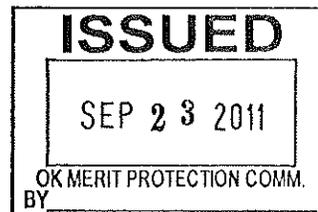


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



DARREL WILSON,)
Appellant)
vs.)
DEPARTMENT OF CORRECTIONS,)
Appellee)

CASE NO. MPC 11-059

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on September 9, 2011 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant Darrel Wilson appeared in person and was represented by Patrick Layden, Esq. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel Michelle Minietta, Assistant General Counsel, and agency representative Randall Workman, Warden, Oklahoma State Penitentiary.

Appellant, a Unit Manager I in "F" Cell House at Oklahoma State Penitentiary (OSP), was terminated from his employment with Appellee for alleged insubordination, for failing to cooperate with an investigation, and for violating agency procedures relating to the proper handling of contraband, reporting unlawful activities and pending criminal charges against him, and engaging in business transactions with a subordinate employee. Appellant appealed his termination.

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

Appellant had been employed with DOC for 14 years, the last three and a half of which he was the Unit Manager of "F" Cell House at Oklahoma State Penitentiary. As unit manager, Appellant was responsible for overseeing the operations in "F" Cell House, which is a maximum security unit housing the most problematic inmates in the penitentiary. Appellant was discharged from his job effective August 24, 2010 based upon four separate and unrelated incidents.

Incident # 1

On January 31, 2010 the OSP Shakedown Unit conducted a routine search of offender cells and staff offices in the "F" Cell House, looking for contraband (any unauthorized item or substance). (Appellee Ex. 3, I.A.) During the search of staff offices, a sticker (homemade knife) and a cell phone were found in Appellant's desk drawer. Approximately two weeks earlier, Lt. Terry Kennedy and Sgt. Matt Knight were meeting with Appellant in the office when Appellant reached in his desk drawer and pulled out a manila envelope with his name on it. A cell phone wrapped in a rubber glove was found inside. At the time, Appellant didn't recall where the phone came from

or why it was in his desk¹, but Sgt. Knight testified that it was inside a kiester pack² covered with feces. (Testimony of Sgt. Knight; Appellee Ex. 8) Sgt. Knight offered to tag the phone and turn it in to the property office, as required by policy, but Appellant declined the offer, saying that he would take care of it. Over the next two weeks, Sgt. Knight asked Appellant three times whether he had tagged the phone and turned it in. (Appellee Ex. 12) Each time Appellant indicated that he had not, but he would take care of it. (Appellee Ex. 12) Appellant did not "take care of it" before it was discovered in the shakedown on January 31, 2010.

Incident #2

At about the same time that the cell phone incident occurred, an Internal Affairs report was issued concerning a 2008 inmate investigation.³ Although Appellant was not the subject of the investigation, his actions during the investigation led to an Internal Affairs finding that he was insubordinate and uncooperative during the investigation. (Testimony of Warden Workman). On October 14, 2008, inmate Bob Hughes had been removed from the "F" Cell House and placed in isolation in IHCC (medical unit) awaiting transport to another facility. Instructions were sent out facility-wide that no one other than the transport officers was to have any contact with the inmate. When Appellant arrived for duty that afternoon, Capt. Jerry Heaslet advised Appellant that no one at OSP was allowed to talk with inmate Hughes. Appellant advised Capt. Heaslet that he was going to talk with the inmate. Capt. Heaslet urged Appellant not to do so, but he

¹ Later Appellant recalled that one weekend he called in to the facility to check on things, and someone told him that they had found the phone and wanted to know what to do with it. Appellant said to put it in an envelope with his name on it and send it to him through the mail. Appellant could not recall who he talked with or which inmate was found with the phone.

² Sgt. Knight explained that a kiester pack is packaging that contraband is wrapped inside to insert inside a body cavity, for smuggling inside the institution.

³ Warden Workman testified that DOC policy prohibits taking any action on matters that are the subject of an Internal Affairs investigation, until after that investigation has concluded.

walked out and headed toward IHCC. Capt. Heaslet called Chief of Security William Jones to advise him of Appellant's intention to talk with inmate Hughes. Chief Jones headed to IHCC and entered to see two officers positioned between Appellant and the cell occupied by inmate Hughes. When Appellant saw Chief Jones, he backed off, stating "It's cool, brother", and left the unit. (Appellee Ex. 5)

About 30 minutes later, Capt. Heaslet again called Chief Jones and reported that Appellant was acting "out of character." (Appellee Ex. 6) Capt. Heaslet was directed to escort Appellant to Chief Jones' office. After some discussion about the earlier incident at IHCC, Chief Jones instructed Appellant to go home for the rest of the day and report to the warden's office the following morning. Appellant complied. (Appellee Ex. 6)

