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Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

DAVID HIEDEMAN, Appellant, and STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.	PERB Case No. 102620 DIA Case No. 23PERB0003 PROPOSED DECISION and ORDER

The hearing in this case was held on March 23, 2023. David Hiedeman ("Hiedeman") appeared and provided testimony; he was represented by Earlene Anderson. The State of Iowa, Department of Corrections, ("DOC") was represented by Adrienne Loutsch and Annie Myers. Warden Mike Heinricy ("Warden Heinricy") and Investigator David Siler appeared and testified. The entire administrative file, including the parties' exhibits, was admitted into the record, and the record was held open until April 28, 2023, for closing briefs, which were received. The matter is now fully submitted.

FINDINGS OF FACT

Hiedeman commenced working for DOC on April 30, 2007, and by the time of his separation on August 3, 2021, he was a senior correctional officer for DOC for the Iowa Medical and Classification Center located in Coralville, Iowa. Ex. E, at p. 1. Due to his advancement, Hiedeman spent a significant amount of his time conducting investigations concerning, among other things, threats and inappropriate contact between inmates and staff. Tr. at pp. 16-17; 41. Prior to the events giving rise to this case, Hiedeman had never received any form of discipline from his years of service with DOC. Tr., at p. 53.

On or about January 5, 2021, Hiedeman had a conversation with a private attorney, Bridget Bott ("Bott"), concerning the inmate J.B., who was on the sex offender registry and was awaiting a "safe keeper" hearing to determine if he had to be civilly committed after his criminal sentence had run. Tr. at p. 18; Ex. G, at p. 10. J.B. appears to have been contacting two adults in the community, at least one of which had a minor child. See generally, Ex. G. A parent of the child retained Bott to modify an existing custody order to prevent J.B. from having contact with the child, and pursuant to this, Bott had contacted Hiedeman for information on J.B. Ex. Q, at pp. 1-2.

The contents of the January 5, 2021, telephone call are sharply disputed. According to Hiedeman, Bott represented herself as a prosecutor looking for information to investigate J.B. See, e.g., Tr. at p. 66 ("She informed me that she was a prosecuting attorney and that she was looking to charge an inmate with a violation of a no-contact order with a child, and would I be able to get her phone records."); Ex. R, at p. 2 (similar). According to Bott, who submitted an affidavit but did not testify, she "did not state that [she] was a prosecuting attorney, nor did [she] imply that [she] was requesting these documents on behalf of a government entity." Ex. Q, at p. 1. What is certain is that Hiedeman left the conversation *subjectively* believing Bott was a prosecutor entitled to confidential information concerning J.B. and that Hiedeman

would review and send J.B.'s statutorily protected communication with the individuals in the community to Bott. Indeed, in an email from Bott to Hiedeman that day, Bott thanked Hiedeman for his help and stated: "Once you have videos and calls please send them to me." Ex. G, at p. 10. In response, Hiedeman sent a variety of emails about the status of his communication search, noting at one point in January 6, 2021, email: "I will let you known when I send the other 500 calls. Until then, if you ever need anything DOC related, please don't hesitate to reach out. Especially since you are a prosecuting attorney." Id., at p. 8. The only communications between Bott and Hiedeman after the January 5, 2021, telephone call were by email, and the email string submitted into the record indicates Bott never corrected or otherwise notified Hiedeman she was *not* a prosecutor. See generally, Ex. G. However, Bott's signature block did state "Bott Law Office, P.L.L.C., Attorney and Mediator," and her email address was not a governmental address. Id.; see also Tr., at p. 26.

During the ensuing months, Hiedeman sent Bott approximately one to three thousand of J.B.'s communications. Compare, Ex. Q, at p. 2 (noting 2,383 recordings) with Ex. C (noting 1,300 recordings); see also Tr. at p. 34 (similar). Bott appears to have used at least some of this material, which made J.B. aware that his communications had been shared and caused him to complain. See generally, Ex. E, at p. 3. This, in turn, triggered DOC to begin an investigation since Bott was not entitled to such information. Tr. at p. 17. During the investigation, DOC only interviewed Hiedeman and chose not to interview Bott. Id., at p. 19. Ultimately, DOC determined Hiedeman made an improper disclosure of information and he should have verified Bott was a prosecutor, particularly after becoming aware of the proverbial red flags of the information being sent to a non-government email address and Bott's signature block being that of a private attorney. Tr., at pp. 30-31. Of note, at the time, DOC had no *written* verification procedures before disclosure of confidential material, but its employee handbooks did articulate who could receive such information. See, e.g., Tr., at p. 33 ("Q. And also just correct me if I'm wrong, but did you say that there's a written procedure for verification? A. There is not a written procedure for verification. However, the procedures do state the individuals that are allowed access."). DOC also had no *unwritten* policy that it shared with its employees on how to verify an individual's identity. See, e.g., Tr. at p. 36 (investigator stating he made up his own verification procedure); p. 65 (Hiedeman stating he never received training on how to verify an individual's identity before releasing confidential information).

