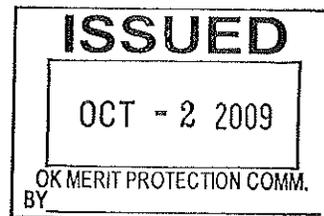


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



EDWIN BARCHUE,)
Appellant)
vs.)
DEPARTMENT OF CORRECTIONS,)
Appellees.)

CASE NO. MPC 09-086

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on September 17, 2009 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Edwin Barchue, appeared in person and was represented by Jeff Lee, Esq. and Ed Bonzi, Esq. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel Gary Elliott, Assistant General Counsel, and agency representative Lester Leroy Young, District Supervisor of the Oklahoma County Community Corrections / Residential Services, North (hereinafter referred to as "OCCC/RS").

Appellant, a Correctional Security Officer IV (Sergeant) at Oklahoma County Community Corrections / Residential Center, filed this appeal after he was demoted to Correctional Security Officer III (Corporal) for, among other things, allegedly failing to follow prescribed procedures for (1) handling an inmate with a weapon in his possession, (2) properly securing the weapon, (3) timely completing all reports of the incident, (4) conducting a full facility search for the inmate prior to reporting him as

escaped, and (5) and for being untruthful in his reports and control log, all in violation of agency rules and/or Merit Rules.

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.

FINDINGS OF FACT

Prior to his demotion, Appellant, Edwin Barchue was a Correctional Security Officer IV (Sergeant) at Oklahoma County Community Corrections / Residential Center (OCCC/RS). He has been employed with DOC since November, 1998, and had been a Sergeant since 2003. On the night of July 27, 2008 Appellant and Corporal Sherman Rose were the security officers on duty on the "midnight shift," from 10:00 pm July 26 to 6:00 am July 27, 2008. As the ranking officer on duty, Appellant was the shift supervisor responsible for the facility.

At approximately 2:15 am on July 27, 2009, while conducting a routine security check of the housing units, Appellant discovered that two inmates in building "B" were out of their bunks, and found them talking in the bathroom. When he entered, Appellant saw one of the inmates put something in his pants pocket. Upon investigation, Appellant found a cell phone (contraband) in the pocket of one of the inmates, and a cell phone and charger (contraband) on the other inmate, Inmate Cheadle. A search of Inmate Cheadle's bed uncovered a weapon fashioned from a pencil with a sharp edge

blade attached to it (contraband) hidden under his blanket. Appellant confiscated the two cell phones, the charger, and the weapon, along with a cell phone (contraband) he had taken from another inmate in building "A" minutes earlier. Appellant returned to the central control room in building 100 with the contraband and the three inmates following him.

When Appellant reached the central control room, he called to Corporal Rose, who was sorting mail in the Sergeant's office adjacent to the control room. Corporal Rose testified that Appellant called to him in an urgent-sounding voice, and when he entered the control room he saw the three inmates in a confrontation with Appellant, exhibiting menacing behavior. Appellant told the inmates they needed to leave and go back to their rooms, but it was not until Corporal Rose repeated that command that the inmates left.

Appellant contacted Chief of Security, Natalie Cooper, to report the incident. Chief Cooper asked Appellant why he did not restrain the inmate with the weapon, Inmate Cheadle, as required by procedure, and place him in the Transit Detention Unit (TDU) or lock-up. Appellant responded that the inmate was too belligerent. When asked why he didn't call Corporal Rose as back-up, Appellant responded that security was required to stay in the control room at all times. Chief Cooper indicated that security must act appropriately and responsibly under the given circumstances. If an inmate is belligerent, Appellant should have called for back-up.

After Chief Cooper's instruction to restrain Inmate Cheadle in accordance with policy, Appellant radioed to Corporal Rose, who was conducting a facility count, to place Inmate Cheadle in restraints and bring him to the control room. When Corporal Rose

went to Inmate Cheadle's room, he was not there. He notified Appellant and conducted a facility search, but could not locate Inmate Cheadle. Appellant enacted escape procedures and notified Chief Cooper of Inmate Cheadle's escape.

Soon after Appellant called for the escape procedures, Inmate Cheadle appeared in the control room and stated that he had been upset about being caught with contraband and left his room to sit alone under a tree behind the basketball court. Corporal Rose placed him in restraints, took him to TDU and called Chief Cooper to inform her that Inmate Cheadle was accounted for and properly restrained.

