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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0137-15
TYEAST WILLIAMS,)	
Employee)	
)	Date of Issuance: December 9, 2016
v.)	
)	
DISTRICT OF COLUMBIA DEPARTMENT)	
OF CORRECTIONS,)	
Agency)	
_____)	
Tyeast Williams, Employee, <i>Pro se</i>)	Arien P. Cannon, Esq.
Janea J. Raines, Esq., Agency Representative)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 4, 2015, Tyeast Williams (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“Office” or “OEA”) challenging the District of Columbia Department of Correction’s (“Agency” or “DOC”) decision to remove her from her position as a Correctional Officer. This matter was assigned to me on November 18, 2015.

A Prehearing Conference was convened on March 14, 2016. Subsequently a Post Prehearing Conference Order was issued, which required the parties to submit briefs addressing their legal arguments. Both parties submitted their briefs accordingly. I determined that an evidentiary hearing was not warranted. The record is now closed.

JURISDICTION

Jurisdiction of this Office is established in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

1. Whether Agency had cause for adverse action for “[a]ny on duty or employment related act or omission that interferes with the efficiency and integrity of government operations; specifically neglect of duty: failure to follow instructions or observe precautions regarding safety; and
2. If so, whether removal was appropriate under the circumstances.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ “Preponderance of the evidence” shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.²

Agency’s position

On November 12, 2014, Agency performed a Search and Recovery Operation in the Northwest Two housing unit of the Central Detention Facility. During the search, Agency personnel discovered a photograph of Employee with a former inmate, identified as Keith Damon Banks, in the cell of another inmate. The photo was recovered and turned over to the Office of Investigative Services (“OIS”) for further investigation. During her interview with OIS on November 14, 2014, Employee stated that she knew the man in the photo and that she recalled taking the picture at a social event. After further investigation, OIS discovered that Employee also engaged in an inappropriate relationship with a different inmate, identified as Troy Mason (also known as Gary Dreher), who was previously booked at Agency’s Central Detention Facility on five separate occasions during Employee’s tenure as a Correctional Officer.

Furthermore, in 2008, Inmate Dreher was housed in the Schuylkill Federal Correctional Institution in Minersville, Pennsylvania. When asked about this relationship by OIS officials, Employee stated that she never received any calls from Inmate Dreher while he was incarcerated and never requested to be placed on his visitation list while he was in a federal facility. However, a further investigation revealed phone records from Inmate Dreher to Employee’s self-identified cell phone number for a total of thirty-nine (39) times between April 2008 and July 2008. Despite Employee’s denial of ever requesting to be on Inmate Dreher’s visitation list, Employee was listed on Inmate Dreher’s visitation register as a friend.³ At no point during

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ Agency’s Pre-hearing Statement and Supporting Documents/Agency Answer, Tab 3 at Exhibit 5. (Oct. 8, 2015)

Employee's eight year tenure with Agency did she ever notify the Warden or other supervisors at Agency of her relationship with Inmate Banks or Inmate Dreher. Based upon the investigative findings, Agency issued its Final Decision on Proposal for Removal on September 2, 2015.

Employee's position

Employee denies that she had an inappropriate relationship with Inmate Dreher. She also denies that she was in receipt of any telephone calls from Inmate Dreher and that she ever visited him while he was in Schuylkill federal prison. Employee, however, acknowledges that she had a preexisting relationship several years prior to Inmate Dreher's incarceration and that he was a family friend. Employee maintains that the phone records that were provided show that the phone calls were made to her family's telephone number and that the phone number was registered in her mother's name.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Agency took adverse action against Employee for "any on-duty on employment related act or omission that interferes with the efficiency and integrity of government operations: neglect of duty—failure to follow instructions or observe precautions regarding safety." Agency's charge stems from Employee's relationship with two different inmates, Keith Damon Banks and Troy Mason (a/k/a Gary Dreher), during her tenure as a Correctional Officer. Agency maintains that these relationships violated two of its policies: (1) Code of Ethics and Conduct Policy; and (2) Non-Fraternization Policy. The Code of Ethics and Conduct Policy provides, in pertinent part, that:

DOC [Agency] strictly prohibits its employees from engaging or fraternizing with inmates whether on or off duty which conflicts or appears to conflict with the interest of their official position...

