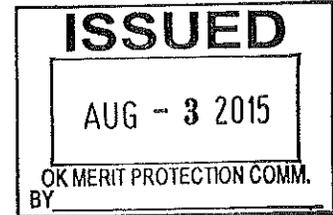


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA

RICKEY D. HUNT, )  
Appellant )  
vs. )  
DEPARTMENT OF CORRECTIONS, )  
Appellee )



CASE NO. MPC 15-074

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on July 1 and 2, 2015 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant Rickey Hunt appeared in person and was represented by Daniel Gamino, Esq. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel Michelle Miniotta, Assistant General Counsel, and agency representative John David "J.D." Colbert, Administrator, Oklahoma Correctional Industries (hereinafter "OCI").

Appellant, a Correctional Industries Manager III, was terminated from his employment at the Mack Alford Correctional Center for allegedly engaging in demeaning sexual "horseplay" towards inmates, name-calling and making derogatory comments toward inmates and about staff members to other staff members and inmates. Appellant was discharged for violation of DOC OP-110215, *Rules Concerning the Individual Conduct of Employees*, and DOC OP-030601 *Oklahoma Prison Rape Elimination Act*. Appellant appealed his termination.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Exhibits presented by the parties. Admitted and incorporated herein were Appellee Exhibits 1 through 8, 11, 12, 14 through 16, 18 through 23, and 25. Also admitted and incorporated were Appellant Exhibits 1 through 3, 8 through 10, and 12 through 22. 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 Correctional Industries Manager III at the Mack Alford Correctional Center in Stringtown, Atoka County, Oklahoma. Appellant was hired by the Oklahoma Correctional Industries (OCI) in 1996 as manager of the furniture factory (now called the upholstery shop) at Mack Alford, one of three different shops of OCI which employs offenders at the facility. In addition to the upholstery shop, MACC also has a sign shop, a wood shop, and a separate service shop (P.I.E.) which is not part of OCI, all utilizing offender labor. Of the approximate 75 OCI offender employees, the upholstery shop employs 40.

In July 2013 Danny Delay became the Correctional Industries Coordinator at MACC, responsible for the three OCI shops, and Appellant's immediate supervisor<sup>1</sup>. Soon after assuming his new position, Mr. Delay became aware of behavior by Appellant toward offenders working for him, and comments expressed by Appellant about upper management and fellow co-workers that Mr. Delay found offensive and contrary to agency policies. He spoke with Appellant about his behavior, but saw no

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<sup>1</sup> Although Mr. Delay was responsible for overseeing the OCI operations at MACC, he did not have disciplinary authority over Appellant and the other Correctional Industries Managers.

improvement. He also spoke with Alex Lunn, acting administrator of OCI at the time. However, Mr. Lunn simply attributed Appellant's behavior to his "style," and took no action. Mr. Lunn stated, however, that he was aware of Appellant's behavioral issues, among other issues, when he spent a month in Mr. Delay's position prior to Mr. Delay's appointment as coordinator. However, Mr. Delay did not ask for any specific action to be taken and, as Acting Administrator, he did not believe he had the authority to make such decisions. (Testimony of Alex Lunn)

Appellant's "style" is well known to those who work with or around him. His signature term of "goat-smelling asses," used in reference to inmates, and his "white root ointment", often accompanied by hand gestures simulating a male sexual act, are familiar to both offenders and co-workers, and are acknowledged by Appellant as terms he has used during most of the eighteen years he has worked at MACC. Appellant admits engaging in "horseplay" with inmates by performing a wrestling move known as a "Bulldog Nelson" in which he grabbed an inmate's arms from behind putting him in a hold or lock. Appellant carried the move a step farther with a simulated sexual act of "humping" the inmate. Appellant acknowledged performing the Bulldog Nelson at least twice in the past three years on two different offenders. After performing this act on Offender Torres, Appellant nicknamed him "Tore Ass".

Appellant continually commented about the sexuality of offenders in front of other offenders, joking or insinuating that certain inmates were gay, insinuating that others are pedophiles. Appellant invited inmates to sit on his lap and talk about what "popped up". (Testimony of Rocky Donado; Appellee Ex. 14) On one occasion, three inmates were going through a bag of rags with characters of children imprinted on them when, upon seeing them, Appellant yelled at the inmates to stop looking for kiddy stuff, and then

ordered them to leave the shop, giving the impression to observers that these three inmates were pedophiles.

Appellant was also very vocal in expressing his disrespect and criticism of DOC staff and management, and shared his criticism with both offenders and staff. Appellant often referred to supervisors and OCI leadership as useless and incompetent; using derogatory terms to "identify" supervisor Delay's and other staff members' sexuality; attributing hiring and promotions of staff members to rewards for sexual favors and favoritism. One employee, Rhenna Reynolds, an ex-offender, was hired by OCI after her release to train offenders and staff in OCI systems use. Appellant informed inmate employees that Ms. Reynolds had been an offender but accused her of sleeping her way into her current position with OCI.

