

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

Michael Barby is Chief of Security at the Bill Johnson Correctional Center (hereinafter "BJCC" or "the facility") in Alva, Oklahoma. Chief Barby supervises 60 security officers and has worked at BCJJ since it opened sixteen years ago.

The BJCC is a minimum security facility which houses 500 to 550 inmates. It is a 24-hour security facility with 8 to 10 security officers working one of three shifts every 24 hours.

Sometime between April and November, 2010, Appellant's supervisor reported to Chief Barby that Appellant had informed him that he [Appellant] had sexual relations with Michelle Roebuck who was the girlfriend of co-worker Corporal John Holt.²

Chief Barby met with Appellant who admitted that at the time he had the relationship with Ms. Roebuck, he was aware that Ms. Roebuck and Corporal Holt lived together and that they had a child together. It was also true that at the time Appellant had the relationship with Ms. Roebuck, Appellant was married.³

Chief Barby told Appellant he was very concerned that Appellant and Corporal Holt were working the same shift and were working together on a daily basis. Chief Barby was also concerned that Appellant, as a Sergeant, was suppose to be a mentor to other officers such as Corporal Holt.

After his meeting with Appellant, Chief Barby met with Ms. Roebuck and then with Corporal Holt. These meetings were held because Chief Barby wanted to avoid a conflict or a confrontation between Corporal Holt and Appellant at the facility. In order to prevent any potential conflict or confrontation, Appellant and Corporal Holt were thereafter assigned to different duty shifts.

² At the time of this meeting, Corporal Holt was unaware that Appellant had sexual relations with Ms. Roebuck.

³ Appellant testified at this hearing that while he was married at the time of the relationship with Ms. Roebuck, he was separated and pursuing a divorce.

During the process prior to Appellant's demotion, Chief Barby was in constant communication with BJCC Warden Janice Melton regarding Appellant's behavior.

Warden Melton became Warden of BJCC when the facility opened in 1995. The facility is located in Alva, Oklahoma which is a town of approximately 5000 people. The City of Alva and the facility have a good relationship and the City is very involved with BJCC.

When Warden Melton first learned about Appellant's behavior, she was very concerned about the impact on the staff and inmates at the facility. Trust is everything in a correctional facility and using good judgment is critical for a sergeant because that is a leadership position. Correctional officers must trust their officers will make good decisions and must be able to rely on senior staff to show good judgment. In the Warden's opinion, Appellant had violated the trust of his fellow officers and had displayed very poor judgment.

Warden Melton testify that Appellant's behavior was not the type of behavior that an officer of his rank should exhibit. Furthermore, the same type of behavior had been addressed in Appellant's previous Performance Management Process reviews ("PMP"). In addition, Appellant's written response to the proposed demotion clearly indicated that Appellant had no grasp of the impact of his behavior on the facility. Warden Melton also believed that Appellant's behavior had damaged the facility's reputation in the small community.

When reviewing Appellant's history prior to his demotion, Warden Melton looked at past discipline of Appellant and noted two prior disciplines in Appellant's notice of demotion which exhibited an ongoing disregard for others feelings and exhibited a disrespectful attitude. These prior disciplines indicated a pattern by Appellant of treating others poorly.⁴

Chief Barby also had an opinion about Appellant's behavior as an officer. Chief Barby observed that, while at times Appellant had shown promise, over all Appellant had been an unreliable and poor decision maker and a "high maintenance" officer. Appellant

⁴ In March, 2010 Appellant received a Letter of Reprimand for referring to a fellow employee as a "Spic" and in December, 2009 Appellant received counseling concerning an inappropriate statement to an offender.

had required a lot of supervision and had to be reminded often of things that had “gotten him into trouble in the past”.

On November 16, 2010, Warden Melton issued a Notice of Involuntary Demotion to Appellant which stated in part:

“By committing this act, you failed to meet the above responsibilities dictated by policy in that you disrespected Corporal Holt’s relationship with his girlfriend and disregarded his feelings and dignity. You have caused conflict between Corporal Holt, fellow staff, and yourself. You have failed to set an example for others to follow. You failed to “promote and model exemplary behavior”. Most of all you violated a trust we all must have in order to perform as a team. You have compromised your position as a senior officer. I no longer feel confident in your judgment or ability to make sound decisions. This incident combined with the most recent two incidents below is certainly not behavior becoming of any public employee much less a senior security staff member. You have lost your credibility and are ineffective as a senior officer.”

