BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

ERIC VINCENT,	)	
Appellant,	)	
	)	
v.	)	Case No. MPC 09-106
	)	
DEPARTMENT OF CORRECTIONS,	)	
Appellee.	)	
	)	

ISSUED
JUN 18 2009
OK MERIT PROTECTION COMM.
BY

FINAL ORDER

This matter comes on for hearing on June 5, 2009 before the undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Eric Vincent, appears personally, pro se. The Appellee, Department of Corrections, appears by and through counsel, Gary Elliot. Also present for Appellee was Table Representative, Ruby Jones-Cooper.

Appellant Eric Vincent, was a permanent, classified employee of the Department of Corrections. He is 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 Appellee offered Exhibits 1 though 38 with no objection and they were admitted. The Appellee also offered Exhibit 39 in rebuttal to the Appellant's testimony, and it was admitted over the objection of the Appellant. Accordingly, all exhibits presented and admitted are incorporated herein and made a part hereof.

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, Eric Vincent (hereinafter "Vincent") was a classified employee of the Department of Corrections (hereinafter "DOC"). Vincent was employed by DOC at three different times. Vincent was last employed with DOC as a Correctional Security Officer III. During the night shift at the Hillside Community Corrections Center (hereinafter "Hillside") on

June 15-16, 2008, Appellant Vincent failed to secure the Transit Detention Unit (hereinafter "TDU") door when he went to the rest room. At that time, two unauthorized offenders entered the TDU. Vincent failed to note this unauthorized entry in the log book and also failed to write incident reports before leaving his post at the end of his shift. Vincent also had these offenders get coffee for him during his shift. During the same shift, Vincent exited the back door of East Housing to smoke cigarettes without having another officer relieve his post. Vincent was alleged to have violated DOC policies as follows: 1) by failing to secure the TDU door which resulted in a breach of security with unauthorized offender visitation; 2) of exiting the East Housing/Transit Detention Unit to smoke a cigarette which resulted in abandonment of post; 3) of failing to properly log incidents of offender violations; 4) of requesting favors of offenders; and 5) of using tobacco in an inappropriate and unapproved location. Following that shift, one of the offenders made allegations of sexual impropriety on the part of Vincent. This complaint was investigated by internal affairs. That investigation took several months to complete and was subsequently found to be unsubstantiated. Following that investigation, DOC proceeded with a proposed disciplinary action regarding Vincent's violations of the various DOC policies on June 15-16, 2008. On October 31, 2008, DOC notified Vincent that he was being considered for termination and a pre-termination hearing was scheduled for November 7, 2008. (Exhibit 4). Immediately following the hearing, DOC provided Vincent with notice of his termination, effective November 7, 2008. The Notice of Termination sets forth the various policies that Vincent violated, a description of the acts or omissions supporting the discipline and a listing of prior discipline. (Exhibit 5). Vincent appealed and this proceeding was held. The parties stipulated to the jurisdiction of the MPC and the application of Merit Rules and that the appeal was timely.

The Testimony

DOC offered the testimony of seven (7) witnesses in support of its disciplinary action.

James Smith was the first witness. Smith is the Chief of Security at Hillside. He oversees the daily operations of the facility. He testified that Hillside is a community level facility and is considered a step-down to minimum security for offenders prior to their release. Hillside is a female correctional facility with approximately 230 offenders. He testified that within the facility is the East Housing building which contains the TDU, a maximum security unit which houses high-risk offenders. Smith identified various sites and locations from the

photographic Exhibits 25-37, including East Housing, the designated employee smoking area and the designated offender smoking area. Smith testified that on the June 15-16, 2008 night shift, Vincent was on duty, assigned to the East Housing building. He further stated that East Housing is a "fixed" post, meaning that it must be always manned and that officers cannot leave the post until relieved by another officer. (See Exhibit 3). Vincent was the only officer assigned to that post during the night shift on June15-16, 2008. Smith testified that there were no entries noted in the log relating to an unauthorized entry into the TDU by two offenders or that Vincent left the unit to smoke cigarettes. (Exhibit 18). Smith testified that Vincent had been given a letter of reprimand the previous month, in May, 2008, for allowing an unauthorized offender into the TDU and for leaving his "fixed" post in East Housing. (Exhibit 9). He testified that Vincent was warned at that time of the seriousness of the violations and that future violations could result in his termination. Smith testified that Vincent did not complete an incident report concerning the offenders' unauthorized entry into the TDU until the next night. Vincent's report was written only after he was made aware that the offenders had each reported the incidents. (See Exhibits 11-14). Smith stated that policy requires these incident reports to be completed by the end of each shift. Smith identified the DOC policy on tobacco use and a memo he posted identifying approved smoking areas. (Exhibits 16-17). Smith testified that it was improper to ask for favors from offenders, such as getting coffee. He stated that it creates the potential for abuse and is prohibited. Smith described Vincent as an "adequate" employee who only does the minimal amount of work and effort. He stated that he recommended that Vincent be terminated because of the prior discipline for the same type of behavior and Vincent's disregard for following policy.

