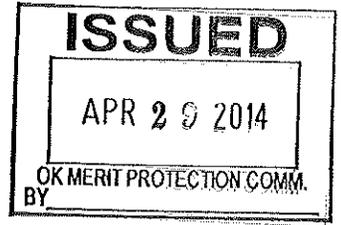


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



JULIE HANLEY,
APPELLANT

vs.

DEPARTMENT OF CORRECTIONS,
APPELLEE.

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CASE NO. MPC 14-123

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on April 15, 2014 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Julie Hanley, appeared in person and represented herself. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel, Michele Miniotta, Assistant General Counsel, and agency representative Warden Mike Mullin, Warden of the Jess Dunn Correctional Center.

Appellant, an administrative programs officer at Jess Dunn Correctional Center, was discharged effective November 5, 2013 for sending harassing and threatening emails and text messages to a co-worker on his State issued telephone during work hours, using her work computer, in violation of OP-110215, "Rules Concerning the Individual Conduct of Employees," and OP-0021001, "Department of Corrections OneNet/Internet Standards." Appellant does not deny that she engaged in the accused conduct, but states that the discipline imposed was harsh and disproportionate to prior discipline imposed in similar situations, and was imposed in retaliation for her reporting other relationships between employees at the facility.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented¹, 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, Julie Hanley, was employed at the Jess Dunn Correctional Center (hereinafter referred to as "JDCC") as an administrative programs officer, primarily responsible for developing policies and procedures for JDCC consistent with DOC policies, and ensuring that staff are aware of them; and for conducting facility inspections and audits to ensure that JDCC operates in compliance with ACA accreditation standards and DOC policies and procedures. She was employed with DOC from November 2008 until her discharge, effective November 5, 2013. As an administrative programs officer, Appellant reported directly to Warden Mike Mullen. She consistently received "Exceeds Standards" on her performance evaluations and received commendations from Warden Mullen for "outstanding leadership," for her "positive example" to her fellow employees, and for her "hard work and effort...in keeping the facility running smoothly and the staff motivated." (Joint Exhibit 18)

Rodney Bailey was a farm supervisor at JDCC. From time to time his duties required him to visit the administrative offices where Appellant worked. They would often engage in conversation, and a casual friendship developed. In April 2011 Mr.

¹ Due to the inability of witness Elvin L. Baum to appear in person, and upon agreement of the parties, his testimony was received by telephone.

Bailey suggested to Appellant that they "hook-up", no strings attached. Appellant was separated and Mr. Bailey was having marital difficulties. Appellant agreed. Between April 2011 and August 2012, the two had two additional sexual encounters.

Sometime after August 2012, Mr. Bailey began to perceive that Appellant expected more from the relationship than he was willing to give, and started pulling back – not answering her telephone calls and refusing to meet or talk with her outside of work, as she frequently requested. At the same time, he continued communicating with her in the work setting on a friendly basis. For instance, he gave her a belt buckle that he had, because he knew she liked that sort of thing. He loaned her a post-hole digger and took it to her house for her to use to set posts for a fence at her home. Nonetheless, he was not responding to Appellant as she wished, and by December, 2012 she began sending him personal text messages on his DOC-issued cell phone and on his personal cell phone, as well as e-mails from her office computer to his. Between December 2012 and September 16, 2013 Appellant sent Mr. Bailey numerous angry, harassing, and threatening text messages and e-mails of a personal, non-business nature. (Joint Exhibits 5, 6, 7, 10, and 11) Many contained profane references such as "f--k you" and asking "Who are you f--k---?" (Joint Exhibits 5 and 10) Several included threats to tell his wife of their relationship, and other threats, including "Watch out im crazy psycho", "you need to hurt as much as i do", and "you deserve to have your life crumble around you liar". (Joint Exhibits 5 and 10) Over a three and a half month period, Appellant sent more than 150 such text messages to Rod Bailey. (Joint Exhibits 5 and 10) On one day alone (May 31, 2013) Appellant sent 22 text messages. (Joint Exhibits 5 and 10)

Mr. Bailey did not respond to these text messages and e-mails, hoping Appellant would grow tired and stop sending them. This did not happen. On September 15, 2013 Appellant sent Rod Bailey a series of text messages beginning at 11:42 am and continuing throughout the day until 10:05 pm. (Joint Exhibit 5) The last text message at 10:05 pm stated: "I think i am going to cover my bases and talk to someone at work about this". (Joint Exhibit 5, page 8)

Realizing the situation would not improve on its own, on September 16, 2013 Rod Bailey reported to the Deputy Warden and Warden at JDCC the harassment by Appellant:

Now for the last year and a half I've been harassed by phone, e-mail, and text messages with sexual content, threats and how she is going to make my world crumble. I've ask [sic] her to stop many, many times but it doesn't, she has talked bad about my wife, and everybody at work, and I have given up my cell phones (work and private) for evidence.

Joint Exhibit 3; see also Joint Exhibit 9

Warden Mullin issued a Cease and Desist Order against both Appellant and Rod Bailey, and placed Appellant on a 32 hour "cooling-off" leave. He contacted Internal Affairs to examine Appellant's and Mr. Bailey's computers and Mr. Bailey's cell phones. He contacted the Civil Rights Administrator, Elvin Baum, and requested a sexual harassment investigation. And he contacted Employee Assistance and requested an investigation to determine if the Workplace Violence rules had been violated. Following a pre-termination hearing, Warden Mullin determined that Appellant had violated OP-110215 "Rules Concerning the Individual Conduct of Employees," I.A. *Code of Conduct* 1,2,3,4,5, and 7 and VII.B. *Workplace Violence* 1; and OP-0021001, "Department of Corrections OneNet/Internet Standards", II. *Employee Use* A.1, and further determined that her behavior justified termination from employment with DOC.

