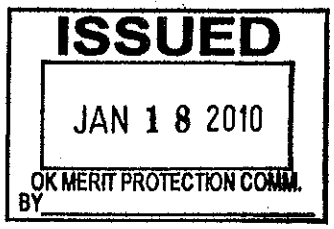
OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA



ROCKY WATSON,	)	
	)	
APPELLANT,	)	
	)	
v.	)	**MPC-10-039**
	)	
	)	
OKLAHOMA DEPARTMENT OF CORRECTIONS,	)	
	)	
APPELLEE.	)	

FINAL ORDER

Hearing on this matter was held January 6, 2010, before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. Present at the hearing was Appellant who was represented by legal counsel, Carole Houghton. Present for Department of Corrections (hereinafter "DOC" or "Appellee") was Assistant General Counsel Michele Minietta. Also present for Appellee was table representative David Parker.

Appellant is a permanent, classified employee appealing a one day suspension without pay for violation of DOC Policy 110215, "Rules Concerning the Individual Conduct of Employees". Specifically, Appellant brought an electronic communication device (his cellular telephone) into the central control lobby of the James Crabtree Correctional Center. Appellee disciplined Appellant because the central control lobby is a secure area of the facility. Appellant asserts that the central control lobby is not a "secure area" and therefore carrying a cellular telephone into the lobby area was not a violation of DOC policy.

Whereupon the hearing began and sworn testimony of witnesses for Appellee and Appellant was presented. In addition, the parties submitted a joint trial notebook containing thirty-three (33) exhibits which were admitted and are incorporated into this

Final Order. At the conclusion of the hearing, the parties were given seven days to submit closing arguments in writing and the record was held open for that limited purpose. The record was closed January 13, 2010.

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 is a Safety Consultant III working at the James Crabtree Correctional Center (hereinafter "JCCC") in Helena, Oklahoma. On June 26, 2009, Appellant carpooled to work with fellow employee Brandy Page. When Appellant and Officer Page arrived at JCCC, Appellant told Officer Page that he was going to take his cellular telephone into the facility administration building with him rather than leave the cellular telephone in Officer Page's car. By doing so, Appellant would not have to go back to Officer Page's car later and retrieve his phone.

Appellant testified that if he had driven his personal vehicle to JCCC that day, he would have left his phone in his car. However, since he carpooled with Officer Page, Appellant made the decision to take his cellular telephone into the facility.

When entering the facility grounds, visitors and employees see a sign located at the corner of the parking lot advising them that they are "now entering a correctional facility. All persons and vehicles are subject to search by Department of Corrections personnel. Entry onto the grounds to pass through an entrance of the parameter is presumed consent to a pat down search at or near the perimeter..."

To enter the facility administration building, visitors and employees must pass through a large metal door marked "visitors". A second sign is located next to the door again advising visitors and employees that they are entering into a correctional facility. Once inside the administrative building, visitors and employees then pass through a second medal door into the central control lobby.

Once inside the central control lobby, Appellant observed that a staff shakedown was taking place and everyone entering the building was being searched. Appellant entered the building for the sole purpose of getting car keys to a state vehicle which he was going to drive to the Bill Johnson Correctional Center that same day.

Captain Chris Payne was standing in the central control lobby area for the purpose of ensuring that everyone who entered the building was searched. Captain Payne observed Appellant enter the area, go to the lock box which contained the state vehicle keys, remove the vehicle keys and start to proceed out of the central control area.

Captain Payne stepped in front of Appellant and directed him to proceed into the search area. Appellant inform Captain Payne that he did not have to be searched because he was just there to pick up the keys to a state vehicle. Captain Payne put his hand on Appellant's arm and told Appellant that he did need to submit to the search.[1]

At that time, Appellant complied with Captain Payne's order and proceeded into the area where employees were being searched by Lieutenant Michael Shelite and two other officers. Appellant went to Lt. Shelite, told him he had a cellular telephone and handed the telephone to Lt. Shelite. After taking information off of the cellular telephone, Lt. Shelite returned the cellular telephone to Appellant and allowed him to leave the facility.[2]

Following the incident, Appellant was given a one-day suspension without pay for bringing a cellular telephone into the facility. Appellant has appealed the suspension asserting that the central control lobby is not a secure area, there were no signs posted prohibiting cellular telephones and, Appellant was not advised that cellular telephones were prohibited in the central control lobby. Appellant also argues that DOC policy 110215 expressly allows employees to check cellular telephones with administration or central control.