Employees shall not become intimately or romantically involved in a relationship with an inmate and or/individuals under criminal justice control or supervision.⁴

The Non-Fraternization Policy provides, in pertinent part, that:

1. Verbal, phone, written or physical contact with individuals, or family members of individuals incarcerated in other local, state, or federal correctional facilities is prohibited except in a routine, official working situation, unless prior written approval is granted.
2. Telephone contact with inmates, on or off duty, is prohibited. If an employee receives collect or other calls from an inmate, the calls are to be reported immediately in writing to the Warden;

⁴ Agency Answer, Tab 3, Exhibit 2 (Employee Code of Ethics and Conduct Sections 8(a) and (b) of 3300.1B)

3. Employees will report, in writing to the Warden, any personal, business or other outside relationship with an individual on probation/parole by the District of Columbia, or any other State or jurisdiction;
4. Failure to comply with this policy is a serious violation of security and shall be cause for immediate termination from employment' and
5. Employees shall notify their supervisor whenever a situation occurs in which they have a[n] acquaintance or personal relationship with, or have been contacted by, a former inmate or other individual within three (3) years of their release from criminal justice control supervision.⁵

Here, during a Search and Recovery Operation on November 12, 2014, Agency personnel discovered a photograph of Employee with a former inmate, who was identified as Keith Damon Banks, in a cell within Agency's Central Detention Facility. Employee acknowledged that she knew Inmate Banks, albeit only through interactions at various social events.

Inmate Banks was in DOC's custody from March 2010 to April 2011. Employee began her employment with Agency in September 2007 until her removal, effective September 4, 2015. When Employee first began working at DOC, and on occasions throughout her tenure, she signed and acknowledged several policies governing the conduct of Agency employees regarding relationships with inmates.⁶ Employee does not deny her familiarity with Inmate Banks and at no point throughout Employee's tenure with DOC did she notify the Warden or any other person in a supervisory role about her preexisting relationship with Inmate Banks. Employee's failure to notify the appropriate officials regarding her acquaintance with Inmate Banks created cause for Agency to take adverse action. Thus, I find that Agency had cause to take adverse action against Employee for neglect of duty and failing to following instructions and observing safety precautions by not reporting her preexisting social relationship with Inmate Banks.

Moreover, while Agency was investigating Employee's relationship with Inmate Banks, OIS also discovered that Employee engaged in an inappropriate relationship with another inmate, identified as Troy Mason (a/k/a Gary Dreher), who was booked at Agency's Central Detention Facility on five separate occasions during Employee's tenure as a Correctional Officer. Inmate Dreher was also incarcerated at the Schuylkill Federal Correctional Institution in Pennsylvania in 2008. Phone records from Inmate Dreher to Employee's cell phone while he was imprisoned at Schuylkill reveal thirty-nine calls were made between April 2008 and July 2008.⁷ In Employee's brief, she avers that the phone calls made by Inmate Dreher were made to her "family telephone number and [that] the telephone number was in [her] mother's name." It is not clear whether Employee intended to indicate that Inmate Dreher was in communications with her mother,

⁵ *Id.* Non-Fraternization Policy.

⁶ Agency Answer, Tab 5 and 6.

⁷ Agency Answer, Tab 3, Exhibit 5 (October 8, 2015).

rather than herself. However, in Employee's Petition for Appeal with this Office, she lists her cell phone number as "202-498-2289." This is the same number that the records from the Federal Bureau of Prisons show that Inmate Dreher called on thirty-nine occasions between April 2008 and July 2008.⁸ Thirteen (13) of these calls lasted longer than five minutes in duration.

