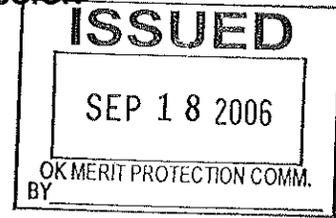


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



JASON WEST,)
Appellant)
vs.)
DEPARTMENT OF CORRECTIONS,)
Appellee.)

CASE NO. MPC 06-142

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on September 12, 2006 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Jason West, appeared in person and was represented by Timothy Wallace, Esq. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel Gary Elliott, Assistant General Counsel, and agency representative Marty Sirmons, Warden of the Oklahoma State Penitentiary (hereinafter referred to as "OSP") in McAlester.

Appellant, a correctional officer at Oklahoma State Penitentiary in McAlester, filed this grievance after his employment was terminated for allegedly unlocking the sugar cage and allowing inmates to take sugar from the kitchen at OSP to their housing unit in violation of DOC Policy OP-110215, Rules Concerning the Individual Conduct of Employees, Section I A(3), (5), and (7) Code of Conduct, and Section VII (B)(2), (3) and (9) Prohibited Activities with Offenders and Ex-Offenders; and OSP Field Memorandum

040102-30, *Post Orders: Food Service Area Security Officers*, Section IV.C. (8) and (9).

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Exhibits and Stipulations of Fact, 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.

FINDINGS OF FACT

Appellant, a corporal at Oklahoma State Penitentiary in McAlester, has been a correctional security officer there for seven and a half years. For the past six to eight months prior to his termination his assigned post was in the kitchen. Appellant heard rumors from inmates that another correctional officer who worked in the kitchen was supplying drugs to inmates in the prison. Appellant had had words with this correctional officer, CO Coleman, and did not like her because she "talked too much" and spread rumors that he and a kitchen supervisor were having an affair. When he caught an inmate kitchen worker, inmate Williams, trying to leave the kitchen with bleach, Appellant called his superior officer, Lt. Marion Bess, and the two of them agreed not to pursue inmate Williams' incident as a misconduct in exchange for him setting up CO Coleman with an alleged drug buy. However, Inmate Williams needed \$200 to make the drug purchase.

Appellant and Lt. Bess set up a meeting with Warden Michael Mullin¹ to discuss their suspicions about CO Coleman and their plans to catch her with drugs. Warden Mullin was unable to meet with the two at the appointed time, but did later meet with Lt. Bess and Lt. William Ward to discuss these suspicions. Warden Mullin authorized drug dog use to attempt to catch CO Coleman, but would not authorize State monies for Inmate Williams to use for the set up. It is against the rules for inmates to have money at OSP.

Inmate Williams had said he thought he could come up with the money for the drug buy, but after nearly two months he had not been able to do so. Under pressure from Appellant and Bess to come up with the money and complete the drug deal, Williams suggested to Appellant that he could raise the money by selling sugar from the kitchen. Sugar is used by inmates to make alcohol or beer. Alcohol in the penitentiary creates a very serious security problem, with drunken inmates fighting each other and attacking staff at the facility, and has led to riots in the past. Because of this potential for violence, sugar is kept in a secure room with a metal door, under lock and key. Only the correctional officer on duty, the kitchen supervisor, and the warden have keys and access to the sugar. Sugar use and the discarding of "empty" bags are carefully monitored to prevent inmates from gaining access to sugar and taking it back to the units.

On October 21, 2005 Appellant was working the 10:00 pm to 6:00 am kitchen shift. He was the only correctional officer on duty at that time. Prior to the end of his

¹ Warden Mullin was the warden of OSP at the time of the incident giving rise to this action and at all relevant times leading up to this incident. However, he transferred to another facility during the investigation of the incident and Warden Marty Sirmons, the new warden at OSP, took the disciplinary action leading to this appeal.

shift on the morning of October 22, 2005, Appellant unlocked the sugar cage and allowed inmates Williams, Herd and Wade to steal sugar.² Williams removed a 50 pound sack of sugar from the cage and placed it in a trash bag where he divided the sugar into four smaller bags, giving two each to inmates Wade and Herd (Joint Ex. 12). Appellant allowed the sugar to be removed from the kitchen at Oklahoma State Penitentiary and taken to inmate Williams', Herd's, and Wade's housing assignment on Unit C.³