Incident #3

Judi Cardenas was the secretary in "F" Cell House, reporting to Appellant, on April 16, 2010 when Appellant asked her to take out a \$400 loan for him until payday on April 30, 2010. Ms. Cardenas testified that she did not want to take out the loan so she told him she did not have any checks with her to write to him, but he asked her to go home and get a check for him. She complied. He did pay back the loan with interest (\$457) on April 30, 2010 as he promised. (Appellee Ex. 20) Then again on June 17, 2010 Appellant approached Ms. Cardenas and asked her to deposit and cash a \$2,500 check for him at her bank. The bank would only give her \$100 until the check cleared Appellant's bank. Appellant asked her to get the \$100 for him, promising that the \$2,500 check would clear by Monday, June 21, 2010. However, the check never did clear, and Ms. Cardenas was forced to borrow money to take care of her expenses until the end of the month when she got paid and Appellant repaid the \$100 and the

overdraft charge resulting from his \$2,500 insufficient funds check. (Testimony of Judi Cardenas; Appellee Ex. 20, 22, and 23)

Incident #4

In July, 2010 OSP Warden Randall Workman received an anonymous call that Appellant was facing criminal charges for writing bogus checks. On July 15, 2010 Warden Workman met with the Pittsburg County District Attorney who advised the warden about Appellant's bogus check charges. On February 8, 2010 and April 27, 2010 criminal misdemeanor warrants had been issued for Appellant's arrest on bogus check charges. (Appellee Ex. 13 and 14) Between April 11, 2009 and January 23, 2010, Appellant had written 15 bogus checks, and owed \$3,759 in checks and fees. (Appellee Ex 15) Notes from the DA's office indicated that Appellant had been in contact with that office and promised to provide proof of payment by October, 27, 2009; promised to pay in full in November, 2009; payment was due December 21, 2009 and the due date was extended to the following Wednesday; Appellant promised to pay in full on January 7, 2010. (Appellee Ex. 17) Appellant failed to make good on any of these promises, all the while continuing to write bogus checks.

On July 16, 2010 criminal felony charges were filed against Appellant, and on July 20, 2010 a third warrant was issued for his arrest; Appellant was arrested and posted bond on July 29, 2010. (Appellee Ex. 18 and 19) At no time did Appellant advise Appellee of the pending bogus check charges or the February 2010 and April 2010 arrest warrants.

DISCUSSION

Appellant does not deny that each of these four incidents occurred, but claims mitigating circumstances surrounding each of them, and further claims that the discipline of discharge was too harsh. This administrative law judge disagrees.

Appellant attempts to downplay his failure to tag the cellphone and turn it in to the property room as required. He claims he was too busy with other facility duties and forgot to do so. Additionally, he claims that other officers have been found with contraband and have not been discharged. However, as Warden Workman explained, not all contraband is equal. An unauthorized tee-shirt or cigarettes may be contraband, but do not pose the danger that a cell phone might pose. Warden Workman indicated that cell phones are particularly dangerous because of the organized gang activity within the prison, and described cell phones as "public enemy #1". Cell phones are used by inmates to communicate with the outside world and have been used to organize hits on witnesses and to orchestrate violence between facilities. Only the warden and his two deputies are allowed to have cell phones anywhere on the facility grounds. Procedures are strict that contraband is to be tagged and properly secured before the end of the shift. Yet, Appellant advised the staffer who confiscated the phone to put it in the mail to him (where it might easily have been intercepted and back in the population), and then, in spite of repeated reminders and offers by Sgt. Knight to tag and secure the phone, Appellant refused to do so, leaving it in his desk drawer until it was discovered during a shakedown. Appellant's lackadaisical, careless attitude toward important safety issues is disturbing, particularly in a veteran DOC employee of his tenure. This incident alone might be sufficient grounds for Appellant's termination,

and Warden Workman testified that, indeed, previous employees have been discharged for just such action.

Appellant argues that he was not insubordinate concerning the 2008 incident with inmate Hughes because Capt. Heaslet was not his supervisor (he did not conduct his performance evaluation). However, Warden Workman pointed out that the chief of security is over all security operations of the facility and, as shift supervisor, Capt. Heaslet has authority to give orders to Appellant and Appellant is expected to obey them. If Appellant had questions concerning an order given by Capt. Heaslet, he could have taken it to the Deputy Warden, but he was not free to simply ignore it. Appellant further argues that he was not insubordinate and did not interfere with the investigation because he never did talk with inmate Hughes. However, it was certainly his intention to do so. The only reason Appellant did not succeed was because two security officers physically blocked his way and Chief Jones appeared on the scene.