Because disclosure of inmate communication to non-authorized individuals is unlawful and creates liability for DOC and because essentially of the sheer number and duration of the disclosures, DOC decided to end Hiedeman's employment. Tr., at pp. 43-44. This was after a Loudermill interview, and the separation letter was issued on August 3, 2021. Exs C, R. The separation letter stated Hiedeman released more than 1,300 confidential phone calls to a private attorney in violation of Iowa Code sections 904.602 and 904.603 and well as: AD-CR-04 (which is a written work policy that details to whom confidential information can be released); AD-PR-29 (which is a written policy that requires employees to reviewing all applicable code provisions and work rules on confidentiality); AD-PR-11 (which is a written policy requiring all employees to comply with all applicable laws and policies). Ex. C, at pp. 1-2. Each of the work policies is in the record before the Tribunal, and Hiedeman grieved his separation, alleging the State had no just cause to terminate his employment because Bott had misrepresented herself. Exs. L, M, N.

The State denied the grievance, concluding just caused existed for the separation due primarily to Hiedeman failing "to perform his due diligence" before releasing the confidential communications, which exposed not only Hiedeman but also DOC "to undue risk of potential legal liability." Ex. E, at p. 3. In denying the request, the State discussed seven factors often associated with a just cause analysis, namely notice, reasonableness of the rule, an investigation, a fair investigation, proof, equal treatment, and penalty. See generally, Ex. E.

Unsatisfied, Hiedeman sought further review, triggering the present proceeding. At the hearing, Hiedeman again reiterated he was duped by Bott into believing she was a prosecuting attorney entitled to J.B.'s communication and noting he did make efforts to verify Bott's identity through googling her name to make sure she was an attorney and the contact information was the same. Tr., at p. 66 ("A. After that, I told her I would look into it. I Googled her name. I never clicked on any website, but I did Google her name just to cross-reference her name, that she was an attorney, and the address and phone number matched what she had called from."). Hiedeman did acknowledge he was fully aware of the confidentiality policy while also noting there was no verification policy. Id., at pp. 72, 84. Hiedeman further stated Bott's signature block did not raise any "red flags" as he did not think to question the veracity of an attorney's statements. See, e.g., Tr., at p. 67 ("A. Because I don't--I didn't see it as a red flag. I had no reason not to believe she wasn't a prosecuting attorney. She told me she was. I thanked her for being one in an email and for doing what she does for work, and not once would I have ever guessed that she was not, not by a signature block, or anything else."). Of note, the notice of confidential information that the State maintains is supposed to be sent with every release of information is apparently not in use. Ex. O; Tr., at p. 81.

In closing, the State reiterated its prior position that just caused had been established principally because Hiedeman, knowing the policies concerning release of confidential information, was negligent in verifying Bott's status as an individual entitled to such information and sending her the protected materials. See generally, State Br. In response, Hiedeman argues his separation was due to DOC needing to find a proverbial scapegoat for the incident, and no just cause existed in part because there was no verification rule that Hiedeman violated. Hiedeman Br., at p. 3. Hiedeman argues he did nothing wrong given the lack of a rule, and the failure to interview Bott reveals how unfairly ends-oriented the investigation was. Id., at p. 2. Hiedeman argues there are no comparable cases justifying such a sanction for his conduct, and it is too severe given his years of service without incident. Id.

CONCLUSIONS OF LAW

A.

Under Iowa Code chapter 8A, the Public Employment Relations Board ("PERB") generally "has authority to consider appeals of discharge decisions involving merit system employees." Kuhn v. Pub. Emp. Rels. Bd., No. 07-0096, 2007 WL 4191987, at *1 (Iowa Ct. App. Nov. 29, 2007) (citing Iowa Code § 8A.415(2)). "If the PERB finds the disciplinary action discriminatory or for other reasons 'not constituting just cause,' the employee may be reinstated without loss of pay or benefits for the elapsed period, or the PERB may provide other appropriate remedies." Walsh v. Wahlert, 913 N.W.2d 517, 522 (Iowa 2018) (some internal quotation marks omitted) (citing Iowa Code § 8A.415(2)). While "[t]here is not an all-encompassing definition of just cause," PERB has promulgated rules to guide this "fact-specific" determination. Krogman v. Iowa Pub. Emp. Rels. Bd., No. 22-0043, 2023 WL 1812835, at *4 (Iowa Ct. App. Feb. 8, 2023).

Under the governing PERB administrative rules, for disciplinary action to be proper, just cause must be based on one or more of the following:

> 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.