Warden David Parker testified that use of cellular telephones has become an increasing threat to security at DOC facilities. The ability to conceal weapons within cellular telephones and the use of cellular telephones to trigger bombs are just two concerns Warden Parker expressed at the hearing. In addition, the ability of inmates to send and receive information through text messaging has caused serious security risks at correctional facilities across the state.

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[1] The evidence presented at this hearing does not establish that Captain Payne restrained or used excessive force when he put his hand on Appellant's arm as asserted by Appellant.

[2] Lt. Shelite admits he failed to follow DOC policy and should have confiscated Appellant's cellular telephone rather than returning it to him. Lt. Shelite was given verbal counseling for returning Appellant's cellular telephone to him and failing to follow DOC policy.

While inmates are not allowed to have cellular telephones, there have been, regrettably, situations where DOC employees have provided cellular telephones to offenders. This has resulted in DOC making radical changes to its policy in an effort to eliminate the way contraband such as cellular telephones are brought into facilities. During the period from September, 2007 through December, 2008 DOC revised its policy regarding who was allowed to carry cellular telephones into correctional facilities no fewer than three times.[3]

In order to provide guidance and information regarding DOC policy to JCCC staff, Warden Parker and Chief of Security Robert Denton sent out interoffice memorandums regarding the introduction of contraband and the possession of cellular telephones at the facility.

Specifically, on January 24, 2007, Warden Parker issued an interoffice memorandum to all staff at JCCC regarding the control of contraband stating that during a recent search of the facility, 21 individual items of contraband, including at least one cellular telephone, was found in violation of DOC policy OP-040109, "Control of Contraband & Physical Evidence". The memorandum also stated it was Warden Parker's interpretation that the term "facility/prison grounds" in DOC policy and state statute included all state-owned buildings or land.

On January 26, 2007, Chief Denton issued an interoffice memorandum to all staff listing items defined as contraband which were not authorized on facility grounds. That list included the item "cellular telephones". The memorandum concluded that "any above listed items or items in question should be removed from facility grounds."

On December 23, 2008, Warden Parker sent an interoffice memorandum to all staff regarding introduction of contraband at DOC facilities. Warden Parker's memorandum referenced Chief Denton's January 26, 2007, memorandum and listed cellular telephones as an example of items that were not authorized on facility grounds.

The memorandum also stated:

> DOC policy 110215, effective 11-25-08, prohibits all staff from carrying cellular telephones inside the secure facility of a medium

[3] The security concerns are so great that even Warden Parker is not allowed to have a cellular telephone within the JCCC.

> and maximum facility with the exception of the Director and Internal Affairs Investigators.
>
> DOC policy 110215 addendum-02 states that all communication devices will be secured in the administration area or in central control at medium and maximum-security facilities. This has been interpreted to be for visitors and guests of the facility and not for employees. Central control is [a] high traffic area that demands the full attention of the person assigned to work in that area, and has limited storage space. Additionally the department assumes no responsibility for the security or privacy of personal property. Personal communication devices will not be stored in the central control area for employees of James Crabtree Correctional Center. To ensure everyone understands any cell phone or other item identified as contraband will not be allowed on facility grounds outside the locked interior of your vehicle. (Emphasis added)

On February 27, 2009, Warden Parker issued an interoffice memorandum to all staff regarding introduction of contraband at the facility. This memorandum stated in part:

> "the following are items that are not authorized to be brought on facility grounds: cellular telephones".

In addition to the interoffice memorandums discussed above, the issue of cellular telephones, contraband and employees being subject to pat down searches was also discussed at numerous department head meetings.

Specifically, at the department head meeting held on January 25, 2007, the definition of contraband was discussed as "any item that you are not authorized to have in any building or land that is state owned. All contraband items must be securely locked in your vehicles." Examples of contraband items were discussed and one example of a contraband item was cellular telephones. Appellant was present at that meeting.

At the March 27, 2008, department head meeting, regional updates were presented including an update regarding personal cellular telephones. Warden Parker noted that "we continue to find staff in possession of personal cellular telephones. This is to advise you that formal discipline will result in [sic] future violations for employees caught with personal cellular telephones at the facility. These need to be left in your personal vehicle." Appellant was present at that meeting.

At the September 25, 2008, department head meeting, Chief Denton discussed state statutes regarding bringing a cellular telephone into a prison and stated that "all staff needs to ensure that when you leave your vehicle you make a quick cell phone/tobacco check to ensure you don't accidentally have it in your possession when entering the prison." Appellant was present at that meeting.