Appellant describes the loans from Ms. Cardenas as one friend doing another friend a favor. But when asked by Appellant's counsel if she considered them friends, she firmly replied "No", they were not friends. Appellant's only relationship with her was as her supervisor. He treated her "worse than anyone at OSP" – talked to her badly, called her names. But because he was her supervisor and controlled her performance evaluation, she was hesitant to tell him she would not borrow money for him. Ms. Cardenas notes, however, that once she was no longer reporting to Appellant, she did not hesitate to tell him 'no' when he asked her to borrow another \$400 for him. (Appellee Ex. 21) Appellant claims, too, that he was unaware of the rule prohibiting business transactions between supervisors and subordinates. Of course, ignorance of

the law is no defense, and for someone of Appellant's position and tenure, is a poor excuse.

Finally, Appellant argues that he didn't think it necessary to report his bogus checks, his arrest warrants, or his discussions with the DA's office since criminal charges had not yet been filed against him. According to Appellant's argument, a crime is not a crime until he is caught and charged. However, he was (finally) charged on July 16, 2010, and still there is no evidence that Appellant filed any written report at OSP.

Appellant's behavior exhibits a lack of respect for authority, a disregard for the safety of others, disdain for rules and procedures, and a propensity for making up his own rules as it suits him. In short, Appellant exhibits attitudes similar to those exhibited by many of the OSP inmates that led them to their current circumstance.

This administrative law judge finds that Appellee has proven by a preponderance of the evidence that Appellant violated DOC OP-110215 (9/13/07) I.A., II. A. and F.; OP-110215 (8/21/09) II. H., VI. A., and VII. A.; OSP-040109 I., II.A. and C.,; and OSP-050109-01 I.A., and that just cause exists for Appellant's discharge.

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 so incorporated herein as conclusions of law.

3. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for misconduct, 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 (effective 9/13/2007), Section I A(3), (4), (7), and (8) *Rules Concerning the Individual Conduct of Employees*, requires employees (1) to refrain from conduct which disregards the welfare of others, (2) to support a safe work environment, (3) to model exemplary, law abiding behavior, (4) and to promptly and truthfully report improper actions which violate DOC policies and procedures.

6. DOC Policy OP-110215 (effective 9/13/2007), Section II A(1) and (2). *Duties and Responsibilities*, states that employees must comply with all laws, rules, regulations, and lawful orders or directives of DOC supervisors and managers.

7. DOC Policy OP-110215 (effective 9/13/2007), Section II F., *Duties and Responsibilities*, states that employees will cooperate with any department investigation, and that failure to do so may result in discipline, including termination.

8. DOC Policy OP-110215 (effective 8/21/2009), Section II H.(2), *Duties and Responsibilities*, states that it is a felony to have a cell phone in any secure area of a prison, including administration and central control, that employees may not store cell phones in administration, and that discipline will be imposed and felony charges may be filed when employees are found to be in possession of cell phones in a secured area.

9. DOC Policy OP-110215 (effective 8/21/2009), Section VI, A. and B., *Illegal Activity* defines illegal activity as any activity prohibited by state, federal or municipal criminal laws (except minor traffic violations), as well as any other laws governing the conduct of state employees, and requires employees to notify the facility head of any arrest, charge, plea or conviction for any illegal activity within 24 hours, and file a written report before the end of the employee's next working day.

10. DOC Policy OP-040109, *Control of Contraband and Physical Evidence*, Section I.A. and II.A. 1(d) and 2(a) defines contraband as any item or substance not authorized by DOC for possession by an offender or any person, including cell phones, and requires that confiscated contraband be appropriately tagged and stored in a designated secure area prior to the end of the shift.

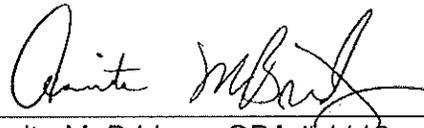
11. DOC Policy OP-050109, *Reporting of Incidents*, Section I. A. and B. defines an incident as any occurrence which appears out of the ordinary, is suspect, is a rule violation, has serious impact to the security of the institution or provides information sharing, and requires any staff member with knowledge about contraband to report the incident on an Incident/Staff Report form and submit it to the shift supervisor prior to the end of the shift. Prior approval from the facility head or designee is required if additional time is needed to complete the report.

12. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Appellant Darrel Wilson and that the discipline imposed – termination of Appellant's employment with DOC -- 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 20th day of September, 2011.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
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