Appellant had often voiced his displeasure at not being promoted to a manager IV, a rank achieved by many of the other Correctional Industries Managers. In his 18 years with OCI Appellant had received only one promotion, and often stated that he knows more than any of the other managers or senior management, and that the upholstery shop could not run without him. It was agreed among management that Appellant is very good at managing his production and his employees, and may be the most knowledgeable and effective OCI manager at MACC. Mr. Lunn suggested to Mr. Delay that if Mr. Delay recommended Appellant for a promotion to a manager IV, this might improve Appellant's attitude and behavior. In January 2014, Mr. Delay did write a letter recommending a promotion for Appellant, based on his job performance<sup>2</sup>.

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<sup>2</sup> Appellant's job performance is not in question here. He has received many "exceeds standards" ratings on his 2012-2013 PMP (Appellant Ex. 2) and is known for sometimes bringing watermelon and sharing food with the staff and offenders.

(Appellant Ex. 8 and 2) However, the promotion was not granted and Appellant's behavioral did not change.

Both offenders and staff were consistent in their description of Appellant's behavior as crude and crass, belittling and intimidating to offenders, disrespectful to staff, and was such that it created a stressful and potentially unsafe work environment for offenders and staff alike. By Appellant "outing" offender employees as sex offenders or homosexuals and staff as homosexual or ex-offenders who received favors from DOC officials, he created a potentially dangerous environment for both offenders and staff. Contrary to Appellant's argument that the behavior he exhibited was just "prison culture", all witnesses agreed that this was not so. Both offenders and staff testified that the behavior exhibited by Appellant was *not* typical of the rest of MACC and especially *not* typical of OCI, and that no other staff talked or behaved this way.

On March 20, 2014 Mr. Delay sent a hand-written document to J. D. Colbert<sup>3</sup>, Administrator of OCI and Agri-Services, alleging certain derogatory statements attributed to Appellant about corruption in OCI, as well as a threat of bodily harm to OCI employee Bob Tomlinson. (Appellee Ex. 19) Mr. Colbert directed that a Cease and Desist Letter be issued to Appellant, and requested an investigation of the allegations by the DOC Office of Inspector General. (Appellant Ex. 1)

Investigator Randy Knight focused his investigation on four allegations from the March 20, 2014 document:

1. OCI employees removing MACC/OCI property without consent.
2. Ex-offenders Rhenna Reynolds and Kelly Hill hired by OCI based on them providing sexual favors to J.D. Colbert and Ron Jackson.
3. Threats by Appellant against OCI employee Bob Tomlinson.
4. Appellant physically touching offender employees in violation of the Prison Rape Elimination Act (PREA).

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<sup>3</sup> J.D. Colbert had been away on sick leave for four months. During that period, Alex Lunn served as the Acting Administrator in Mr. Colbert's absence.

Following interviews with OCI employees and MACC offenders, and completion of his investigation, Mr. Knight concluded that the following violations may have occurred:

1. Appellant's admission to performing the Bulldog Nelson on two employees and Appellant's admission to making statements concerning Bob Tomlinson, but denying they were intended as threatening statements, may have violated OP-110215, I.A.2 and 9, *Rules Concerning the Individual Conduct of Employees, Establishment of Rules and Code of Conduct*, to 2. engage in conduct that affords respect, courtesy, and preserves the dignity of others. and ... 9. refrain from conduct which constitutes violation of the agency's sexual abuse/sexual harassment policy.
2. Danny Delay's admission that he failed to notify Appellant of the specific alleged actions that are the basis of the Cease and Desist Order he issued to Appellant March 24, 2014, in violation of OP-110215, A.A. *Rules Concerning the Individual Conduct of Employees, Duties and Responsibilities*, stating: employees will comply with all laws, rules, and regulations, which apply to any aspect of their job duties, responsibilities, or state employment; and OP-110415, *Progressive Disciplinary Procedures*.

See: Appellant Ex 1, pages 11-12.

The investigation by Randy Knight was limited to the statement from Mr. Delay and the four issues stated which were based upon that statement, but did not include investigation into many of the actions and statements that offenders and staff identified as indicative of Appellant's behavior. Administrator Colbert determined, however, that the totality of the evidence obtained from staff and offenders supported findings of conduct unbecoming a state employee and violation of PREA, that just cause exists to discipline Appellant, and that discharge of Appellant is required because of the potential danger to both inmates and staff that Appellant's actions pose.

