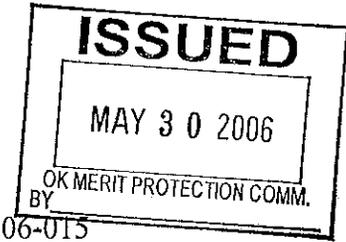


**OKLAHOMA MERIT PROTECTION COMMISSION  
STATE OF OKLAHOMA**



JOHN E. ROPER, III,                    )  
  Appellant                            )  
  )  
vs.                                        )  
  )  
DEPARTMENT OF CORRECTIONS,        )  
  Appellee.                            )

CASE NO. MPC 06-015

**FINAL ORDER**

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on May 10, 2006 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, John Roper, appeared in person and was represented by Daniel Gamino, Esq. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel Gary Elliott, Assistant General Counsel, and agency representative Michael Dunkle, District Supervisor, Southeast District Community Corrections, McAlester, Oklahoma.

Appellant, a Captain at the Marshall County Community Work Center, requested a demotion to Corporal, Correctional Security Officer, III, and transfer to the Union City Community Correctional Center. Appellant alleges that the transfer was not voluntary, but was an involuntary demotion in lieu of discharge, and further alleges that just cause does not exist for the involuntary demotion or threatened discharge, which was later reduced to a letter of reprimand. The basis for Appellant's threatened discharge was inappropriate conduct in violation of DOC Policy OP-110215, Rules Concerning the Individual Conduct of Employees, Section I A(1) and (5), Code of Conduct, and Section VIII A. Prohibited Relationships, because of his alleged personal relationship with a subordinate under his command.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Exhibits, which were admitted and are incorporated herein and made a part hereof. Accordingly, after careful consideration of all evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and

order.

### ISSUES

1. Whether the purported “voluntary demotion” requested by Appellant was, in fact, voluntary. This Administrative Law Judge finds that the demotion was an involuntary demotion in lieu of discharge.
2. Whether just cause exists for the involuntary demotion. This Administrative Law Judge finds that just cause exists for the involuntary demotion.

### FINDINGS OF FACT

Appellant, John E. Roper, III, a Captain at the Marshall County Community Work Center in Madill (hereinafter “the center”), was responsible for directing all operational and administrative activities at the center, including hiring and supervising staff. The center is a low security facility housing approximately 58 inmates, with a staff of nine under supervision of the Captain.

Appellant and Lora Branch had been friends for many years before he recruited and hired her as food service manager at the center in 2003<sup>1</sup>. He testified that the two had known each other for 12 to 14 years prior, that she had been his son’s preschool teacher, that he sometimes babysat her grandchildren. He knew her to be a reliable, capable, hard worker, and when the food service specialist position became vacant, he recruited her for that position. Appellant testified that after Ms. Branch began working at the center, the two grew closer. They spent time together outside work hours and shared an interest in many of the same things, such as gardening; Appellant had a small garden behind Ms. Branch’s house that he tended. Nonetheless, Appellant testified, the two were mindful of the agency’s prohibition against fraternization, and did not allow their relationship to proceed in a manner they thought would jeopardize their jobs.

As the relationship between Appellant and Ms. Branch grew, they became a growing concern for District Supervisor Michael Dunkle and Assistant District Supervisor Margaret Johnson. Staff

<sup>1</sup> The exact date of Ms. Branch’s hiring is not in the record, however, Appellant testified that he had supervised her for two years before his demotion and transfer to Union City Community Correctional Center, effective August 23, 2005.

observed that the two spent a good deal of time together -- leaving for breaks together in the same vehicle each day (Jt. Exhibit 3); taking smoke breaks together (Jt. Exhibit 3); spending off-duty hours together at her house (Jt. Exhibits 6, 7, 8, and testimony of Sgt. Hallmark). Several of the staff complained that Appellant showed favoritism toward Ms. Branch. Sgt. Jacke Hallmark testified that when Ms. Branch was hired, Appellant went out of his way to get her position upgraded from a food service specialist to a food service manager, but did not put forth that same effort for his promotion. Also, according to Sgt. Hallmark, Appellant wrote Ms. Branch's supporting documentation for "Employee of the Month", but told Sgt. Hallmark to write his own documentation because Appellant was too busy to do it. Sgt. Hallmark told of an argument that Ms. Branch had with two correctional officers in which the officers were written up, but Ms. Branch was not. Officer Foster testified that he was reprimanded loudly during a staff meeting for not paying attention to Ms. Branch after he asked a question for clarification of what she had said. (Jt. Exhibit 5)

The situation was of such concern that in September 2004 District Supervisor Dunkle personally discussed the relationship with Appellant. Appellant assured him that he and Ms. Branch were just friends and there was nothing inappropriate between them. On another occasion, Assistant District Supervisor Johnson spoke with Appellant and instructed him not to take smoke breaks with Lora Branch and not to leave the center with her during work hours. (Jt. Exhibit 3) His supervisors were not the only ones concerned about Appellant's and Lora Branch's relationship. Apparently, concern about the relationship extended beyond the center. Appellant testified that even his counterpart (Captain) in another district expressed his concern to Appellant because of his relationship with Ms. Branch.

