BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

BILLY RAY WARRIOR, Appellant,	)	
v.	)	Case No. MPC 07-11
OKLAHOMA TOURISM AND RECREATION DEPARTMENT, Appellee.	)	

FINAL ORDER

This matter comes on for hearing on December 19, 2006 before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Billy Ray Warrior, appears personally, and with his counsel Traci L. Rhone. The Appellee, Oklahoma Tourism and Recreation Department, appears by and through counsel, Claudia Conner.

Appellant Warrior is a permanent, classified state employee appealing an adverse disciplinary action of discharge. Whereupon the hearing began and the sworn testimony of witnesses was presented, along with exhibits. Regarding the exhibits, the parties offered Appellee's Exhibits No. 1, pages 1-8, 6, 7, 8, 9 and 10 and the Appellant's Exhibits No. 1, 15, 16, 17, 18, 19, 20 and 21. This Administrative Law Judge admitted these exhibits into the record. Following the hearing, the parties were granted additional time to submit written summations. The record was closed on January 15, 2006.

After careful consideration of the record, including all relevant evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Background of Case

Appellant Billy Ray Warrior (hereinafter "Warrior") is a classifed employee of the Appellee Oklahoma Tourism and Recreation Department (hereinafter "Tourism"). Warrior was a automotive mechanic employed at Lake Eufala State Park. On June 27, 2006, Tourism

provided Warrior with a Notice of Suspension, in order to pursue investigation of allegations of improper sexual conduct with an inmate and conduct unbecoming a state employee against him (Appellant's Exhibit No. 1). On July 12, 2006, Tourism provided Warrior with notice of the proposed disciplinary action (Appellee's Exhibit No. 7). A pre-termination hearing was scheduled for July 18, 2006. Warrior was given an opportunity to present testimony and evidence. There is no evidence in the record that Warrior's attorney filed a request for continuance or that any written objections were filed regarding the pre-termination hearing. In the Hearing Officer's recommendation, he specifically notes that Warrior refused to answer certain questions on advice of counsel. (Appellee's Exhibit No. 10).

On July 21, 2006, Tourism provided Warrior with notice of discharge based upon a finding that he engaged in misconduct and conduct unbecoming a state employee by engaging in improper sexual activity with inmates under his supervision. In the notice, Tourism sets forth certain actions by Warrior which were considered to be misconduct and conduct unbecoming a public employee.

The Testimony

The testimony of six (6) witnesses was provided in support of the disciplinary action. Inmate Christian Adams testified she was on a inmate work crew assigned to work at Lake Eufala State Park in May of 2006. On her first day at the park, she was assigned to pick up trash outside and was supervised by the Appellant. On the second day, she was again supervised by Appellant, and was assigned to clean inside the cabins at the park. While in the cabin, she testified that Warrior make improper comments of a sexual nature to her and fondled her on top and under her clothing. Warrior then forced her to perform oral sex upon him. She testified that she was fearful of Warrior and was afraid to return to the park. She stated that she had never been incarcerated before. When questioned, Adams testified that she did not yell out or immediately report the incident because she was afraid of Warrior and because of peer pressure from other inmates. When she was directed to return to the park for future work assignements, she reported the incident. Her testimony was consistent with Investigator Wright's report (Appellee's Exhibit No. 1).

Inmate Callie Johnson testified that she had worked on inmate crews at Lake Eufaula State Park under the supervision of Warrior many times from November of 2005 through May of 2006. She testified that she performed oral sex on Warrior, as well as engaged in sexual

intercourse with him on several occasions, and that he often left cigarettes in the park for her. She stated that Warrior never forced her to perform these acts. She testified that she was not aware of any special treatment that inmates who were victims of sexual assault might receive. She denied any knowledge about inmates Christian Adams and April Bolner's allegations concerning Warrior. Her testimony was also consistent with Investigator Wright's report (Appellee's Exhibit No. 1).

Witness Randy Knight testified that he is an investigator with the Department of Corrections (hereinafter "DOC"). He explained his law enforcement background, having worked with DOC for over 4 years and having served as a Deputy Sheriff prior to that. His testimony included information regarding his interviews with inmates April Bolner, Christian Adams, Callie Johnson and Lynne Hamilton. Each inmate confirmed that Warrior had engaged in various sexual acts with them. Knight testified that he found each of the witnesses to be very credible. He also testified that he interviewed Appellant Warrior in his office in Tulsa. He stated that Warrior volunteered to speak with him. He testified that Warrior admitted to him that he had fondled and received oral sex from inmate Adams but stated that it was consensual. He stated that there is no special treatment that inmates who were victims of sexual assault might receive. He stated that he did not discuss the potential for criminal charges with Warrior. His testimony was consistent with his report (Appellee's Exhibit No. 1).

Sue Hughart, Park Manager at Lake Eufala testified that she was Warrior's supervisor and had worked with him for approximately 17 years. She stated that Warrior had been responsible for supervising inmate work crews since 2001 and that he had received training on supervising inmates in 2001, 2002 and 2003. She testified that she was contacted by Investigator Knight and advised of the allegation regarding Warrior. She stated that Warrior asked her to drive him to Tulsa for his interview with Knight. She testified that she told him about the allegations and encouraged him to retain a lawyer. She stated that she was not in the room when Warrior was interviewed. She testified that during the drive back to the park, Warrior admitted that Adams performed oral sex on him but stated that it was consensual. She stated that she immediately placed him on administrative leave, which later became a suspension.

