this condition affected his memory and ability to complete tasks when distracted. He asserted his medical condition is known by NCF and should have been considered when determining if formal discipline was warranted. Jones did not provide NCF with documentation or any indication that he was cognitively unable to fulfil his assigned duties. The only restriction known was that Jones was unable to handle items heavier than 30 pounds.

Following the investigatory interview and review of Jones' two prior coaching and counseling incidents, NCF concluded the May 12 infraction required corrective action. Jones was given a written reprimand on June 14, 2021. It stated, in pertinent part:

On May 12, 2021, you were assigned as Lower officer at CRC. That assignment required that you complete the Central Tool inventory. Through review of the documentation, you did not check each item as required, but only signed and dated the bottom of the form. During an interview, you stated you did complete the inventory but forgot to check off each item because you had your hands full at the time.

The cited action was found to be in violation of CRC Lower Post Order, items 3 and 32.

3. Record all daily movement, activities, counts, unit checks, emergency alarms, maintenance work order, etc., via the Personal Data Assistant (PDA) or in a logbook and other logs when applicable.

32. Take inventory of housekeeping/chemical items in central cleaning closet.

Jones had notice of the CRC Lower Post Order cited in the written reprimand. NCF concluded Jones was able to write on the form because he signed and dated it. Additionally, as this inventory is of one-hundred items, Jones should have had the sheet with him to check off items as he conducted the inventory to ensure an accurate accounting of the items. NCF determined it was insufficient that Jones did the inventory, when he did not complete the documentation. Completing the check marks is part of the post order expectation and the reason the form individually lists all inventory items.

Undisputed State witness testimony establish that frequent inventories are a critical security measure in the correctional setting. Having accurate records of completed inventory tools is equally critical to maintaining security as it provides reliable documentation on the status of inventoried items. If an inventory item is

discovered missing, the inventory documentation is used to investigate when the item was first unaccounted for. As some of the tools could be used as weapons, the institution may go into a lock-down until the items are found.

NCF acknowledged the institution has a practice of coaching and counseling employees on the importance of properly conducting inventory prior to the issuance of corrective action. Although the institution is not required to coach and counsel, its established practice has been to do so twice before formal discipline. This practice is intended to give employees an opportunity to learn and correct mistakes pertaining to inventory duties without formal discipline. As part of its investigation, NCF concluded the January and February 2021 coaching and counseling sessions were both for infractions related to inventory duties. While Jones did not recall the January 2021 coach and counsel, NCF relied on the documentation Panknen noted at the time to conclude the coaching and counseling occurred.

2. Issue Presented and Summary of Arguments

The issue in this case is whether Jones established the DOC failed to substantially comply with DAS rule 11—60.2. This rule requires disciplinary actions to be supported by just cause. The specific aspects of just cause in contention are whether the DOC conducted a fair and sufficient investigation, whether Jones was treated the same as other similarly situated employees, and whether the imposed penalty is appropriate for the established violation.

Jones argues the DOC's investigation was inadequate because it did not interview Ringler. Jones contends he should have been interviewed because Ringler told Jones he believed him that he completed the inventory, but merely neglected to mark the inventory items. Jones also maintains he was not coached and counseled, as he does not recall the January 2021 conversation with Panknen, and asserts he was unaware the February 2021 conversation with Panknen constituted a coaching and counseling. Jones argues NCF did not follow its own practice of coaching and counseling at least twice prior to corrective action. Finally, Jones claims the written reprimand is improper because he had a documented medical condition, post-concussion syndrome, that caused memory problems. As such, this mitigating circumstance should be considered, and should lead to the conclusion that discipline is not the appropriate response to his infraction.

The DOC maintains that just cause supports the issuance of a written reprimand. A policy violation was established, as Jones' assigned duty was to complete the inventory and the sheet to document that he completed the inventory. Jones admitted he did not fully complete this task. NCF further contends that two coaching and counseling sessions were held and documented at the time. Jones' only medical restriction pertained to maximum weight he can handle and he never made NCF aware of any memory lapses that affected his ability to perform his assigned duties. After coaching and counseling Jones twice for inventory-related infractions, Jones continued to inadequately perform his

inventory duties, and NCF was justified when it issued him a written reprimand, the lowest level of discipline.

3. Conclusion of Law and Analysis

Jones filed the instant grievance appeal pursuant to Iowa Code section 8A.415(1), which states:

8A.415 Grievance and discipline resolution procedures.

1. Grievances.

a. An employee . . . 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 [of the Department of Administrative Services]. 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. . . .

Particularly significant in the excerpted language is that PERB's decision in a subsection 8A.415(1) grievance appeal "shall be based upon a standard of substantial compliance with [Iowa Code chapter 8A, subchapter IV] and the rules of the department [of Administrative Services]." The burden is on the appealing employee to establish the State failed to substantially comply with the cited statute or rule. *Studer and State of Iowa (Dep't of Human Servs.)*, 98-MA-12 at 9. Accordingly, to prevail in this appeal, Jones must establish the DOC failed

to substantially comply with DAS rule 11—60.2 which requires the State to have just cause to support the issuance of discipline, including written reprimands.

In the absence of a definition of “just cause,” PERB has long considered the totality of the circumstances and rejected a mechanical, inflexible application of fixed elements in its determination of whether just cause exists. *Stein and State of Iowa (Iowa Workforce Dev.)*, 2020 PERB 102304 at 15. In analyzing the totality of circumstances, the Board has instructed that the following factors may be relevant to a 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.

Id. PERB also considers how other similarly situated employees have been treated.