On cross-examination, Smith admitted that most officers fail to make log entries from time to time, however, that was not the only violation that Vincent committed. He also stated that only *authorized* offenders were to be permitted into the TDU and they must be supervised at all times. The two offenders in this matter were not authorized and were unsupervised while in the TDU. They were in the TDU only because of Vincent's negligence in leaving the door unsecured. Smith also testified that even though Vincent may have only stepped outside the back door to smoke, it was still outside the building and the unit was left unsupervised for a period of time. He concluded with his concern about the repeated violations and that previous discipline failed to improve the behavior.

Natalie Cooper testified that she is the Chief of Security at another DOC facility. She testified that she previously supervised Vincent for approximately a year. She further testified that she assisted in interviewing Vincent for his most recent position in 2006. She stated that she was aware of his previous employment with DOC but was unaware of the circumstances or previous discipline problems. In 2006, during the interview, Vincent stated that he previously resigned due to personal reasons, when he actually resigned pending disciplinary action to terminate him. Cooper testified that she drafted the disciplinary documents regarding Vincent in November, 2007. At that time, he was found sleeping on duty, brought contraband (a pocket knife) inside the facility and then openly played with the knife in front of offenders, left the facility to smoke cigarettes without approval, refused to comply with the directive of his supervisor, failed to respond to repeated calls, and solicited deer meat from a relative of an offender. She testified that she recommended termination but it was reduced to a letter of reprimand. She included these incidents on Vincent's evaluation and rated him as "Does Not Meet Standards". (Exhibit 20). She testified that Vincent would always try to find a way to get out of doing assigned tasks. She reported that he wrote very few incidents reports or misconducts, which is unusual and is indicative of not adequately performing his job. Vincent questioned Cooper regarding her knowledge of violations of DOC policy by other employees, however, she stated that those appeared to only be Vincent's perception of violations which did not excuse or justify his own behavior.

Mike Addison, the Warden of Joseph Harp Correctional Center in Lexington, OK, testified that Vincent was previously a correctional officer at his facility. In 2005, the facility became "smoke-free" and smoking was prohibited by all staff and offenders. Tobacco was considered "contraband" and was in high demand by the offenders, creating a high potential for abuse. In April, 2007, Vincent was caught smoking in the facility and Addison stated that he issued a Letter of Reprimand. Addison stated he was particularly concerned because Vincent was untruthful about the incident. Addison testified that he proposed termination of Vincent in October, 2005, due to the continuing smoking violations and using tobacco to barter with the offenders. Vincent resigned before the disciplinary procedure was concluded. On cross-examination, Addison denied that Vincent's problems at Joseph Harp were a result of Vincent's comments about racial discrimination in the promotion process.

Shawn Dodson is an investigator with DOC. He stated that he investigated Vincent's behavior at Joseph Harp in 2005. He stated his opinion that Vincent had "problems" being truthful about his conduct. In September, 2005, Vincent was given a polygraph examination regarding an allegation of his smoking in an offender's room and Dodson was present for that examination. During the examination, Vincent denied smoking in the offender's room and also denied having the offender hide his cigarettes. The results revealed that Vincent was not being truthful and Vincent subsequently admitted to bring cigarettes into the facility and smoking in the offender's room. He also stated that he lied about the events out of fear of being terminated. (Exhibit 19).

Stephanie Burk is an investigator with DOC's Internal Affairs division. She testified that she conducted an investigation into the allegations of sexual abuse and the events of June 15-16, 2008. She testified that Vincent admitted to her that he was outside the back door of East Housing (location shown on Exhibit 34) with the two offenders and that he smoked 2 to 3 cigarettes while out there. He also admitted that he sent the offenders to get him coffee and that he left the TDU door unsecured when he hurriedly went to the rest room. Burk testified that the sexual complaint was unsubstantiated.

Ruby Jones-Cooper is the DOC Table Representative and the District Supervisor in Oklahoma City. Jones-Cooper testified that she was unaware of Vincent's prior disciplinary problems when she re-hired him in 2006. She testified that a disciplinary action was undertaken in November 2007, as Natalie Cooper discussed. That action was originally proposed to be a termination, but the pre-termination hearing was not properly recorded so the discipline was reduced to a Letter of Reprimand. Vincent's actions at that time were very serious and were demonstrative of his continuing performance and behavior problems. Jones-Cooper testified that Vincent admitted to the current allegations during his pre-termination hearing, except that he didn't recall sending the offenders for his coffee. She stated that Vincent alleged that he waited to complete the incidents reports because he wanted to discuss the matter with Sgt. Collins, however she stated that there is a duty officer on call 24 hours a day who was available to Vincent and he failed to make contact. She Jones-Cooper testified that she makes a final decision on discipline based upon the seriousness of the incidents and on the employee's past history and performance. In this matter, Vincent was terminated because of the continued,

repeated violations and that the numerous previous disciplinary steps failed to improve or remedy the problem.