The next day, July 28, 2008, Lieutenant Perry Burkhart returned from a one week vacation to learn of the possible escape the previous night and received a request from Chief Cooper to follow up. Lieutenant Burkhart could not find the contraband that Appellant indicated on his Incident Report he had confiscated and called Appellant to ask him the whereabouts of the contraband. Appellant advised him that he had stored the contraband in a bag in the bottom drawer of the file cabinet of the Sergeant's office. Lieutenant Burkhart found the bag containing the three cell phones and charger, but did not find the weapon.

That night Corporal Rose and Lieutenant Hancock worked the midnight shift. Corporal Rose was in the Sergeant's office when he noticed a pencil with a sharp blade taped to the end of it. He notified Lieutenant Hancock who placed the weapon in his carry bag and took it home with him. Lieutenant Hancock did not complete an incident report or properly secure the weapon in the contraband room as required.¹ Instead he placed a note to Appellant in his mailbox stating:

¹ Lt. Hancock received discipline for failing to follow proper protocol in handling this discovered contraband.

Mr. Barchue,
What happened to the sticker (knife) you found. [sic] You must of missplaced
[sic] it???

Joint Exhibit # 10

Lieutenant Hancock kept the knife at his home several days without reporting to anyone that he had it, until he received word that the facility was about to undergo a shake-down to locate the missing weapon. On July 31, 2008 at approximately 9:30 am, Lieutenant Hancock returned the weapon to the facility and gave it to Sergeant Uche, who tagged it and stored it in the contraband room. (Joint Exhibit # 22)

The incidents of July 27, 2008 and the aftermath were investigated and, effective November 1, 2008 Appellant was demoted from CSO IV to CSO III. Appellant has appealed the demotion on grounds that (1) he was treated unfairly; (2) that storing contraband in the file cabinet of the Sergeant's office is the procedure followed by all Security Officers; (3) the discrepancies noted in his reports were mistakes, not lies; (4) his shift was understaffed; (5) the "lost" weapon was taken intentionally to play a prank on him, and (6) Chief of Security Cooper was out to get him.

This administrative law judge is not persuaded by Appellant's arguments, and finds that just cause exists for Appellant's demotion from Correctional Security Officer IV to Correctional Security Officer III.

DISCUSSION

A correctional security officer (CSO) is responsible for providing security and supervision to inmates in a variety of situations and activities; for patrolling grounds, cell houses, dormitories, and work areas and observing movement and activities of inmates; for maintaining order and discipline; reporting incidents, conducting counts, preparing

written documents and reports concerning inmate behavior; and participating in escape teams. (Joint Exhibit #36) As a CSO IV, Appellant was in a leadership position, charged with independently performing specialized functions requiring a high degree of judgment and skill. (Joint Exhibit # 36)

On July 27, 2008 Appellant failed to fulfill his responsibilities as a CSO IV as required by policy and procedure:

(1) Appellant failed to restrain inmates caught with contraband as required by prescribed procedures, but allowed them to follow him to central control and then ordered them to return to their rooms. Appellant argued, after the fact, that he failed to follow the procedure because the inmates were belligerent and he was fearful. Assuming this to be true, Appellant exhibited poor judgment in failing to call Corporal Rose for back-up and in sending Corporal Rose, a junior CO, alone to restrain a belligerent inmate.

(2) Appellant failed to conduct a full facility search for inmate Cheadle prior to initiating escape procedures.

(3) Appellant failed to follow procedures to tag, bag, and log in the contraband cell phones and weapon and secure them properly in the contraband locker. Instead, he left the contraband in the drawer of a file cabinet in the sergeant's office, where they were subjected to being tampered with and the chain of custody broken. In his defense, Appellant argued that storing contraband items in the file cabinet temporarily is a customary procedure at the facility. In support of this argument Appellant presented an incident report he wrote on March 17, 2009 (after the subject incident) when he discovered razor blades taken from an inmate by another CO and kept in a desk drawer

for over a week before they were logged in and placed in the contraband locker. (Appellant's Exhibit # 64) District Superintendent Lester Leroy Young testified that it is neither acceptable nor routine practice to put contraband in the sergeant's office of the control room. He further testified that he heard about the razor blade incident for the first time at the hearing in this matter.

