

**STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD**

PAUL RODE,
Appellant,

and

STATE OF IOWA (DEPARTMENT OF
CORRECTIONS),
Appellee.

CASE NO. 100041

PROPOSED DECISION AND ORDER

Appellant Paul Rode filed this state employee disciplinary action appeal pursuant to Iowa Code section 8A.415(2)(b) and PERB rule 621—11.2(3). He appeals the third-step response issued by the Department of Administrative Services (DAS) that denied his challenge of disciplinary action. Rode alleges the State does not have just cause for disciplining him with a one-day suspension. The State contends just cause supports the discipline.

Pursuant to notice, a public evidentiary hearing was held before me on October 29, 2015, in Des Moines, Iowa. Rode appeared *pro se* and Andrew Hayes represented the State. Both parties delivered closing arguments in lieu of post-hearing briefs following the presentation of evidence.

Based upon the entirety of the record and having considered the parties' arguments, I issue the following findings of fact and conclusions of law.

FINDINGS OF FACT

Rode has been employed by the State of Iowa since July 1981. He started his employment with the Department of Corrections (DOC) in December 1992 and is currently employed as an Associate Warden of Treatment (AWT) at the

Iowa Correctional Institution for Women (ICIW) in Mitchellville, Iowa. The AWT is a supervisory position. One of Rode's duties as a supervisor is reviewing timesheets submitted by his subordinate reports and the employees under the supervision of another manager. In total, Rode is responsible for approving approximately 14-15 timesheets every pay period.

The ICIW utilizes a timekeeping system known as "KRONOS." In KRONOS, the employee creates a record of hours worked by "punching in" and "punching out" each workday. Shortly prior to or at the end of the pay period on Thursday, a supervisor receives the KRONOS record of hours worked to review and approve by 10:00 a.m. the next day, the Friday following the end of the pay period. In the event there is a "missed punch" on an employee's timesheet, it is noted in red for the supervisor to reconcile by speaking with the employee or waiting for the employee to submit a leave slip. Once the timesheet is complete, the supervisor approves it and the information goes to the ICIW's personnel department for final approval. The approved timesheets are then transmitted to the State's central payroll department for processing of paychecks. The submission to central payroll occurs, at the earliest, on Monday following the end of a pay period.

The pay period relevant to this case ran from Friday, January 30 through Thursday, February 12, 2015. On February 11, 2015, Rode received the KRONOS timesheet records that he is responsible for approving. In reviewing the timesheets, Rode noticed one of his employees, Angela Sorensen, had a "missed

punch” because she had no clock out time for February 6, 2015. He also had no leave slip for Sorensen for this date.

Upon seeing the omission, Rode reached out to Sorensen to gather the missing information. At 6:12 p.m. on February 11, 2015, Rode wrote Sorensen an email with the subject “look at your time card” and said “One day does not show a punch out time. Please let me know what time you clocked out and leave slips if needed.”

At the time Rode was attempting to get ahold of Sorensen, he was aware the time clock has been known to malfunction. There were at least three instances every two weeks of the time clock not accepting an employee’s attempt to punch in or punch out. One such time clock malfunction occurred on February 5, the day before Sorensen had a missing punch. On that day, Rode received an email from an employee informing him that she attempted to punch in but the time clock “said to please wait, biometric configuring something, and then it beeped.” The employee further stated, “I didn’t want to punch in again in case it would punch me back out.” This employee asked Rode to punch her in at the time she arrived to work. In addition to the February 5 time clock malfunction, four other malfunction instances occurred between February 9 and March 19, 2015. The malfunction reports included both attempts to clock in and clock out.

By the morning of Friday, February 13, which was Rode’s deadline to approve the timesheets, Sorensen had not replied to his email. He was also

unable to reach her by phone but left her a voicemail. At 9:18 a.m., after still not having heard back from Sorensen, Rode “made an educated guess” that the missed punch was due to the time clock not working properly and failing to accept her out punch. Consequently, Rode edited Sorensen’s KRONOS timesheet by adding her regular end-time of 4:30 p.m. for February 6 and the comment “clock not working.” He then approved the timesheets with the noted edits and the information went to the ICIW personnel department for approval. At 10:33 a.m., Jenny Phillips in the ICIW personnel department approved the timesheets.