It is Appellant's position that the central control lobby is not a secure area and that Appellant and other employees frequently go into that area with their personal cellular telephones. In support of that position, Appellant presented three JCCC employees who testified that the public has access to the central control lobby area and therefore that area is not considered a secure area. The undersigned does not find this argument persuasive. Also, none of these witnesses were present at the department head meetings where the issues of cellular telephones, contraband and employees being subject to pat down searches were discussed. Appellant was present at those meetings.

Appellant also asserts that since there are no signs stating that cellular telephones are prohibited, visitors who enter the facility with cellular telephones are not disciplined but simply instructed to take their telephones back to their vehicles. Again, the public did not have access to the memorandums sent to DOC employees nor were they included in the department head meetings attended by Appellant where policy language prohibiting cellular telephones was discussed.

Appellant also maintains that the language in OP-110215 is unclear and could be interpreted differently by different people. DOC OP-110215, "Rules Concerning the Individual Conduct of Employees" establishes a code of conduct for employees of the Department and sets forth duties and responsibilities of those employees. The policy states in part.

> 2. Electronic Communication Devices.
> Staff and community correctional facilities may carry electronic communication devices while on facility premises.
>
> Electronic syndication devices will be secured in the administrative area or in central control at minimum, medium and maximum security facilities. Only the personnel identified below are authorized to carry electronic communication devices when conducting official business at minimum, medium and maximum security facilities:
>
> a. Director

b. Internal Affairs Investigators/Fugitive Apprehension Agents.

The fact is that any possible confusion regarding the interpretation of language in this DOC policy was remedied when Warden Parker set forth to JCCC employees what his interpretation of the policy would be. Warden Parker then sent out numerous memorandums clarifying the policy, informing employees what his interpretation of the policy was, and specifically setting forth that cellular telephones would not be allowed within the facility.

Appellant claims he was not on JCCC's e-mail list and therefore did not receive any of the interoffice memorandums, except the memorandum issued February, 27, 2009. If this is true, the February 27, 2009, memorandum from Warden Parker is, in and of itself, enough notice to Appellant he should not take his cellular telephones into the central control area lobby. In addition, Appellant had the advantage of receiving clarification of this issue at the three department head meetings which he attended and which are discussed above.

Furthermore, the four, separate key lock boxes located in the central control area contain not only keys to state owned vehicles but also keys for the different work stations throughout the facility. The undersigned does not believe that DOC would keep keys to state owned vehicles and various doors and locks throughout a correctional facility in an unsecured area.

Lastly, regarding progressive discipline, Appellee submits the discipline imposed was the appropriate level of discipline and it is undisputed that Appellant received prior discipline in December, 2007. Specifically, on December 26, 2007, after conducting a search of all personnel entering the facility, Appellant was found to be in possession of contraband in the form of a can of smokeless tobacco. For that violation, Appellant received a letter of reprimand.

CONCLUSIONS OF LAW

1. The Merit Protection Commission has jurisdiction over the parties and subject matter in the above entitled cause.

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

3. OAC 455:10-11-14 states that a permanent, classified employee may be suspended without pay for, among other things, misconduct, insubordination, inefficiency, inability to perform the duties of the position, willful violation of the Oklahoma Personnel Act or Merit Rules, conduct unbecoming a public employee or any other just cause.

4. DOC OP-110215, "Rules Concerning the Individual Conduct of Employees" establishes a code of conduct for employees of the Department and sets forth duties and responsibilities of those employees as discussed above.

5. OAC 455:10-9-2 states that Appellee, as the appointing authority, has the burden of proof in this case and must prove by a preponderance of the evidence that just cause exists for the adverse action and that the discipline imposed upon Appellant was just. Appellee has met its burden of proof in this matter.

6. Appellee has shown by a preponderance of the evidence that Appellant violated OAC 455:10-11-14 and DOC OP-110215 when he brought an electronic communication device (a cellular telephone) into the central control lobby of the James Crabtree Correctional Center, which is a secure area of the facility and therefore just cause exists for the imposition of the one-day suspension without pay.

IT IS THEREFORE ORDERED, ADJUDGED AND DEGREED that the appeal of Rocky Watson v. Oklahoma Department of Corrections, MPC-10-039 be **Denied.**

Signed this 18th day of January, 2010.

P. Kay Floyd, OBA 10300
Administrative Law Judge
Oklahoma Merit Protection Commission
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