After reviewing all of the evidence presented in this case, the undersigned Administrative Law Judge finds that Appellee has proven, by a preponderance of the evidence, that Appellant's behavior violates DOC policies and procedures and just

cause exists to discipline Appellant. Under the circumstances, however, Appellee has failed to show by a preponderance of the evidence, that the discipline imposed – termination of Appellant's employment – is just under the circumstances presented here. While Appellant's behavior is entirely unacceptable and potentially dangerous, it is not a single incident, but rather a nearly 18-year continuing behavior. Justice and fairness require that Appellant be given notice of the behavior that is unacceptable, an opportunity to correct his behavior, and notice of potential consequences if the behavior is not corrected; in other words, progressive discipline. By the same token, it is important to balance the legitimate concern for alleviating the potential for retaliation and violence while maintaining justice for Appellant.

#### 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 455:10-11-4 (a) and OP-110415 states that Progressive Discipline is a system designed to ensure not only the consistency, impartiality and predictability of discipline, but also the flexibility to vary penalties if justified by aggravating or mitigating conditions.
4. Merit Rule 455:10-11-14 states that a permanent classified employee may be suspended without pay, demoted, or discharged for misconduct, willful violation of the Oklahoma Personnel Act and Merit Rules, conduct unbecoming a public employee, and any other just cause.

5. 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.

6. DOC Policy OP-110215, Section I A(2), (3) and (7) *Rules Concerning the Individual Conduct of Employees*, requires employees to engage in conduct which affords respect, courtesy, preserves the dignity of others, contributes to and supports a safe and healthful work environment, and requires employees to refrain from conduct which denigrates, demeans, or disregards the welfare of others.

7. DOC Policy OP-110215, Section I A(9). *Rules Concerning the Individual Conduct of Employees*, states that employees must refrain from conduct that violates the agency's sexual abuse/harassment policy described in Section IV.B.2 item a.

8. DOC Policy OP-110215, Section IV.B.2.a. *Discussions of Office Operations. Discrimination. Harassment* provides that no employee will engage in conduct which constitutes or contributes to sexual harassment, defined as unwelcome sexual advances or physical conduct of a sexual nature when the conduct creates an intimidating, hostile or offensive working environment.

9. DOC Policy OP-110215, Section IV.B.2.e. *Discussions of Office Operations. Discrimination. Harassment* provides that immediate corrective action is required to ensure that the misconduct does not reoccur, including (1) disciplinary action, (2) training, or (3) transfer.

10. DOC Policy OP-110215, Section VII.C.3. *Regulations Governing Activities and Relationships with Offenders* prohibits employees from engaging in any contact or personal relationship with offenders which may compromise the employee's ability to effectively discharge the duties of his/her position.

11. DOC Policy OP-030601, I. and II.D.1. and 3. *Oklahoma Prison Rape Elimination Act* provides that DOC has zero tolerance for staff sexual misconduct and sexual harassment toward offenders, and defines sexual harassing activities to include (1) sexually offensive comments, gestures, or any physical conduct of a sexual nature or is sexually suggestive, and (3) creating an intimidating, hostile or offensive environment for an offender by engaging in sexually offensive behavior or language that is directed at or observable by offenders or others.

12. DOC Policy OP-030601, II.F.2.b. *Oklahoma Prison Rape Elimination Act* provides that staff sexual harassment toward an offender includes repeated statements of comments of a sexual nature to an offender, including demeaning references to gender, or repeated profane or obscene language or gestures. Further, due to the offender's status and custody, the employee cannot claim consent by the offender.

13. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Appellant Rickey D. Hunt for violating Merit Rules and DOC policies and procedures in his behaviors and interactions with OCI offender employees, with staff and with management.

14. Appellee, Department of Corrections, has failed to meet its burden to prove, by a preponderance of the evidence, that the discipline imposed – termination of Appellant's employment with DOC – was just under the circumstances.

#### ORDER

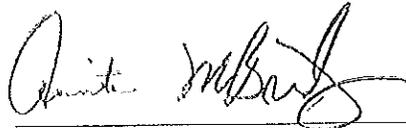
*IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED* by the undersigned Administrative Law Judge that the petition of Appellant is hereby **GRANTED IN PART**. Appellant's discipline is reduced from discharge to thirty (30)

work days suspension without pay. Appellant is reinstated to his former grade and pay *without* backpay and benefits; and

*IT IS FURTHER ORDERED THAT* Appellant shall be transferred and reassigned to an area outside of the Mack Alford Correctional Center OCI upholstery shop, wood shop, or sign shop where he will not have supervisory duties and responsibilities over offender employees in those shops; and

*IT IS FURTHER ORDERED THAT* Appellant receive training as provided by OP-030601 IV. *Employee Training*, as soon as such training is available.

DATED: this 27<sup>th</sup> day of July 2015.



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Annita M. Bridges, OBA # 1119  
Administrative Law Judge  
OKLAHOMA MERIT  
PROTECTION COMMISSION  
3545 N.W. 58<sup>th</sup> Street, Suite 360  
Oklahoma City, Oklahoma 73112  
(405) 525-9144