At approximately 12:45 p.m. on the same day, Sorensen contacted Rode indicating she had received his email and voicemail. She reminded Rode that on the day in question, February 6, Rode verbally approved her request to leave work early to attend to urgent childcare needs. She left work at about 1:00 p.m. and she forgot to punch out because she was in a rush. Sorensen further explained that she forgot to submit a leave slip when she returned to work. This conversation reminded Rode that he did in fact approve Sorensen’s request to leave early, but he forgot to note it down on his desk calendar as he usually does when he approves an employee’s leave request. Rode asked her to submit a leave slip to account for the leave.

Immediately after speaking with Sorensen, Rode accessed KRONOS to correct the “mistake” he input earlier regarding Sorensen’s end-time for February 6. He realized that Phillips had already approved the timesheets and he was unable to make further edits as the information was sent to the next level of

approval. He then contacted Phillips, told her he “made a mistake” and asked her to “unapprove” the timesheet so he could correct the inaccurate end-time on Sorensen’s timesheet. Phillips “unapproved” the timesheet and Rode corrected the information by 1:58 p.m. Sorensen’s time worked and leave were corrected and accurate prior to it being sent to the State’s central payroll department for processing.

Some time on February 13, the business manager who oversees the ICIW personnel department was made aware of the “clock not working” comment submitted by Rode. He contacted Deputy Warden Jeremy Larson, Rode’s supervisor, to inform him of the same. The business manager told Larson he deemed this comment “odd” because there had been no earlier reports of the time clock not working. Larson subsequently contacted Rode to ask whether he input the comment and if the time clock was not working. Rode confirmed he entered the comment but he was mistaken and he corrected the submission after getting ahold of the employee.

The ICIW deemed that Rode’s actions in editing Sorensen’s timesheet warranted an investigation. Steve Squires, the Human Resources Director of the Newton Correctional Facility, was asked to investigate because he is considered “well versed in the time keeping system” and has provided “oversight” on KRONOS for about eight years. During his tenure as the Human Resources Director, Squires has “seen supervisors make mistakes” and some have been “disciplined for making KRONOS mistakes” but not all.

In this situation, Squires was asked to investigate an allegation that a supervisor “knowingly entered incorrect information in to (sic) the time keeping system.” The focus of the investigation was that “information was knowingly entered [into KRONOS] that was incorrect.” During his investigative interview on March 4, 2015, Rode stated that he had verbally approved Sorensen’s leave for February 6 but forgot to note it on his desk calendar. When he was confronted with the missing out punch and unable to get ahold of Sorensen, he assumed the time clock had malfunctioned again and failed to accept her out punch. Therefore, he edited it to reflect 4:30 p.m., which is her regular end-time. Rode found out his assumption was a “mistake” when Sorensen did call him back after his deadline for approving the timesheets had passed. Rode immediately worked to correct the timesheet entry after he spoke to Sorensen.

From speaking with Rode, Squires concluded that Rode “felt compelled to complete the time keeping record as indicated in DOC Policy AD-PR-08.” Following their investigation, the ICIW determined that Rode violated two sections of the DOC policy AD-PR-08 and his infractions warranted discipline. At that time, Rode already had a written reprimand that he received on May 29, 2014, for “fail[ing] to ensure the Iowa Ethics and Reporting Donation Form was completed on the first of each month.” Consequently, the ICIW followed progression and disciplined him with a one-day suspension.

On April 6, 2015, Rode received notice of a one-day suspension for his edits to Sorensen's timesheet. The suspension letter stated, in part:

This letter is to inform you that you are receiving a one-day suspension for violation of the following policy:

AD-PR-08

Policy on Attendance, Timekeeping and leave

C. Timekeeping

1. Employees must request supervisory approval for time away from scheduled work and have the appropriate leave balance to utilize for the absence. Absences without supervisory approval or sufficient leave may be considered unauthorized leave and subject to the violation schedule in B.3.