The week of March 24, 2005 Ms. Johnson received calls from three staff at the center sharing their concerns about issues at the center, including the relationship between Appellant and Lora Branch. (Jt. Exhibit 1) On April 11, 2005 Ms. Johnson interviewed staff at the center, including interviewing Appellant about his relationship with Ms. Branch. He continued to insist that they were merely good friends. (Jt. Exhibit 2)

On April 30, 2005 Corporal Jennifer Lehr drove past Lora Branch's house at 5:30 a.m. on her way to work when she observed two vehicles she recognized as Appellant's parked outside the Branch house. (Jt. Exhibits 6, 8) Just to insure this was not a "one-

time incident” Officer Lehr went past the house again on May 7, 2005 at 5:30 a.m. She again saw the two vehicles recognized as Appellant’s. (Jt. Exhibit 6) On May 12 and May 13, 2005 Sgt. Hallmark drove past Lora Branch’s house at about 8:50 p.m. on his way to work, and observed a vehicle he recognized as Appellant’s parked at the Branch house. (Jt. Exhibit 7) Both officers reported their observations to Ms. Johnson.

On the belief that Appellant frequently stayed at Lora Branch’s home, on May 20, 2005 Ms. Johnson sat outside the Branch home from about 5:20 a.m. until about 7:05 a.m. At 7:05 a.m. Ms. Johnson observed Appellant leave the Branch residence and followed him to the center. (Jt. Exhibit 11) When he got out of his car, she inquired where he had been and he admitted spending the night at Ms. Branch’s. He said that he had been working on the garden until late the previous evening, he was tired and fell asleep, and insisted that he had slept on the sofa. (Jt. Exhibit 10) Ms. Branch confirmed Appellant’s statement. (Jt. Exhibit 12)

On June 17, 2005 Appellant was given a Notice of Pre-Termination Hearing (Jt. Exhibit 14) and an Amended Notice on June 22, 2005 (Jt. Exhibit 15) On July 22, 2005 Superintendent Dunkle met with Appellant and gave him a Termination of Employment letter, effective August 23, 2005. (Jt. Exhibit 16) During their conversation, Appellant asked if there were any other alternatives to his termination. Mr. Dunkle advised him that if he found another position outside the district prior to August 23, 2005, he would withdraw the discharge and replace it with a letter of reprimand.

On August 23, 2005 Appellant spoke with Tamira Jennings, personnel secretary in the McAlester District office. He had found a position as a Correctional Security Officer III in the Union City Community Correction Center. (Jt. Exhibit 20) However, he needed the signatures of Mike Carr, Enid District Supervisor, and Michael Dunkle to complete the paperwork. As both were unavailable at that time, Ms. Jennings suggested that Appellant write a memo requesting the demotion and transfer, if that was what he wanted. Appellant did so, and the transfer was approved, effective August 23, 2005. (Jt. Exhibits 18, 20)

On August 8, 2005, Appellant filed a Petition for Appeal with the MPC appealing the discharge. The appeal followed receipt of the July 22, 2005 letter of Termination, but was before his transfer or the effective date of the termination. (Jt. Exhibit 17) As there was no discharge from which to appeal, and as Appellant never filed a new Petition for Appeal based on involuntary

demotion, the undersigned granted Appellee's motion to dismiss for lack of jurisdiction. The Commission reversed the dismissal and ordered the case returned for a hearing on its merits.

## DISCUSSION

### *A. Voluntariness of Demotion*

Appellee argues that the demotion was voluntary, and points to Appellant's letter requesting demotion and transfer as proof of his request for "a voluntary demotion to the rank of Corporal, (Correctional Security Officer, Level III), and a transfer to the Union City C.C.C." (Jt. Exhibit 18) However, it is clear that Appellant would not have requested such a demotion with its significant pay cut and travel distance far from his residence, except that the alternative to the transfer was termination of his 17-year employment with the agency.

Federal courts have recognized "constructive discharge" in an employment situation where the employee resigns, but the conditions of employment to which the employee was exposed made continued work there intolerable. In such circumstances, courts have looked behind the resignation to find that it was not voluntary, but coerced. In this instance Appellant was caught between a rock and a hard place and forced into a Hobbsian choice of accepting termination and the loss of 17 years with Appellee, or transferring out of the district and continuing his service in whatever position he could find. Under such circumstances, the undersigned is hard-pressed to find the demotion and transfer to be "voluntary". Additionally, there is no signed settlement or compromise in which Appellant gives up his right to appeal an adverse action in exchange for demotion and transfer in lieu of termination.