11 Iowa Administrative Code ("I.A.C.") § 60.2. In making the just cause determination, a totality of the circumstances must be consider, with relevant factors including, but 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 and State (Dep'tofTransp.), 2009-MA-01, at pp. 16-17. This generally includes the reasonableness of any rule that is being enforced, as well as how similar situated employees have been treated in the past. See, e.g., Kuhn and State of Iowa (Comm'n of Veterans Affairs), 04-MA-04 at 42. No "mechanical, inflexible application of fixed elements" exists when making the just cause determination, and the State bears the burden of proof. Garduno and State (Iowa Workforce Development), 20-PERB-102249, a pp. 9-10. Further, the presence or absence of just cause rests on the reasons stated in the disciplinary letter. See ,e.g., Eaves & State of Iowa (Dep't of Corr.), 03-MA15 04, at p. 14; Hunsaker & State of Iowa (Dep't ofEm p't Servs.), 90-MA-13 at p. 46, n. 27.

B.

In this case, no dispute exists Hiedeman's discharge can only be authorized if just cause existed because he was a merit system employee. Based *solely* on the record made at the hearing, the State carried its burden of proof to establish just cause for Hiedeman's separation. While all agree Hiedeman subjectively thought he was disclosing protected information to a person who was entitled to it, Hiedeman ultimately acted in an unlawful matter in disclosing such information to Bott in circumstances that should have put him on notice more verification was needed. The sustained and significant number of actions that did not satisfy the law ultimately overrides any contrary factors cutting against his separation, leaving little choice but to uphold the action under review.

First, the record established Hiedeman violated DOC's rules requiring its employees to follow all applicable laws in performance of their duties. No dispute exists DOC's employee manuals require its employees to follow the law in the performance of their duties, including on handling confidential material. See, e.g., Ex. N, at p. 12 ("Employees are charged with the responsibility of complying with [all relevant] rules, orders, polices, and procedures, along with municipal county, state and federal law[.]"). The relevant law on confidential material is Iowa Code section 904.602, which articulates what inmate information is confidential. Iowa Code § 904.602(2). This would generally include inmate communications, and the law then provides the conditions under which such information can be released, including to "to public officials for use in connection with their official duties relating to law enforcement[.]" Id. § 904.602(6). Importantly, the statute defines a violation of it as a "serious misdemeanor," and as the statute lacks any language about needing a specific intent to violate it, the statute is considered a general intent crime. Iowa Code § 904.602(11); Eggman v. Scurr, 311 N.W.2d 77, 79 (Iowa 1981) ("When the definition of a crime

consists of only the description of a particular act, without reference to intent to do a further act or achieve a further consequence, we ask whether the defendant intended to do the proscribed act. This intention is deemed to be a general criminal intent."). This means a violation of statute can occur even with a genuine mistake of fact as to whether a disclosure is proper so long as individual intended to make the disclosure, i.e., that the "result of [the] purposeful acts" is the prohibited conduct. State v. Neuzil, 589 N.W.2d 708, 711 (Iowa 1999). Consequently, when Hiedeman disclosed information to Bott, who was not entitled to receive such, Hiedeman ran afoul of Iowa Code section 904.602 despite his good intent, and in so running afoul of the statute, Hiedeman violated DOC's rules to follow the law in the performance of his duties.

Second, Hiedeman's violation of DOC's requirement to follow the law was severe. This is because the legislature decided improper disclosures of protected inmate information was a serious misdemeanor, as opposed to a simple misdemeanor or a civil infraction, and because he violated the confidentiality law over the course of months with at least a thousand improper disclosures. Once more, the legislature decided that violations of section 904.602's confidentiality provisions creates civil liability for DOC that covers not only damages but also costs and fees. Iowa Code § 904.603. In short, the disclosures were not an isolated mistake, and legal liability associated with such makes this case unlike many of the comparatively minor law violations by employees that are acknowledged but do not always lead to discipline such as an occasional speeding ticket.

Third, Hiedeman had notice of the governing rules he violated. No dispute exists Hiedeman was aware of the requirement to follow all governing laws and rules in the performance of his duties as a senior correctional officer. See, e.g., Tr. at pp. 74-75 (Hiedeman acknowledging he received all relevant employee handbooks). Once more, "[a]ll persons are [statutorily] presumed to know the law." Iowa Code § 701.6. This is true even if the consequence of such would offend basic concepts of justice because, in the words of the Supreme Court, of "society's overriding needs[.]" State v. Clark, 346 N.W.2d 510, 512 (Iowa 1984). As a result, even though Hiedeman was acting on a mistake of fact, he had constructive notice of the law's requirements and actual notice of his employer's requirement to follow the law when he broke both with the unlawful disclosure to Bott. While notice under the just cause standard is likely a broader consideration, it cannot meaningfully change the analysis because, as a veteran investigator with DOC, Hiedeman should have known to make further inquiry into Bott's credentials when he saw her signature block referenced a private law firm and her email address was non-governmental. Granted attorneys should be honest under their ethical rules and frankly the criminal code when dealing with state actors and granted non-attorneys are not expected to have a commanding understanding of the legal practice, it is also true that a reasonable person standing in Heideman's position with his level of training and experience as a seasoned investigator handling sensitive information should have asked more questions than just verifying that Bott was an attorney with matching contact information. Bott may have lied to him, but he should not have accepted her statements at face value given the disparity between the claim of being a prosecutor and the contact information being that of a private attorney.