It is Appellant’s position at this hearing that because his actions took place off DOC property and while he was off duty, he is not subject to disciplined as defined in OAC 455:10-11-3. The Appellant asserts that this definition refers to behavior that impacts the facility and therefore if there is no impact to the facility, there can be no discipline of Appellant.⁵ Appellant then argues that no evidence was presented establishing that Appellant’s sexual relationship with Ms Roebuck had an impact on the facility. The undersigned disagrees.

Warden Melton was asked about the impact of Appellant’s behavior on the facility. She testified that because of making the shift changes necessitated by Appellant’s behavior, she had lost maximum flexibility to schedule officers as needed depending on circumstances at the facility. That had an impact on the facility.

It must also be noted that just because Appellant and Corporal Holt were assigned to different duty shifts, those assignments did not insure that the two officers would not interact. Officers from different shifts interact during the shift briefing held at the beginning of each shift. Because of this and other times Appellant and Corporal Holt

⁵ Reference Appellant’s cross examination of Warden Melton at this hearing.

might need to interact, both had to be monitored by other officers to insure both conducted themselves properly. That had an impact on the facility.

The staff and inmates at the facility were also impacted by Appellant's behavior. Chief Barby testified that although initially only a few staff were aware of Appellant's behavior, it soon became general knowledge among staff and some of the inmates. This resulted in numerous comments to Corporal Holt from staff and at least one situation where Corporal Holt was subjected to "cat calls" from the inmates.

Chief Barby and Warden Melton also testified that Appellant's behavior resulted in a massive disruption to Corporal Holt's relationship with Ms. Roebuck and to his life including Corporal Holt's moving out of his home.

Appellant's next argument is that because there was no physical confrontation between Appellant and Corporal Holt at the facility, that lack of confrontation is evidence that there was no conflict between the two officers and no impact on the facility. Although there was no face to face confrontation between Appellant and Corporal Holt, that does not negate the fact there was a conflict between the two officers and an impact on the facility as discussed above.

In addition, had it not been for Chief Barby and Warden Melton's swift action (or "damage control" as Warden Melton testified) when they became aware of Appellant's behavior, there could very well have been disastrous consequences which would have had an even greater impact on the facility. The Appellant cannot use the result of Appellee's proactive response to Appellant's behavior as evidence that there was no conflict between Appellant and Corporal Holt.

Lastly, Appellant maintains that relationships which take place outside the workplace or while off duty are "not within the realm of conduct that DOC can regulate". The Appellant states in his closing argument at this hearing that if the demotion is allowed, "where will Appellee's control of the lives of its officers end?" It appears that Appellant is attempting to broaden the real issue in this case.

This is a case where the facts are clear and the issue is narrow. Did Appellant's behavior with Ms. Roebuck, even though off duty and outside the facility, have an impact on the facility? The specific facts in this case show that Appellant's behavior did impact the facility. Therefore, just cause existed for the demotion of Appellant.

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 455:10-11-3. **Definitions** define “**discipline**” as informal or formal action to correct infractions of statute, rule, policy, practice or procedure regarding work performance or behavior.
4. OAC 455:10-11-14 **Causes for discharge, suspension without pay or involuntary demotion** 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.
5. 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;
 - engage in conduct which affords respect, courtesy, and preserves the dignity of others;
 - refrain from conduct which is corrupt, illegal, serves to denigrate, demean, or disregard the welfare of others;
 - promote and model exemplary, law abiding behavior;
 - avoid any conduct, interest, or relationship, which is in conflict with, or detrimental to, the proper and effective discharge of official duties.
6. The Correctional Employee Oath which is signed by correctional officers at DOC and which is also taken orally by correctional officers states in part:

“I will treat all employees and offenders with respect and dignity. I will conduct myself in such a manner to enhance and establish a positive tradition of excellence for the Oklahoma Department of Corrections.”

7. 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.

8. 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 Officer IV (Sergeant) to Correctional Security Officer III (Corporal).

ORDER

IT IS THEREFORE ORDERED, ADUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Bruce W. Keitel, MPC-11-114 be **DENIED**.

This Order entered this 10th day of March, 2011.



P. Kay Floyd, OBA 10300
Administrative Law Judge
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