On the way back to the unit, one of inmate Wade's bags began to leak, leaving a sugar trail behind him. He passed his other bag to inmate Herd, who took the three bags back to the unit. Correctional Security Officer Issiah Gibson, who was escorting the inmates from the kitchen to their housing unit, discovered the leaking bag of sugar on inmate Wade and called Lt. Marcella Thomason, the shift supervisor and ranking officer at OSP at the time. Appellant also called Lt. Thomason and admitted that he had allowed inmate Wade to take the sugar from the kitchen because he and Lt. Bess were trying to set up CO Coleman.

About seven pounds of sugar were recovered from the leaking bag. There is no indication that the remaining three bags of sugar were ever recovered from the inmates. Following an investigation of the matter, Warden Marty Simons determined that for Appellant's admitted breach of security and lapse in judgment, and given the long history of trouble at OSP with home brew and the serious danger posed to staff and other inmates as a result of home brew made from sugar, Appellant's employment should be terminated.

² Appellant admitted this fact pursuant to his Stipulations of Fact admitted into evidence.

³ Appellant admitted this fact pursuant to his Stipulations of Fact admitted into evidence.

In mitigation of his actions, Appellant argues that he believed his admitted breach of security was implicitly authorized by Lt. Bess with the knowledge of Warden Mullin. Warden Simons testified that he did not believe Appellant's stated belief that he was acting with the approval of his supervisor. Neither does this administrative law judge. Lt. Bess testified that had Appellant asked him, he would never have approved allowing inmates to steal sugar to raise money for the set-up of CO Coleman. As a security officer with over seven years at OSP, Appellant knew or should have known the seriousness of inmates having sugar on the units, and knew or should have known that inmates were not allowed to have money at OSP. This serious lapse of judgment by Appellant is evidence of his unfitness to serve as a correctional officer at OSP.

Appellant argues, too, that he had nothing to gain personally and was merely furthering the interests of the institution. Again, this administrative law judge finds Appellant's argument disingenuous. A more likely motive for Appellant's over-zealousness was his desire to get rid of CO Coleman because of his intense dislike for her after she reported to her captain that he was having an affair with the kitchen supervisor.

Under the circumstances presented, this administrative law judge finds that just cause exists for discipline of Appellant, and further finds that the discipline of discharge was 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 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(3) *Rules Concerning the Individual Conduct of Employees*, requires employees to refrain from conduct that is corrupt, illegal, or that disregards the welfare of others.

6. DOC Policy OP-110215, Section I A(5). *Rules Concerning the Individual Conduct of Employees*, states that employees will avoid conduct, interest, or relationships detrimental to the proper and effective discharge of their duties.

7. DOC Policy OP-110215, Section I A(7) *Rules Concerning the Individual Conduct of Employees*, requires employees to conduct work in a manner that contributes to and supports a safe, healthful work environment.

8. DOC Policy OP-110215, Section VII B(2), (3) and (9) *Prohibited Activities with Offenders and Ex-Offenders* prohibits employees from offering money or anything of value to offenders; giving money or anything of value, for any purpose, without written consent of the employee's supervisor; engaging in any activity which constitutes or offers the opportunity for abuse of the employee's position.

9. OSP Field Memorandum 040102-30, *Post Orders: Food Service Area Security Officers*, Section IV.C. (8) and (9) requires correctional officers to conduct a daily shakedown of all inmates exiting the food service area to ensure that no items are removed from the kitchen; and requires any breach of security to be reported to the senior correctional officer, food service supervisor, and shift supervisor.

10. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Appellant Jason West when he violated agency rules and Merit Rules by unlocking the sugar cage and allowing inmates to steal sugar from the OSP kitchen and take it to their housing unit.

11. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that the discipline imposed – termination of Appellant's employment with DOC -- 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 15th day of September, 2006.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
OKLAHOMA MERIT
PROTECTION COMMISSION
3545 N.W. 58th Street, Suite 360
Oklahoma City, Oklahoma 73112
(405) 525-9144