(4) Appellant did not complete his reports prior to leaving his shift as required. On July 27, 2008 Appellant confiscated contraband from three inmates, but only documented two with incident reports and inmate misconduct reports. It was not until July 31 that Appellant submitted an incident report and misconduct report on the third inmate, which was dated July 29, 2008. (Joint Exhibit # 16) Appellant stated he did not submit the required reports on July 27 because he was busy with other business, couldn't get to it before the end of his shift, and wanted to avoid overtime. (Joint Exhibit #21)

(5) There were many discrepancies in the reports Appellant submitted and in Appellant's log entries:

- a) Most notably, Appellant stated in his incident report and in two inmate offense reports that the confiscated phone and charger "were log [sic], tag [sic] and placed in the contraband locker by this R/O" on July 27, 2008. (Joint Exhibits#16, 25, and 36) This was untrue.
- b) The same incident report listed the "Place of Incident" as A-13, however, in the body of the report, Appellant states that the events took place in room A-11. (Joint Exhibit #16)

- c) In another incident report, Appellant indicates that Corporal Rose advised him at 2:45 am that inmate Cheadle was not in his room; Appellant conducted a confirmation count and facility search at 3:10 am; at 3:12 am he notified Chief Natalie Cooper that inmate Cheadle had been placed on escape status. (Joint Exhibit #15) Even Appellant admits that these times cannot be correct, but are only approximations.
- d) Appellant wrote in the central control log on July 27, 2008 that at 2:15 am he logged, tagged, and placed in the contraband locker the two cell phones, charger, and weapon confiscated from two inmates in "B" building. ((Joint Exhibit #7) This is untrue.
- e) Appellant wrote in the central control log on July 27, 2008 that at 2:15 am he confiscated contraband from an inmate in "A" building and in the next entry indicated that at 2:15 am he confiscated contraband from two other inmates in "B" building. As Appellant cannot be in two places at once, the times cannot be accurate.

Appellant dismisses these discrepancies as "minor inadvertent mistakes". (Joint Exhibit #29, page 3) This administrative law judge disagrees. Some of these "mistakes" are clearly untruths written by one who knows what is expected of him and who wants the reader to believe that he performed his responsibilities when he did not. At best, the other discrepancies are the result of carelessness, sloppiness, and a lack of caring. None of these are desirable or acceptable traits for a CSO in a supervisory or leadership position.

In his defense, Appellant alleges that the facility is understaffed with security officers. There were only two officers to handle 219 inmates during the 10 pm to 6 am shift. (Joint Exhibit #8) However, Appellant presented no evidence that this staffing is unusual or that it constitutes understaffing that would justify his actions. A review of the shift sheet for July 27, 2008 indicates that there were three CSO's for the 6 am to 2 pm shift and two CSO's for the 2 pm to 10 pm shift. (Joint Exhibit #8)

Appellant also alleges that he is treated differently than other CSO's and was targeted by Chief of Security Natalie Cooper in retaliation for him complaining about her as a supervisor. Appellant has presented no evidence to substantiate these allegations.

In his December 2006 – December 2007 Performance Management Process (PMP), out of nine listed "Accountabilities", five (5) were rated "Needs Improvement" and two (2) were rated "Does Not Meet" standards. He was rated "Does Not Meet" standards on four (4) of the five (5) listed "Behaviors", with an overall performance rating of "Does Not Meet Standards" and a need to improve his relationship with co-workers and subordinates and improve his problem-solving skills. (Joint Exhibit # 33)

In his last PMP, December 2007 – July 2008, Appellant had improved his performance to an overall rating of "Needs Improvement", but many of the same criticisms were noted. (Joint Exhibit # 32) Both of these two PMP's were completed by Chief Cooper. Each of the "Results" recites specific incidents and examples to justify the rating given. Although Appellant stated his disagreement with the ratings, not once did he site any specifics to refute any of them. (Joint Exhibits # 32 and 33)

Appellant also stated his disagreement with the ratings on his June 2005 – June 2006 PMP, completed by supervisor Jim Smith. (Joint Exhibit # 60) Supervisor Smith

rated Appellant overall as "Meets Standards", but found that he "Does Not Meet" standards in observing work hours and he "needs improvement" in his supervisory / management accountabilities as he "has trouble expressing himself to others without becoming upset or causing others to be upset." (See: Section B: Accountabilities) Likewise, Appellant's communication skills and documentation "need improvement" as he was found to "have [sic] trouble communicating with fellow Sergeants and his subordinate officers" and "needs improvement" in the area of documentation.