Eric Vincent was called as DOC's final witness. He testified that he was employed at DOC from 1988 to 1992 and he resigned pending a disciplinary action. He stated that in 1992, he was arrested for Driving Under the Influence. When confronted with Exhibit 39, Vincent admitted that he was actually arrested for DUI and Possession of a Controlled Dangerous Substance and that the letter indicated that he was terminated on July 24, 1992. He stated that he didn't remember it that way. Vincent also admitted that he resigned in 2005 while the disciplinary process to terminate him was underway. He admitted that he had a problem with smoking. Vincent was offered the opportunity to provide testimony in his defense and he declined to testify further.

Vincent called no witnesses and offered no evidence into the record in support of his appeal.

ISSUES

1. Did Appellee DOC have just cause to impose discipline in this matter?
2. If so, was the discipline imposed just and appropriate under the circumstances pursuant to the statutes, policies and procedures?

DISCUSSION

The evidence is uncontroverted that the Appellant violated numerous DOC policies during his night shift on June 15-16, 2008. Vincent negligently left a maximum security, high risk unit unsecured, which allowed the entry of two unauthorized offenders into the area. He failed to properly note the incidents in the log and failed to document them with written incident reports before the end of his shift. He left his post inside East Housing to stand outside and smoke several cigarettes. He refused to follow the DOC smoking policy because he did not agree with it. He engaged in prohibited activities with offenders, the least of which was having them get coffee for him. Vincent's violations, especially the abandonment of his post and leaving the TDU door unsecured, are very serious and his actions could endanger himself and other officers on duty, as well as increase the risk of harm to the other offenders housed in that

facility. DOC has met its burden of proof regarding the violations as set out in the Notice of Termination. (Exhibit 5). Despite being warned repeatedly, as recently as the previous month, Vincent continued to violate the DOC policies regarding leaving his post and smoking. There is substantial evidence to show that DOC had just cause to impose discipline for Vincent's admitted violations on June 15-16, 2008.

The last issue for determination is whether Vincent's termination was just and the appropriate level of discipline under the circumstances. Vincent's performance evaluation for 2006 showed an employee who "Needs Improvement". (Exhibit 21). In 2008, he was rated as "Does Not Meet Standards". (Exhibit 20). He has a long history of disciplinary problems with DOC, including a previous termination for cause. In the last four years, he has received three Letters of Reprimand and one Suspension without Pay for similar serious violations. (Exhibits 6-9). All of these previous disciplinary actions involved smoking violations, among other things. The progressive discipline imposed by DOC thus far has failed to achieve the goal of redirecting Vincent toward improved job performance and conduct. DOC's imposition of progressive discipline with Vincent has failed to produce acceptable results. There is no evidence of mitigating circumstances which would warrant the reduction of the severity of discipline imposed herein.

The undersigned has considered the facts and circumstances of this case and the testimony of the witnesses. Based upon the entire record, it is clear that DOC has met its burden of proof that the termination was just and appropriate. Given the nature of this case, there is no lesser discipline that is appropriate.

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. Title 74 O.S. §840-6.5 and Merit Rule 455:10-9-2 states that the Appellee DOC 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. 74 O.S. §840-6.5 and Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for the reasons of misconduct, insubordination, inefficiency, habitual drunkenness, 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. DOC Policy OC-040102-09, *HCCC Post Orders for East Housing/Transit Detention Unit*, requires that the East Housing/TDU is a fixed position and the officer may not leave his post until properly relieved. It further requires that all activities of the unit be noted in the log book, including incidents outside the normal, ongoing activities and all non-staff movement on and off the unit. The policy also requires that major incidents be verbally reported to a supervisor and a detailed written report be submitted by the end of shift. (Exhibit 3).

6. DOC Policy OP-110215, *Rules Concerning the Individual Conduct of Employees,* prohibits employees from engaging in any activity which constitutes or offers the opportunity for an abuse of the employee's power. (Exhibit 2).

7. DOC Policy OP-150601, *Tobacco Regulations*, permits employees to use and possess tobacco products as long as they use them in a designated area at least 25 feet from the entrance or exit to any building. (Exhibit 16). The only designated staff smoking area at HCCC is on the north side of the Administration Building. (Exhibit 17).

8. The preponderance of the evidence shows that Vincent's actions violated these referenced policies. The preponderance of the evidence also shows that DOC took numerous progressive disciplinary steps to address Vincent's performance and conduct issues and those steps have failed to produce acceptable results.

9. Appellee, DOC, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Vincent as set forth in the Notice of Termination.

10. Appellee, DOC, has met its burden to prove, by a preponderance of the evidence, that the discipline of termination imposed herein was just under the totality of the circumstances.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Eric Vincent, MPC 09-106 be **DENIED**.

This Order entered this 16th day of June, 2009.

Lydia Lee
Administrative Law Judge