Fourth, the decision to skip any progressive discipline and move to termination was justified under the unique facts of this case. As noted during the hearing, there are no materially comparable instances of a DOC employee disclosing such a large amount of protected information over such a protracted period of time as what occurred here. See, e.g., Tr., at p. 58. Consequently, no prior practice exists to enlighten the Tribunal on the appropriate response, and as far as the Tribunal can discern, there is no governing policy that dictates the specific disciplinary outcome to an issue such as this, akin to an articulated, progressive disciplinary policy for absenteeism. Stepping back, a repeated breach of the confidentiality law does justify a separation because, as just explained, the violation of the provision is a serious matter given the criminal and civil consequences, the violation was severe in that a great amount of disclosure occurred

over a long-period of time, and Hiedeman was on legal notice about the prohibited nature of his conduct and should have known to conduct additional verification procedures given what he saw in Bott's emails. It is true Hiedeman made a mistake in good faith in disclosing the information, but not all mistakes are the same. This mistake is too grave to fault the State for not overlooking the matter or otherwise choosing a lesser form of discipline.

Fifth, there is nothing in the remaining just cause factors PERB considers or the broader totality of the circumstances that enable the Tribunal to set aside the just cause that exists from the foregoing. With respect to the investigation, it was sufficient because, although Bott was not interviewed, the interview of Hiedeman and overall review of DOC records was sufficient to show Hiedeman committed a sufficient rule violation concerning following the law in the performance of his duties to justify the separation even if Bott misrepresented her identity to him. The investigation was also fair in that Hiedeman was provided an opportunity to present his information during the investigation, and the investigation only occurred after DOC received a complaint about the disclosures. This is not a situation of an employee being targeted, and as evidenced by the demeanor of the investigator looking into Hiedeman's conduct, nobody wanted or sought out this matter. With respect to Hiedeman's prior years of service that was sufficient to warrant a promotion and occurred without any discipline, this is not sufficient to overcome the sheer magnitude of criminal and civil liability he caused with his ongoing mistaken disclosures to Bott. As for the remaining totality of the circumstances, it is true Hiedeman was only trying to provide information to someone he thought was authorized to hear the information in furtherance of his duties and in an effort to prevent a child from being sexually exploited, but this well-intentioned effort does not excuse releasing a large volume of protected communications in circumstances where he should have conducted additional verification. As such, and irrespective of whether the Tribunal would have chosen the disciplinary path the State did in this case, the State has proved just cause for the separation.

Hiedeman's arguments to the contrary are not persuasive. Hiedeman argues he had no notice "he was doing anything wrong," which vitiates the notice and reasonableness of the rule considerations associated with just cause analysis. Hiedeman Br., at p. 2. However, as discussed above, he had constructive notice of the confidentiality law, actual notice of the work-place rule to follow the law, and a reasonable basis to conduct further inquiry after Bott requested information be sent to a private account associated with a private law firm. In short, the facts do not support the claim. Hiedeman also argues the investigation was improper because Bott was not interviewed and because it did not consider the lack of verification procedures. Id. However, as also discussed above, Bott's testimony was not needed to find the dispositive facts, as the email communication and Hiedeman's own testimony revealed all pertinent facts to the separation. As for the lack of a training procedure, while unfortunate, this cannot override the conclusive presumption that every person knows the law, including the law on confidentiality. Without any other similar cases, there is no basis to find unequal treatment despite Hiedeman's claims to the contrary in his brief, and the penalty is not too severe given the magnitude of the disclosures. In sum, just cause existed for Hiedeman's separation because, while he was acting in *subjective* good faith in releasing more than a thousand protected communications, his conduct was nonetheless unlawful in circumstances where *objectively* he should of known better. As such, the separation is AFFIRMED.

ORDER

Hiedeman's state employee merit appeal is dismissed. The costs of reporting and of the agency-requested transcript in the amount of $486.15 are assessed against Hiedeman, pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the State of Iowa in accordance with PERB subrule 621—11.9(3).

IT IS SO ORDERED.

Dated this the 11th day of May, 2023.

Jonathan M. Gallagher
Administrative Law Judge

Filed electronically.
Parties served via eFlex.

NOTICE

The proposed decision and order will become PERB's final agency action on the merits of Burden'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 merits.