Appellant's difficulties as a supervisor have been long-standing² and different supervisors have seen similar issues with Appellant. During the past two years, Appellant's shortcomings may have become more acute³ or his supervisor less willing to overlook those shortcomings. Nonetheless, Appellant's handling of the incident on July 27, 2008 was the culmination of long-standing problems, not merely an aberration.

Finally, Appellant alleges that he was the victim of a practical joke by Corporal Rose and Lieutenant Hancock when Lieutenant Hancock removed the weapon from the sergeant's office and took it home with him. Even assuming this was the case (Lt. Hancock received discipline for his actions), this has nothing to do with Appellant's actions and his resulting demotion.

Based upon the foregoing, this administrative law judge finds that Appellee has proven by a preponderance of the evidence that Appellant failed to follow prescribed procedures for (1) handling an inmate with a weapon in his possession, (2) properly securing the weapon, (3) timely completing all reports of the incident, (4) conducting a

² On his June 2006 – December 2006 PMP, Supervisor Smith rated Appellant "Meets Standards" in every category, with the same comment in each of the "Results" sections – "Sgt. Barchue (generally) meets this standard." (Joint Exhibit # 61)

³ District Supervisor Young suggested that perhaps Appellant has difficulty accepting a woman as his supervisor. Both Chief Cooper and Assistant District Supervisor McBride are female.

full facility search for the inmate prior to reporting him as escaped, and (5) for being untruthful in his reports and control log, all in violation of agency rules and/or Merit Rules. Appellant's demotion from CSO IV to CSO III was just under the circumstances.

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 incorporated herein as conclusions of law.

3. Merit Rule 455:10-11-14 states that a permanent classified employee may be demoted for misconduct, insubordination, inefficiency, inability to perform the duties of the position, 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.7 *Rules Concerning the Individual Conduct of Employees*, requires employees to perform work in a manner which contributes to and supports a safe and healthful work environment.

6. DOC Policy OP-110215, Section I A.8. *Rules Concerning the Individual Conduct of Employees*, states that employees will promptly and truthfully report any improper actions which violate department policies and procedures, endanger others, or undermine principles in the Code of Conduct.

7. Community Corrections Policy OC-040102-01, Post Order #1 *Shift Supervisor Responsibilities*, indicates that the shift supervisor is usually the security sergeant on duty and that the shift supervisor is responsible for:

- (A) Ensuring that all activity is promptly documented in the appropriate log;
- (B) Managing staff and inmates during the occurrence of serious or unusual events; comply with applicable notification requirements; *assemble and prepare documentation relevant to the event prior to termination of the tour of duty*;
- (C) Ensuring that all incidents requiring disciplinary measures are addressed in accordance with the appropriate procedures. ...
- (H) Ensuring that proper notification and proper forms are completed when it is determined that an escape has occurred. Make sure that as many counts as are necessary are conducted immediately, and that all attempts are made to locate the inmate before initiating escape procedures.

(emphasis added)

8. Community Corrections Policy OC-040109-01, II A.1 and 2 *Oklahoma County Community Corrections/Residential Services Control of Contraband and Evidence*, identifies contraband to include any item that can be used as a weapon, and states that all confiscated contraband will be properly tagged and stored in the contraband room *prior to the end of the shift* unless the District Supervisor approves the immediate transfer of contraband to other law enforcement officials. *(emphasis added)*

9. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that Appellant Edwin Barchue failed to follow

prescribed procedures for (1) handling an inmate with a weapon in his possession, (2) properly securing the weapon, (3) timely completing all reports of the incident, (4) conducting a full facility search for the inmate prior to reporting him as escaped, and (5) for being untruthful in his reports and control log, all in violation of agency rules and/or Merit Rules.

10. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that demotion of Appellant Edwin Barchue from Correctional Security Officer IV (Sergeant) to Correctional Security Officer III (Corporal) was just under the circumstances.

ORDER

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

DATED: this 30th day of September, 2009.



Annita M. Bridges, OBA # 1119
Administrative Law Judge

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