E.g. Kuhn and State of Iowa (Comm’n of Veterans Affairs), 04-MA-04 at 42.

The presence or absence of just cause rests on the reasons and policy violations cited in the disciplinary letter provided to the employee. *Eaves and State of Iowa (Dep’t of Corr.)*, 03-MA-04 at 14; *Gleiser and State of Iowa (Dep’t of Transp.)*,

09-MA-01 at 17-18, 21. Jones' written reprimand indicates he was disciplined for failing to complete the Central Tool Inventory on May 12, 2021.

3.1. Fair and Adequate Investigation

Under the record presented, Jones' argument that NCF should have interviewed Ringler as part of its investigation is unpersuasive. Jones was not disciplined for falsely claiming to have done the inventory. Instead, he was disciplined for failing to properly complete the required paperwork when conducting the central tool inventory. As Jones argues, the only information Ringler might have provided is that he believed Jones did the inventory, but failed to mark the inventory items on the sheet. This information was unnecessary to the investigation. Jones already acknowledged he failed to complete the required inventory paperwork before signing it, which is precisely the basis for the written reprimand. As such, the record establishes that NCF conducted a fair and adequate investigation prior to the issuance of the written reprimand.

3.2 Equal Treatment

Jones' claim that he was not previously coached and counseled on similar infractions is credibly refuted by evidence in the record.

First, both coaching and counseling instances were documented by Panknen at the time, providing a dated narrative of the conversation he had with Jones. Those narratives credibly establish that the conversations occurred and were regarding Jones' inventory-type infractions.

Next, Jones acknowledges talking to Panknen regarding the barber equipment inventory, which is the February 2021 incident. Jones stated to Panknen at the time, and maintains now, that the barber equipment sheet was not an inventory sheet but a check in/out sheet. His claim about the content of the form is refuted by documentary evidence received, which demonstrates the post orders and form were updated at least six months prior to the coaching and counseling Panknen had with Jones. Those updates required the officers to conduct an inventory of the barber equipment regardless of whether items were checked out. While Jones claims he did not consider this to be a coaching and counseling, he acknowledged Panknen informed him to follow the post order requirements going forward. As such, the evidence as a whole establishes Jones did not follow the post order for the required barber inventory and Panknen had a conversation with him to ensure Jones complied with the post order requirements going forward, which is a coaching and counseling.

Finally, Jones asserts he does not recall the January 2021 coaching and counseling. While he may not recall the incident, the documentary evidence received credibly establishes Panknen had a coaching and counseling with him regarding an inventory-type infraction in January. The fact that NCF did not provide Jones documentation of the conversation at the time is not unusual or suspect as coaching and counseling is intended to be an informal way to correct an employee's actions. Therefore, Jones' claim that the coaching and counseling did not occur because he was not given documentation of it at the time is

unpersuasive. While he may not recall it, the evidence in the record establishes a coaching and counseling did occur in January 2021 for an inventory-type infraction.

For the reasons discussed, the record demonstrates NCF had two coaching and counseling sessions with Jones regarding inventory-type infractions prior to the infraction that resulted in the written reprimand. This is in line with the informal practice NCF has for correcting similar inventory infractions. As such, Jones has not shown the State treated him disparately from other similarly situated employees who violated inventory-related requirements.

3.3 Appropriate Penalty

Jones has failed to establish the written reprimand was not supported by just cause.

Jones provided evidence of his post-concussion syndrome. He also testified that he has had memory issues as a result, which may explain his inability to recall conversations and stay focused on tasks despite distractions. While not minimizing or disregarding memory loss as a possible symptom of post-concussion syndrome, the undersigned finds that NCF had no knowledge or indication that Jones may have been experiencing memory problems. He was medically cleared to perform all essential duties except those that physically required him to push/pull or lift items over 30 pounds. He has not provided supporting documentation of cognitive issues as part of this appeal. As such, the greater weight of the evidence supports the conclusion that Jones was cognitively able to fulfill his assigned

inventory duties, but failed to do so on May 12. As such, Jones has failed to show the State's disciplinary action was unwarranted.

The DOC utilized progressive discipline and determined the lowest level of discipline was the appropriate penalty. The purpose of progressive discipline is to correct the unacceptable behavior of an employee and to convey the seriousness of the behavior while affording the employee an opportunity to improve. *Phillips and State of Iowa (Dep't of Human Servs.)*, 12-MA-05 at App. 16 (internal citations omitted). After being coached and counseled twice of inventory-type infractions, this was Jones' third violation of similar nature. The DOC concluded a written reprimand, the lowest level of discipline, would convey the seriousness of properly conducting inventory while allowing the employee an opportunity to correct his behavior. Jones has failed to demonstrate the State's imposition of a written reprimand was not supported by just cause.

3.4 Conclusion

Under the record presented, and following consideration of the parties' arguments, Jones has failed to demonstrate the DOC lacked just cause to issue him a written reprimand for failing to complete the Central Tool Inventory on May 12, 2021. As such, Jones has failed to demonstrate the State did not substantially comply with DAS rule 11—60.2.

Consequently, I propose the following:

ORDER

The state employee grievance appeal filed by Eddie Jones is hereby DISMISSED.

The cost of reporting and of the agency-requested transcript in the amount of \$642.45 are assessed against Appellant Eddie Jones pursuant to Iowa Code subsection 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).

This proposed decision and order will become PERB's final agency action on the merits of Jones' appeal pursuant to PERB rule 621—11.7 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 14th day of November, 2022.

/s/ Jasmina Sarajlija
Administrative Law Judge

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