Furthermore, Agency provides a visitor log from the Federal Bureau of Prisons for Inmate Dreher while he was in federal custody in Schuylkill.⁹ Although the visitor log does not provide the name of the guest who visited Inmate Dreher, it does provide the address and phone number of the visitor, which corresponds with the home address and home telephone number Employee provided in her appeal with OEA. This suggests that it was in fact Employee who visited Inmate Dreher while he was incarcerated in Schuylkill. Even if Employee's argument that she did not visit Inmate Dreher at the Schuylkill Correctional facilities is true, the record still supports that she was at least in communication with the inmate via telephone. Despite Employee's arguments that she was not engaged in an inappropriate relationship with Inmate Dreher, received phone calls from Inmate Dreher, or visited him while in Schuylkill, I find that the documentary evidence supports otherwise.

Employee also does not deny that she knows Inmate Dreher; rather, she asserts that their relationship was established long before he was incarcerated and is considered a family friend. Notwithstanding Employee's assertion, it is clear that the phone number Inmate Dreher was in contact with on several occasions while he was incarcerated is the same number that Employee lists as her cell phone number in her appeal with this Office. Thus, I find that Employee was in contact with Inmate Dreher on several occasions while he was incarcerated at Schuylkill, as evidenced by the phone records provided by the Federal Bureau of Prisons. Employee's contact with Inmate Dreher violated Agency's Employee Code of Conduct and Ethics and its Non-Fraternalization Policy.¹⁰ As such, I further find that Agency had cause to take adverse action against Employee for neglect of duty and failing to follow instructions and observe precautions regarding safety based on her failure to notify the appropriate personnel regarding her frequent communications with Inmate Dreher.

Appropriateness of the penalty

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). According to the Court in *Stokes*, OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalties; whether the penalty is based on a consideration of the relevant factors, and whether there is a clear error of judgment by agency. In the instant case, I find that Agency had cause to take adverse action against Employee for neglect of duty and failing to follow instructions and observe precautions regarding safety.

⁸ *Id.*

⁹ *Id.*

¹⁰ See Agency Answer, Tab 3, Exhibit 2, Program Statement 3301.1B and Program Statement 3300.2.

DCMR § 1619.1(6) (2015)¹¹ (Table of Appropriate Penalties) provides the range of penalties for the charge of any on duty or employment related act or omission that interferes with the efficiency and integrity of government operations; specifically neglect of duty: failure to follow instructions or observe precautions regarding safety. The appropriate penalty for a first time offense for a neglect of duty charge ranges from a reprimand to removal. This is Employee's first and only incident regarding neglect of duty; however, Agency still elected to impose removal as the penalty for Employee's action.

Agency has the primary discretion in selecting an appropriate penalty for Employee's conduct, not the Administrative Judge.¹² The undersigned may only amend Agency's penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of reasonableness.¹³ When assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of Agency, but rather ensure that managerial discretion has been legitimately invoked and properly exercised.¹⁴ Here, in Agency's Notice of Proposed Adverse Action and in its Final Notice Regarding Proposed Removal, it thoroughly discusses each *Douglas* factor.¹⁵ Based upon the analysis of each *Douglas* factor, I further find that Agency reasonably concluded that removal was the appropriate penalty under the circumstances.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's decision to remove Employee from her position is **UPHELD**.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

¹¹ DCMR § 1619.1 was recently amended in February 2016. This section is no longer a Table of Appropriate Penalties, rather it addresses Administrative Leave During Notice Periods, which is unrelated to the instant matter. Thus, the Table of Appropriate Penalties under DCMR § 1619.1 (2015) applied when determining the appropriateness of the penalty here.

¹² See *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

¹³ See *Id.*

¹⁴ *Id.*

¹⁵ *Douglas v. Veteran Administration*, 5 M.S.P.B. 313 (1981); Agency's Answer, Tab 2 (June 17, 2015).