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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0067-11
SHANTE BRISCOE,)	
Employee)	
)	Date of Issuance: August 29, 2013
v.)	
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF CORRECTIONS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Shante Briscoe, Employee, <i>Pro Se</i>		
Eric Huang, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On February 10, 2011, Shante Briscoe (“Employee”), filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Department of Correction’s (“Agency”) action of terminating her employment. Employee was charged with “[a]ny on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations.” Specifically, Employee was charged with having an on-going romantic relationship with an inmate while employed with Agency. Employee was working as a Correctional Officer at the time she was terminated. The effective date of Employee’s termination was February 9, 2011.

I was assigned this matter in August of 2012. On November 8, 2012, a telephonic Prehearing Conference (“PHC”) was held for the purpose of assessing the parties’ arguments. During the PHC, it was determined that there were material facts in dispute, therefore an Evidentiary Hearing (“EH”) was held on January 17, 2013. The parties were subsequently ordered to submit written closing arguments on or before April 5, 2013. Agency responded to the order; however, Employee did not. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.03 (2001).

ISSUES

1. Whether Agency's action was taken for cause.
2. If so, whether the penalty imposed was appropriate under the circumstances.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "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.

OEA Rule 628.2 *id.* states:

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.

Employee's Position

Employee argues that this Office should reverse Agency's decision to terminate her employment. According to Employee, Agency retaliated against her because she filed a discrimination complaint in 2010. Employee further submits that she made both written and verbal notification to Agency concerning her familiarity with Elliott, as required by Agency policy. Employee notes that she had no prior adverse actions or disciplinary proceedings against her, and received excellent or outstanding performance ratings during her tenure.

Agency's Position

Agency argues that there is substantial evidence in the record to support a finding that Employee was terminated for cause. Agency submits that Employee's relationship with Elliott violated the policy regarding staff/inmate over-familiarity, which prohibits personal or romantic interactions and relationships between staff and inmates. According to Agency, the testimony adduced during the evidentiary hearing clearly shows that Employee also violated the Employee Code of Ethics and Conduct, 3300.1, *infra*. In support thereof, Agency cites to Employee's alleged failure to properly report her pre-existing relationship with Elliot for approximately fifteen (15) days after confirming his presence in the Central Detention Facility. In addition, Agency maintains that removal was the appropriate penalty in this case, based on the District Personnel Manual's ("DPM") Table of Appropriate Penalties.¹

¹ Agency's Proposed Initial Decision (April 5, 2013).

SUMMARY OF RELEVANT TESTIMONY

Wanda Patten (Transcript pages 15-64)

Wanda Patten (“Patten”) has worked as a Senior Supervisory Criminal Investigator for the Office of Investigative Services since 2004. Patten was tasked with supervising the Office of Internal Affairs, the background investigation unit, the correctional surveillance unit, and the criminal intelligence and gang tracking function. (Tr. pgs. 16-17). Patten and Investigator Benjamin Collins were responsible for preparing the written report in Employee’s investigation. According to Patten, the U.S. Attorney and the FBI contacted her regarding Employee’s case in relation to Jarrell Elliott (“Elliott”), who was under investigation at the time. (Tr. pg. 19). Patten testified that the FBI told her that Employee had been identified as Elliott’s female companion. The FBI further shared with Patten communications that they acquired through the use of wire taps, and text messages between Elliott and Employee. Patten testified that Elliott was detained at the D.C. Central Detention Center in September of 2010, and that Employee had failed to inform Agency that Elliott was being detained at the Center. (Tr. pg. 22). According to Patten, Agency’s policies and procedures require that an employee notify them if a family member or a person that the employee is intimately involved with is incarcerated at the Center. (Tr. pgs. 22-23).

The policies regarding staff/inmate over-familiarity were also described in a memorandum authored by Agency Director, Devon Brown. Patten testified that Employee received, and signed for several program statements, including the Employee Code of Conduct and Ethics, which was issued to all Agency employees during academy training. When asked if there was any physical evidence gathered to establish a link between Employee and Elliott, Patten testified that the FBI had executed a search warrant on Employee’s home. As a result of the search, the FBI retrieved a flash drive, in addition to several letters addressed from Employee to Elliott. (Tr. pg. 27). Patten subsequently identified Agency’s Exhibit 8 as a hand-written documented found in Employee’s home that identified the names of other inmates housed at a contract facility located near the Central Detention Center. Agency’s Exhibit 9 was identified as a handwritten letter from Elliott that was found inside Employee’s home. Patten recognized Agency’s Exhibit 10 as photocopies of envelopes found inside of Elliott’s cell. The envelopes had a return address belonging to Yolanda Suber, Employee’s mother. (Tr. pgs. 34-39).

Patten stated that she personally reviewed video surveillance of Employee and Elliott during the course of Agency’s investigation. Patten testified that on September 23, 2010, Employee and Elliott were videotaped walking and conversing together in the detention center on the third floor (north access corridor) for approximately three (3) minutes. (Tr. pg. 42). According to Patten, Employee denied having contact with Elliott during an interview with Internal Affairs on October 14, 2010. Patten further testified that she interviewed Employee and gave her an opportunity to provide justifying and mitigating evidence in support of Employee’s position. A typewritten document, identified as Agency’s Exhibit 12, was a memorandum from Employee to Warden, Simon Wainwright; Acting Deputy Warden, Orlando Harper; Major Norah Talley, and Captain Walter Coley. The memorandum was dated September 17, 2010. (Tr. pgs. 48-49). Patten stated that she was not sure if she received the document, but she knew that the memorandum came from Employee. Patten explained that when an employee notifies Agency that they have a loved one in the same jail where they are working, the notification will “go through the chain of command so the other managers will know, so they will not assign that person to an area where they will come in contact with that individual or they will transfer the inmate out of the jail.” (Tr. pgs. 50-51).