Ellen King, a Human Resources manager with Tourism testified that she was involved in the disciplinary proceedings. She stated that Hughart told her that Warrior had admitted to engaging in sexual behavior with an inmate. She also testified that on the day of the pre-

termination hearing, Warrior's attorney contacted her to request a continuance. She stated that she had no authority to grant such a request. She also testified that, in her experience, this type of misconduct would justify a higher level of discipline.

Scott White testified that he is an Administrtive Programs Officer with Tourism and was assigned to conduct the pre-termination hearing for Warrior. He stated that after hearing all of the evidence, he recommended that Warrior be discharged.

Following the testimony of these witnesses, the Appellee rested its case. Appellant moved for Directed Verdict. The motion was denied. It must be noted that at no time did Warrior request a continuance because of the pending criminal charges. Appellant Warrior did not testify nor did he offer any witnesses in his defense.

ISSUES

1. Did Warrior engage in misconduct or conduct unbecoming a state employee as alleged by Tourism?
2. If so, was the discipline imposed appropriate?
3. Was Warrior denied due process?

DISCUSSION

Appellant Warrior admitted to Sue Hughart and Randy Knight that he engaged in oral sex with an inmate, Christian Adams. That behavior is prohibited by law and by Tourism and DOC policy. (Appellee's Exhibit Nos. 6 and 9). In addition, there was substantial testimony and evidence that Warrior engaged in various types of sexual behavior with at least three other inmates under his supervision. All of the Appellee's witnesses were credible and consistent in their testimony. Warrior offered essentially no defense and no evidence to refute these allegations. Based upon the record, the undersigned finds that Tourism has clearly met its burden of proof that Warrior engaged in acts of misconduct and in conduct unbecoming a state employee in violation of OAC 455:10-11-14 and 530:10-11-91.

It is also clear from the testimony that this was considered to be a very serious misconduct. The Merit Rules recognize that a single incident may justify a higher step of

discipline without proceeding through lower steps of discipline. *See* OAC 455:10-11-14. Any one of the incidents alleged to have occurred would be sufficient on its own to warrant discharge, and the fact that the misconduct occurred numerous times reinforces that conclusion. Based upon the record, the undersigned finds that Tourism has met its burden of proof that just cause existed for the discipline imposed and Tourism has proven, by a preponderance of the evidence, that this disciplinary action was not a violation of its progressive disciplinary procedure.

Warrior claimed that his rights were violated due to DOC's failure to give him an "Administrative Miranda" warning of his right to consult an attorney prior to questioning by the DOC investigator. Appellant offered no authority in support of this claim and as such, it is found to have no merit. Warrior also complained that he was denied due process by Tourism's refusal to continue the pre-termination hearing; however, no evidence is contained in the record as to the good cause for such continuance request. Further, it appears that Warrior was present at the hearing and had consulted with his attorney about his testimony. Warrior also argued that he was not given proper training to know that sexual conduct with inmates while on duty was not permitted. This argument has absolutely no merit. The testimony at the hearing was that Warrior attended training sessions and signed receipt of at least one employee handbook. Finally, Warrior argued that it is improper for Tourism to rely upon DOC's investigation. Appellant has again provided no authority to support this argument. Rather, it is entirely reasonable for one state agency to rely upon the investigation of a sister agency. There were no allegations that the DOC investigation was incomplete. Indeed, DOC was in a better position to interview and deal with the inmates involved. Tourism acted appropriately in relying to a large part upon the investigation conducted by DOC into these allegations.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause and the filing of the Petition for Appeal was timely.

2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.

3. Merit Rule 455:10-9-2 states that the Appellee Tourism has the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for the adverse action and that the discipline imposed is just.

4. Merit Rule 455:10-11-17 states that a permanent classified employee may be discharged for any of the reasons set forth in 455:10-11-14, which are misconduct, insubordination, inefficiency, habitual drunkeness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or the Merit Rules, conduct unbecoming a public employee, conviction of a crime involving moral turpitude or any other just cause.

5. Warrior clearly violated the DOC guidelines and rules for supervisors of public works programs by engaging in acts of a sexual nature with the inmates assigned to him. (Appellee's Exhibit No. 6). Tourism's handbook states that "the failure of an employee to follow recognized DOC and Department rules with inmates may be grounds for discipline, up to and including termination" and also prohibits unwelcome or unwanted sexual conduct such as asking for sex or making sexual advances.. (*See* Appellee's Exhibit No. 9, pgs. 18-20).

6. Appellee has met its burden to prove, by a preponderance of the evidence that just cause exists to discipline Warrior for failing to comply with the above referenced DOC and Tourism policies.

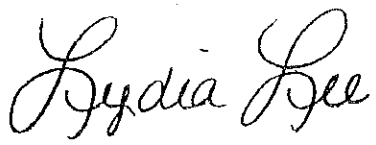
7. Appellee has met its burden to prove, by a preponderance of the evidence, that the discipline imposed did not violate the Progressive Disciplinary Procedure.

8. Appellee has met its burden to prove, by a preponderance of the evidence, that the discipline imposed was just under the circumstances considering the seriousness of the conduct as it relates to the employee's duties and responsibilities and other mitigating circumstances.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that MPC 07-011, Billy Ray Warrior v. Oklahoma Tourism and Recreation Department, be **DENIED.**

This Order entered this 25 day of January, 2007.



Lydia Lee
Administrative Law Judge