4. Supervisors shall submit all available documentation, timesheets, approved leave form(s), medical verification(s), and reconciled time for the pay period to the institution or central office designee prior to 12:00 pm on the Friday after the pay period ends.

During the course of an investigative interview conducted on 3/4/15, you admitted that you edited a missed punch in Kronos for Psychologist Angela Sorensen on 2/12/15¹, which was for 2/6/15. You're responsible for approving her timecard by 10:00am on Friday at the end of the pay period. You couldn't get a hold (sic) of her, so you edited the missed punch and made a comment in Kronos that the time clock was not working. You entered a punch out at 4:30pm, which credited her for 3.5 hours. You stated that you put that comment in there, but guessed wrong. You stated that you put that comment in there until you could find out what the actual reason for the missed punch was. Angela Sorensen put a leave slip in for vacation for the 3.5 hours after you had edited the out punch. You stated that you had verbally approved this time, but had forgotten to write it down. You had the time adjusted once you became aware of the discrepancy.

As a result of this infraction, you are hereby subject to this written notice of alternative discipline in lieu of a one-day suspension. While this action does not reduce your pay, seniority, or other benefits, it

¹ A screen shot of the KRONOS timesheet record for Sorensen shows Rode made the edit on 2/13/15, not 2/12/15, as stated in the discipline letter. State Ex. 4.

does carry the same weight as if you had been subject to a one-day suspension. It is important that you understand that your failure to follow the Institution's work rules and policies is a serious matter.

Rode appealed the one-day suspension to the director of DAS pursuant to Iowa Code section 8A.415(2) and chapter 61 of the DAS rules. A third-step meeting was held on May 4, 2015, and the third-step response denying the grievance was issued by the DAS director's designee on May 11, 2015. The director's designee determined the one-day suspension is supported by just cause. Rode timely appealed the third-step response to PERB pursuant to Iowa Code section 8A.415(2)(b) and PERB rule 621—11.2.

CONCLUSIONS OF LAW

Rode 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.

The following DAS rules set forth specific discipline 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.

60.2(1) Suspension.

b. Disciplinary suspension. An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days as provided in either subparagraph (1) or (2) below. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.

The State bears the burden of establishing that just cause supports the discipline imposed. *See, e.g., Phillips and State of Iowa (Department of Human Resources)*, 12-MA-05. The term “just cause” as employed in section 8A.415(2) and administrative rule is not defined by statute or rule. *Stockbridge and State of Iowa (Department of Corrections)*, 06-MA-06 at 21. Determination of whether management has just cause to discipline an employee is made on a case-by-case basis. *Id.* at 20.

In determining whether just cause exists, PERB has continued to examine the totality of circumstances in each case. *See, e.g., Cooper and State*

of Iowa (Department of Human Rights), 97-MA-12 at 29. As previously stated by the Board,

[W]e believe that a § 19A.14(2)[now § 8A.415(2)(b)] just cause determination requires an analysis of all the relevant circumstances concerning the conduct which precipitated the disciplinary action, and need not depend upon a mechanical, inflexible application of fixed “elements” which may or may not have any real applicability to the case under consideration.

Hunsaker and State of Iowa (Department of Employment Services), 90-MA-13 at 40. While emphasizing there is no “fixed test” to determine the presence or absence of just cause, the Board has instructed that an analysis of the following factors may be relevant:

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 (Department of Transportation), 93-MA-21 at 22. Another factor that has been deemed relevant by the Board is how other similarly situated employees have been treated. Kuhn and State of Iowa (Commission of Veterans Affairs), 04-MA-04 at 42.

