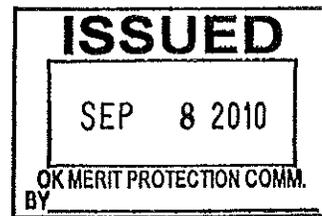


**BEFORE THE OKLAHOMA MERIT  
PROTECTION COMMISSION**



<b>Levi Casey,</b>	)	
<b>Appellant,</b>	)	
	)	
<b>-v-</b>	)	<b>MPC No. 10-220</b>
<b>Department of Corrections,</b>	)	
	)	
<b>Appellee.</b>	)	

**FINAL ORDER**

Hearing on this matter was held August 25, 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, Mary Ann Karns. Present for Department of Corrections (hereinafter "DOC" or "Appellee") was Michele Miniotta, Assistant General Counsel. Also present for Appellee was table representative Warden Eric Franklin.

Appellant is a permanent classified employee appealing his demotion by Appellee from a Correctional Security Manager II ( a Captain) to a Correctional Security Officer IV (a Sergeant).<sup>1</sup>

At the beginning of the hearing, the parties announced they had entered into additional stipulations and had also agreed to the reduction of witnesses and exhibits. The parties asked the Court to enter the stipulations as if they were part of the Pre-Hearing Conference Order. The undersigned admitted the stipulations into the record.<sup>2</sup>

Thereafter, sworn testimony of witnesses for Appellee and Appellant was presented along with exhibits which were presented jointly by both parties, admitted into the record, and are incorporated herein and made a part hereof.

<sup>1</sup> Both parties acknowledge that this demotion is a two level/rank demotion which by-passes the rank of Lieutenant.

<sup>2</sup> The stipulations entered at the beginning of this hearing are styled "Additional Stipulation of the Parties" and are incorporated in the findings of fact portion of this Final Order.

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**

As stated above, at the beginning of this hearing the parties entered into the following twelve additional stipulations:

1. Appellant stipulates that his actions, as set out in the Notice of Discipline, violated DOC OP-110215, Rules Concerning the Individual Conduct of Employees.

2. The parties stipulate that Joyce Perry, Civil Rights Administrator 1, conducted a thorough investigation of this matter, and, if called to testify would state:

A. She found the following incidents to be inappropriate and unprofessional:

\*Kasey McDonald telling Levi Casey that she would screw him.

\*Kasey McDonald showing Levi Casey her breast through her bra.

\*Kasey McDonald realizing later what she had done was wrong and unethical and tried to stop the behavior but Levi Casey would not stop.

\*Conan Jackson telling Kasey McDonald that he had a sex dream about her.

\*Levi Casey, as a supervisor, did not take the appropriate action by documenting and counseling Ms. McDonald, his subordinate employee, in reference to her behavior when she approached him as noted above.

B. She recommended “sexual harassment training for Kasey McDonald and Conan Jackson. I recommend sexual harassment training and supervisory training for Levi Casey.”

3. The parties stipulate that Stephanie Burk, DOC Internal Affairs Investigator, conducted a thorough investigation of this matter, and, if called to testify would state that she found Mr. Casey and Ms. McDonald had violated DOC OP-110215, Rules Concerning the Individual Conduct of Employees.

4. Appellant stipulates that although the reports of Ms. Perry and Ms. Burk were not listed by Appellee as exhibits, the conclusion portions referenced in stipulations two and three may be added to Appellee’s exhibit list.

5. Appellee agrees to withdraw the following exhibits:
  2. Incident Report of K. McDonald
  5. Audio recording of IA interview of Mr. Casey
  7. One page list entitled "K. McDonald."
6. Appellant's exhibit list is reduced to the Appellant's PMP's.
7. Appellant's witness list is reduced to:

Appellee's witnesses

Appellant

Stephanie Howard

Mike Carpenter

Charles Galaviz

8. Appellee's witness list is reduced to:

Appellant's witnesses

Eric Franklin

Stephanie Howard

9. The parties stipulate that the matter before the Court is whether the discipline given was appropriate for the circumstances, and, if not, the proper remedy.

10. The parties stipulate that Ms. McDonald received a verbal reprimand in person directly from the Warden regarding her actions.

11. The parties stipulate Mr. Casey received no supervisory training because DOC had removed him from a supervisory position, and received sexual harassment training as part of his annual in-service training.

12. The parties stipulate that AED (defibrillator) training includes teaching the user to remove clothing, including a bra when necessary, and that placement of the paddles is dictated by the build of the patient, particularly a female patient. The parties further stipulate that although such was not his intention, it is possible that one could construe some statements made by Appellant as sexually suggestive.

At this hearing Appellee presented one witness, Warden Eric Franklin. Warden Franklin has been employed by DOC for 26 years and has held the position of Warden at five different facilities. Warden Franklin has been Warden of the Lexington Assessment and Reception Center ("LARC") for two years.

The LARC security chain of command is as follows: the Warden, Deputy Warden, Chief of Security, Captain, Lieutenant, Sergeant, Corporal, and Cadet. Those officers who are Captains supervise the Lieutenants who in turn supervise the Sergeants, Corporals and Cadets. The position of Sergeant is not a supervisory position.

In March, 2009, Corporal Kasey McDonald, a female, went to Warden Franklin and made sexual harassment allegations against Appellant. At the time of the allegations, Appellant was a Captain and was also Corporal McDonald's supervisor.