Appellant admitted that she did engage in the behavior indicated, in violation of DOC rules. However, she appealed her discharge on the basis that the discipline imposed was not just, was not consistent with discipline imposed in prior similar situations, and was actually in retaliation for her reporting alleged sexual relationships among employees at JDCC. In support of her position, Appellant (1) cited employees who had violated the same agency rules but were not discharged, and further argued that (2) she was truthful and accepted responsibility for her actions, (3) she had never received any prior discipline, and (4) her job performance is exemplary and consistently rated "Exceeds Standards" on her PMP's. (Joint Exhibits 17 and 18).

Warden Mullin testified that in reaching his decision to discharge Appellant he considered various mitigating factors, including that (1) Appellant was truthful, admitted her actions, acknowledged that they were wrong, and apologized for them; (2) Appellant had no prior discipline in her record over the five years she had worked at DOC; (3) Appellant was a good worker in a difficult job, was highly recommended by those who worked with her, and did a "tremendous" job for DOC.

Weighing in favor of discharge, however, Warden Mullin considered that Appellant is part of the executive staff, writes facility procedures and monitors their compliance, and yet repeatedly and continuously violated some of the most serious of these procedures. Most important was the nature of the offense – threatening and intimidating another employee. Warden Mullin testified to the seriousness of that offense and his past experience with an employee in a similar domestic situation that ended tragically in a murder and suicide. Warden Mullin also testified that he

considered transferring Appellant to the Eddie Warrior facility, but that facility is next to the Jess Dunn farm where Rod Bailey works, and was not a viable option.

In considering whether just cause exists for the discipline imposed, this Administrative Law Judge must not determine whether a lesser discipline *could* have been imposed, nor substitute her judgment for that of the appointing authority, if she finds that just cause exists for the action taken. It is the determination of this Administrative Law Judge that Appellee has met its burden of proving by a preponderance of the evidence that just cause exists for discharge of Appellant under the circumstances of this case. The examples of prior inconsistent discipline are distinguishable from the instant case in that the examples of *improper use of state equipment* and *behavior unbecoming a state employee* reference a single act that violated only one operating procedure each. The *hostile work environment* example of physical altercation between two officers was actually cited as horseplay rather than workplace violence, according to Warden Mullin, and, again, referenced a single act in violation of a single operating procedure. The fourth incident cited by Appellant (Joint Exhibit 17) is still under investigation, Warden Mullin testified. In contrast to Appellant's stated examples of inconsistent discipline, Appellant's wrongful actions were numerous and continuous over a period of at least nine (9) months, from December 2012 through September 15, 2013, and, this Administrative Law Judge finds that her actions rose to a far higher level of severity than any of the actions for which the inconsistent discipline was imposed. In further contrast to Appellant's cited inconsistent discipline, Appellant was found to have violated three different operating procedures rather than one.

In addition to the examples of prior discipline, Appellant argues that the reasons given for her discharge were merely a pretext for, and in retaliation for, her reporting alleged sexual activities among other employees at the facility. Appellant has presented no evidence to substantiate this allegation. Further, JDCC does not prohibit personal relationships among employees at the facility. Appellant's unsubstantiated allegations of pretext and retaliation are without any articulated basis and are rejected.

Based upon the evidence presented, and findings of fact as stated above, the undersigned finds that just cause exists for the termination of Appellant's employment for violation of the cited agency operating procedures.

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. The burden of proof in this case was placed on Appellee pursuant to Merit Rule 455:10-9-2(f) and Appellee has met its burden of proof in this case.

4. Merit Rule 455:10-11-14 provides that any employee may be discharged for misconduct, willful violation of the Merit Rules or rules of the agency, conduct unbecoming a public employee, or other just cause.

5. OP-110215 "Rules Concerning Individual Conduct of Employees", Part I, A. Code of Conduct, states that employees are to perform work in a manner that upholds the public trust and reflects the highest ethical standards; devote full time,

attention and effort to their duties during assigned work hours; refrain from conduct that is denigrating and demeaning; avoid conduct which is in conflict with or detrimental to the proper and effective discharge of the employee's duties; and act in a courteous, respectful manner toward others.

6. OP-110215 "Rules Concerning Individual Conduct of Employees", Part VII, *Prohibited Activity and Relationships with Employees*, B, Workplace Violence, prohibits employees from engaging in any workplace conduct which serves to threaten, intimidate, or menace another employee.

5. OP-021001 "Department of Corrections OneNet/Internet Standards", Part II, *Employee Use* and A, Employee Etiquette, prohibit misuse or abuse of DOC computer systems for personal use, and require employees to use civil forms of communication on the internet.

6. Merit Rule 455:10-9-2(f)(1)(C) requires that a hearing officer ordering reduction of discipline consider, as a minimum, the seriousness of the conduct, previous employment and disciplinary records of the Appellant, actions taken by the agency in similar circumstances, and mitigating circumstances.

7. Appellee, DOC, has shown by a preponderance of the evidence presented at the hearing that just cause exists for discharge of Appellant, Julie Hanley, for, over the course of nearly nine months, sending harassing and threatening emails and text messages to a co-worker on his State-issued telephone, using her work computer during work hours.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant is hereby **DENIED**.

DATED this 25th day of April, 2014.

A handwritten signature in cursive script, appearing to read "Annita M. Bridges", is written over a horizontal line.

Annita M. Bridges, OBA # 1119
Administrative Law Judge
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