While no “fixed test” for determining just cause exists, PERB has consistently held that the presence or absence of just cause must rest solely on the reasons stated in the disciplinary letter. *Eaves and State of Iowa (Department of Corrections)*, 03-MA-04 at 14. This requirement is derived from Iowa Code section 8A.413(18)(b), which states “[t]he person discharged, suspended, or reduced shall be given a written statement of the reasons for the discharge, suspension, or reduction within twenty-four hours after the discharge, suspension, or reduction.” In accordance with this statutory directive and DAS rule 11—60.2(1), quoted *supra*, PERB has consistently found that the disciplinary notice must contain the reasons for the disciplinary discharge, suspension or demotion, and that just cause must be determined solely upon the reasons stated in the notice of discipline. *See, e.g., Hunsaker and State of Iowa (Department of Employment Services)*, 90-MA-13 at 46, n. 27.

The reason for Rode’s one-day suspension as stated in the notice of discipline and preserved for consideration here is that his edit of Sorensen’s timesheet violated sections C.1. and C.4. of the DOC policy AD-PR-08, Attendance, Timekeeping and Leave. Upon considering the evidence presented, I conclude the State has failed to prove Rode’s actions violated either section cited in the disciplinary notice.

The first rule violation alleged in the notice of discipline is AD-PR-08 section C.1., which requires that “Employees must request supervisory approval for time away from scheduled work and have the appropriate leave

balance to utilize for the absence.” I am perplexed as to why this rule is cited in the discipline letter because it patently has no applicability to Rode’s actions. Section C.1. imposes an obligation on the employee taking leave to request prior approval and ensure enough leave is available for that request. In this instance, Rode did not take leave and thus could not have violated C.1. The rule has no applicability to Rode’s actions and I therefore conclude he certainly did not violate it.

The second rule violation alleged in the discipline letter is that Rode’s edit of Sorensen’s timesheet violated AD-PR-08 section C.4., which states, “Supervisors shall submit all available documentation, timesheets, approved leave form(s), medical verification(s), and reconciled time for the pay period to the institution or central office designee prior to 12:00 p.m. on the Friday after the pay period ends.” For the reasons explained below, I conclude that Rode’s actions were in compliance with the requirements of section C.4.

The record demonstrates he submitted “all available documentation, timesheets [and] approved leave form(s)” by the 12:00 p.m. deadline. There is no evidence in the record to show Rode failed to submit all available documentation, timesheets, or leave slips at the time he edited and approved Sorensen’s timesheet. Sorensen did not submit a leave slip until Rode contacted her to discuss the missing punch. As such, there is no “documentation” that Rode failed to submit to the institution as required by C.4.

Significantly, upon finding out Sorensen actually left early on February 6, Rode promptly acted to submit that information to the institution. Had Rode found out his initial edit was erroneous and failed to correct it that might present a different situation. Absent any such evidence, I conclude he acted in accordance with C.4. when he corrected his initial entry.

During the hearing, the sole position of the State was that Rode “knowingly enter[ed] false information” into an official timekeeping system and that his conduct was “unethical.” While the State now argues Rode’s actions constitute a deliberate intent to submit false information into KRONOS, I need not decide that issue. As previously explained, the presence or absence of just cause must be determined solely on the reasons cited in the notice of discipline. Nowhere in Rode’s disciplinary notice does the State even allude to the knowing falsification of timesheets or unethical behavior as the basis for the discipline. Consequently, the State cannot now use these reasons to support the presence of just cause. To allow such would be in direct contravention of longstanding PERB case law and the notice requirements as set forth in Iowa Code section 8A.413(18)(b) and DAS rule 11—60.2(1).

For the foregoing reasons, I conclude the State failed to prove that Rode violated either section C.1 or C.4 of the DOC policy AD-PR-08, Attendance, Timekeeping and Leave, as cited in the discipline letter. As such, the State has failed to show the one-day suspension is supported by just cause.

Accordingly, I hereby propose the following:

ORDER

Paul Rode's state employee disciplinary action appeal from the one-day suspension is hereby GRANTED. The State shall rescind the suspension and make appropriate adjustments to his personnel file.

DATED at Des Moines, Iowa, this 24th day of December, 2015.



Jasmina Sarajlija
Administrative Law Judge

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