Warden Franklin reported the allegations to the civil rights office and later to the internal affairs division and the parties have stipulated as to the testimony of Joyce Perry, Civil Rights Administrator and Stephanie Burk, DOC Internal Affairs Investigator.<sup>3</sup>

After reviewing the reports issued from the civil rights office and internal affairs division and reviewing past disciplinary action taken against Appellant, Warden Franklin demoted the Appellant from the position of Captain to Sergeant.<sup>4</sup>

In the Notice of Involuntary Demotion, Warden Franklin stated:

"I am gravely concerned with you as a supervisor and these issues. I'm also concerned that a pattern of behavior may be developing. I expect for supervisors to treat all employees with respect and their actions uphold the public trust and reflect high ethical standards."

Warden Franklin testified that he valued Appellant as a correctional officer but could not have an officer in a supervisory position that engaged in the type of conduct engaged in by Appellant. In addition, supervisors have a greater responsibility to be appropriate with their subordinates and all employees need to be safe from sexual harassment. Accordingly, Warden Franklin demoted Appellant to the position of Sergeant rather than Lieutenant because a Sergeant has no supervisory duties.

Warden Franklin also testified regarding Appellant's previous corrective action. Specifically, in May, 2006, Appellant received an interoffice memorandum regarding "inappropriate behavior" which stated in part:

"Please be advised that your duties as Receiving Lieutenant place you in a supervisory role of many of the officers here at the

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<sup>3</sup> See additional stipulations two and three incorporated above in this Order.

<sup>4</sup> Warden Franklin testified that he had originally thought termination was appropriate but later decided to demote Appellant.

facility.... Please ensure that all relations with subordinates, especially females, are conducted in a professional manner at all times.”

Appellant also received a May, 2007, interoffice memorandum reminding Appellant again that his duties as Lieutenant placed Appellant in a supervisory role and telling Appellant:

“Please ensure that all relations with subordinates [are] conducted in a professional manner at all times.”

The May, 2007, interoffice memorandum was issued following a Level 1 investigation regarding allegations that Appellant was sexually harassing a female officer.

During Appellant’s case in chief, Appellant called Lieutenant Stephanie Howard who was present during the AED (defibrillator) training.<sup>5</sup> Lieutenant Howard was not offended by the conversation which took place during the AED training and did not think the conversation was sexual in nature.

However, Lieutenant Howard was present another time when Appellant and Corporal McDonald were discussing Corporal McDonald's appearance. Appellant, during that conversation, pulled on Corporal McDonald's uniform which Lieutenant Howard thought was unnecessary. In addition, Lieutenant Howard thought a comment by Appellant regarding Corporal McDonald's weight was not an appropriate comment for a supervisor to make to a subordinate.

Appellant has stipulated that his actions as set out in the Notice of Discipline violated DOC policy and, although it was not his intention, it was possible the one could construe some of the statements made by Appellant during the AED training as sexually suggestive.

Appellant however disputes that the May, 2006, and May, 2007, interoffice memorandums are "corrective action" as contemplated by DOC policy. Appellee counters that they are "corrective action" and also points out that the progressive discipline procedure allows for the use of more severe disciplinary responses to serious infractions.

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<sup>5</sup> The AED (defibrillator) training is referenced in stipulation number 12 above.

Whether or not the May, 2006, and the May, 2007, interoffice memorandums are corrective action or not, Appellee is correct that progressive and consistent discipline does not preclude the use of more severe disciplinary responses to serious infractions.

Lastly, the parties have stipulated that the matter before the Court is whether the discipline given was appropriate for the circumstances, and, if not, the proper remedy. The undersigned finds that the discipline imposed by Appellee was appropriate based on the circumstances of this case.

### 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 demoted 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 policy OP 110215, Rules Concerning the Individual Conduct of Employees establishes a code of conduct for employees of DOC and sets forth duties and responsibilities of those employees including the duty to devote full time, attention and effort to their duties during assigned hours of duty; engaging in conduct which affords respect and courtesy to, and preserve the dignity of others; avoiding any conduct, interest, or relationship, which is in conflict with, or detrimental to, the proper and effective discharge of official duties; and, promptly and truthfully reporting any improper actions which violate department policies and procedures, endangers others, or undermine the principles contained in the policy.
5. Appellant has stipulated that his actions, as set out in the Notice of Discipline, violated DOC OP 110215, Rules Concerning the Individual Conduct of Employees.
6. OAC 455:10-9-2 **Burden of proof** states in part that the burden of proof in this case shall be upon the Appellee who must prove its case by a preponderance of the

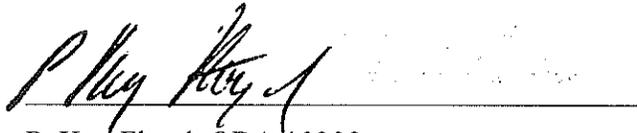
evidence. In this case, Appellee must establish by preponderance of the evidence that the discipline given was appropriate for the circumstances.

7. The undersigned finds Appellee has met its burden of proof and has shown by a preponderance of the evidence presented at the hearing that just cause exists for the demotion of Appellant from Correctional Security Manager II (Captain) to Correctional Security Officer IV (Sergeant).

**ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Levi Casey, MPC-10-220 be DENIED.

This Order entered this 7<sup>th</sup> day of September, 2010.



P. Kay Floyd, OBA 10300  
Administrative Law Judge  
Oklahoma Merit Protection Commission.  
3545 NW 58th St, Suite 360.  
Oklahoma City, OK 73112.  
(405) 525-9144