### *B. Just Cause for Demotion*

Appellant maintains that he and Lora Branch were very good friends, but that their relationship did not cross the line beyond friendship. While he admits that they were often together, both at work and outside work, that he spent nights at her home, and that they discussed taking the relationship to another level, they did not want to jeopardize their jobs, and therefore remained only close friends while he was her supervisor.<sup>2</sup>

<sup>2</sup> Appellant and Lora Branch were married on February 17, 2006, nearly six months after his transfer.

Appellant is charged with violating certain codes of conduct and prohibited relationships:

I. Establishment of Rules and Code of Conduct

A. Code of Conduct

Employees of the department are expected to discharge the duties and responsibilities of their positions in a manner which upholds the public's trust and the correctional employee oath, and reflect the highest ethical standards.

Employees will:

1. Perform work with diligence, honesty, and impartiality;

5. Avoid any conduct, interest, or relationship which is in conflict with, or detrimental to the proper and effective discharge of official duties;

Oklahoma Department of Corrections OP-110215, "Rules Concerning the Individual Conduct of Employees"

VIII. Prohibited Activity and Relationships with Employees

A. Prohibited Relationships

Engaging in any activity with another employee which compromises professional relationships is prohibited.

Oklahoma Department of Corrections OP-110215, "Rules Concerning the Individual Conduct of Employees"

The Code of Conduct requires Appellant to act impartially and to avoid any relationship which is detrimental to the effective discharge of his duties. Likewise, the Prohibited Activity and Relationships prohibits Appellant from engaging in any activity with another employee that compromises professional relationships. Appellant's relationship with Ms. Branch violated both of the above Rules of Conduct cited. Whether romantic or not, their relationship had an apparent intimacy that caused disruption in the workforce with evidence of favoritism and partiality that undermined Appellant's authority and the effective discharge of his duties. The evidence indicates

that Appellant's relationship with the other employees on his staff was compromised because of his relationship with Ms. Branch.

Appellant makes much of the fact that their relationship was one of friendship only. However, neither of the above rules requires proof of a romantic or sexual relationship. A family relationship between siblings or parent and child might violate these rules of conduct. A relationship between friends of the same gender might violate the rules, where that friendship interferes with the impartial discharge of duties or is detrimental to the effective discharge of duties or compromises professional relationships. A relationship that simply has the appearance – real or otherwise – of impropriety may be disruptive, detrimental, or compromising to the effective discharge of an employee's duties, and therefore violate the rules of conduct. The undersigned finds just cause for discipline of Appellant for violating DOC Policy OP-110215, Rules Concerning the Individual Conduct of Employees, Section I A(1) and (5), Code of Conduct, and Section VIII A. Prohibited Relationships, because of his alleged personal relationship with a subordinate under his command.

Appellant was a Captain in command of the Marshall County Community Work Center with its 58 inmates and nine staff members. As leader and commander of the center, he was charged with upholding and enforcing the rules and setting an example for those under his command. As a 17-year employee with Appellee he was well aware of those rules and prohibitions. Further, he had been put on notice on several occasions over the previous year, of concern about his relationship with a subordinate. Mr. Dunkle had spoken with him at least once; Ms. Johnson had spoken with him on separate occasions; even a co-worker outside his district expressed his concern. Appellant had the opportunity to do the right thing. He could have sought a transfer for himself. He could have sought a transfer for Ms. Branch. He could have curbed or been more discreet in his relationship. He could have acted in a more even-handed, impartial manner with his staff. Instead, Appellant chose to ignore the warnings of his friends and superiors and try to craft indistinguishable distinctions to excuse his relationship with Lora Branch. Under the circumstances presented here, this Administrative Law Judge finds the discipline of discharge or demotion and transfer of Appellant to be just.

## CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above-entitled matter.
2. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.
3. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged or demoted for misconduct, willful violation of the Oklahoma Personnel Act and Merit Rules, conduct unbecoming a public employee, and any other just cause.
4. Merit Rule 455:10-9-2(f)(1) states that the Appellee bears the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for adverse action and that the discipline imposed was just.
5. DOC Policy OP-110215, Section I A(1) Rules Concerning the Individual Conduct of Employees, requires employees to perform work with diligence, honesty, and impartiality.
6. DOC Policy OP-110215, Section I A(5). Rules Concerning the Individual Conduct of Employees, states that employees will avoid relationships detrimental to the proper and effective discharge of their duties.
7. DOC Policy OP-110215, Section VIII A. Rules Concerning the Individual Conduct of Employees, prohibits employees from engaging in any activity that compromises professional relationships.
7. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Appellant John E. Roper, III when he engaged in a personal relationship with Lora Branch that violated agency rules and Merit Rules.
8. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that the discipline imposed – demotion and transfer -- was just under the circumstances.

**ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** by the undersigned Administrative Hearing Officer that the petition of Appellant is hereby **DENIED**.

DATED: this 24<sup>th</sup> day of May, 2006.

A handwritten signature in black ink, appearing to read "Annita M. Bridges", written over a horizontal line.

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Annita M. Bridges, OBA # 1119  
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