

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

RECEIVED

2013 APR 11 PM 5:04

ILO JON ALLEN,)	PUBLIC EMPLOYMENT
Appellant,)	RELATIONS BOARD
)	
and)	
)	CASE NO. 13-MA-06
STATE OF IOWA (DEPARTMENT OF,)	
TRANSPORTATION, DEPARTMENT OF)	
ADMINISTRATIVE SERVICES),)	
Appellee.)	

PROPOSED DECISION AND ORDER

Appellant Ilo Jon Allen (Allen) filed a state employee disciplinary action appeal with the Public Employment Relations Board (PER Board) on December 3, 2012. Appellant Allen alleged his employer imposed a ten day suspension from work (and a final warning) on October 4, 2012, without just cause within the meaning of Iowa Code section 8A.415(2). The employer is the State of Iowa, the Department of Transportation, and the Department of Administrative Services (collectively DOT). The DOT contends Allen violated work rules and regulations by smoking on DOT grounds and by allowing employees under his supervision to do the same.

This administrative law judge (ALJ) was assigned as hearing officer on January 8, 2013. Pursuant to Iowa Code sections 8A.415 and 20.1(2), and 17A.12, this ALJ held a contested case hearing on January 31, 2013. Mr. Allen represented himself at the hearing; Mr. John Crupi represented the DOT. The DOT filed a post-hearing brief on February 13, 2012. Allen chose not to file a post-hearing brief.

After a review of the pleadings, the evidence, the arguments and the law, this ALJ rules as follows:

FINDINGS OF FACT

For administrative purposes, the State of Iowa divides the Iowa Department of Transportation (DOT) into six statewide districts. District Three includes the nineteen northwest Iowa counties and is supervised by a district engineer. Reporting to the district engineer is the maintenance manager who, in turn, supervises eight highway maintenance supervisors, one of whom is Allen. Allen has served as a highway maintenance supervisor since August 1986. Allen began work with the DOT in November 1979.

Up until recently, Allen had no record of any disciplinary actions. However on August 6, 2012, Allen received a five day paid paper suspension for violation of the DOT's internet policy. Two months later, Allen received this second suspension. Allen contemporaneously appealed both suspensions. The other appeal, also heard by this ALJ is *Allen and State of Iowa (Dept. of Transportation)*, PER Bd. 13-MA-05 (April 11, 2013). This is significant because unlike Allen's companion appeal, in this appeal Allen does not dispute that he knowingly violated DOT policy. Specifically, Allen admitted regularly smoking on DOT premises and allowing subordinates to do the same. Nor does Allen dispute DOT's investigation or imposition of discipline.

The only purpose for Allen's appeal in this case is that the instant "final warning" is built on Allen's five day suspension imposed in his first case. In the earlier case, Allen asked this ALJ to find that the DOT should have,

instead, given him a verbal warning. If successful in that appeal, Allen asks this ALJ to reduce the “final warning” in this case to a five day suspension. To use a baseball batting analogy, Allen asks this ALJ to turn his “first strike” into a verbal warning and, in turn his “second strike” into a “first strike.”

However, today this ALJ filed his proposed ruling upholding the DOT’s earlier five day suspension. Because Allen raises no other challenge to the DOT’s discipline in this case no other findings of fact are required.

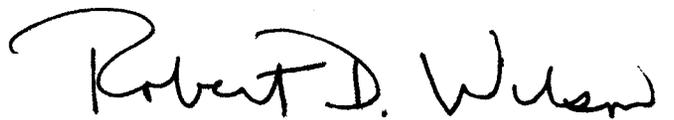
CONCLUSIONS OF LAW

In light of Allen’s admissions, this ALJ concludes that the DOT has met its burden of proof to establish that Allen knowingly violated DOT work rules both as to smoking on DOT grounds and allowing his subordinates to do the same.

Allen has raised no issue with regard to how DOT investigated this matter or DOT’s imposition of discipline.

Accordingly, this ALJ finds “just cause” for the ten day suspension (final warning). Allen’s appeal is dismissed. So ordered.

Dated at Des Moines, Iowa this 11th day of April, 2013.



Robert D. Wilson

Administrative Law Judge

Original filed.

Mailed and e-mailed copies to:

Mr. Ilo Allen
3225 Humbolt Ave.
Hornick, IA 51026

Email: iloallen@hotmail.com

Mr. John Crupi
State of Iowa
Department of Administrative Services-HRE
Hoover Building, 3rd Floor
1305 East Walnut
Des Moines, IA 50319-0150

Email: John.Crupi@iowa.gov