Patten testified that the document submitted by Employee was neither signed nor dated by any of the individuals who purportedly received Employee's September 17, 2010 memorandum. The warden did not have a record of anyone receiving Employee's notification. (Tr. pgs. 151-152). Patten believed that Employee's memorandum was "fake", and that Employee only drafted the letter after realizing that Agency was aware of her relationship with Elliott. In support thereof, Patten said that she interviewed Captain Coley, who stated that he never received any written or verbal notification from Employee concerning her relationship with Elliott. (Tr. pg. 52). Patten further testified that she gave Employee an opportunity to present witnesses who could support her side of the story. However, Employee never provided Agency with a list of witnesses that the investigating team could interview. (Tr. pg. 55).

On cross examination, Patten testified that she personally observed the video wherein Employee and Elliott had physical and personal contact for three minutes. Patten further stated that Employee was given notice about when she would be interviewed, and was also notified that she could bring additional information to the interview to support her case. (Tr. pg. 60). In addition, at the end of the interview, Employee had the opportunity to make comments and provide additional information about individuals that Patten should contact about the investigation. (Tr. pg. 61). Patten stated that memos are typically reviewed, signed, and dated by all the individuals who have read the document. She was not aware if a confirmation of the memorandum's receipt was ever given back to the original author. (Tr. pg. 63).

Walter Coley (Transcript pages 65-69)

Walter Coley ("Coley") was employed by the Department of Corrections until January of 2012, when he retired. (Tr. pg. 65). Before retiring, Coley worked as a Captain at the Central Detention Facility. Coley testified that he never received written or verbal notification of Employee and Elliott's relationship prior to the commencement of the investigation. (Tr. pgs. 66-67). Coley further stated that he never signed off on the September 17, 2010 (Agency's Exhibit 12), memorandum from Employee, despite having his name listed on the document.

Coley, when later called as a rebuttal witness, testified that he did not receive the memorandum from Employee, and did not shuffle it to the back of a stack of papers and ignore it. (Tr. pgs. 150-151).

Thomas Hoey (Transcript pages 70-87)

Thomas Hoey ("Hoey") has been employed with Agency since 1996, and is the Deputy Director for Management Support. Hoey testified that he has knowledge of Agency's guidelines and regulations. According to Hoey, Agency's Exhibit 16, the Table of Appropriate Penalties, states that the penalty for "[f]ailure to follow instructions or observe the cautions regarding safety; failure by a supervisor to investigate a complaint; failure to carry out assigned tasks; careless or negligent work habits" ranges from reprimand to removal. (Tr. pg. 83). Hoey, who was familiar with Employee's investigation, believed that the facts in this case fit appropriately within the aforementioned charge. He stated that Agency's standards for employee conduct are used to protect the public, Agency's staff, and inmates within the facility. (Tr. pg. 83-84). Hoey testified that inappropriate relationships erode that protection and present a clear and present threat to the inmates and the staff.

On cross examination, Hoey stated that employees receive policy and procedure documents when they first enter the Training Academy. Employees are also required to sign off on those documents. (Tr. pg. 84).

Harry Lundy (Transcript pages 93-96)

Harry Lundy (“Lundy”) works as a Training Specialist for Agency. (Tr. pg. 93). Lundy was one of Employee’s previous instructors when she went through basic correctional training and in-service academy training. (Tr. pgs. 93-94). Lundy did not recall having knowledge of Employee’s notification to Agency regarding Elliott, but he did remember an occasion wherein Employee requested to use his computer. According to Lundy, Employee used his computer to prepare a report. However, he did remember the date on which the report was written. (Tr. pg. 95).

Andra Parker (Transcript pages 97-122)

Andra Parker (“Parker”) has been employed by Agency since 1990 and works as a Senior Correctional Officer and Training Instructor. (Tr. pg. 98). Parker stated that Employee approached him, along with another Correction Officer, Susan Briscoe, at the Central Detention Facility. Parker testified in pertinent part the following:

[Employee] had made notification to the Agency in regard to Inmate Jarrell Elliott as the godfather of [her] children. [Employee showed me a memorandum, and I read it. And I further advised you that I thought – well, you didn’t have to do that because there’s no policy or procedure providing you to do that, and I thought you made a mistake in doing that. Based on your history with the Agency, at the time, I felt that it was adverse. And I thought they [were] going to retaliate against you. (Tr. pg. 98)

According to Parker, Employee was not treated fairly by Agency. Parker testified that he became aware of Agency’s treatment of Employee after her memorandum was submitted. (Tr. pg. 101). Parker identified Employee’s Exhibit 2 as a memorandum, dated September 17, 2010, that was purportedly prepared by Employee. The document was substantially identical to Agency’s Exhibit 12, but was signed by Employee. (Tr. pgs. 102-103). Patten further opined that Employee did not violate Agency’s Program Statement (July 15, 2007), sections 8A or 8J.² (Tr. pgs. 106-108).

On cross examination, Patten testified that he was not involved in drafting the charges against Employee. (Tr. pg. 111). He further admitted that he was not present when Employee submitted the memorandum to Agency. (Tr. pg. 112).

When called as a rebuttal witness Parker testified that, based on his personal knowledge, he did not believe Patten and Coley to be credible witnesses, alleging that they provided false evidence and testimony in other court proceedings. (Tr. pgs. 120-122).

² Section 8A prohibits employees from becoming intimately involved with an inmate in custody of the D.C. Department of Corrections. Section 8J applies to employees who have an immediate relative that is incarcerated by the Department of Corrections; approval must first be received from an immediate supervisor or the warden prior to visitation.

Shante Briscoe (Transcript pages 123-144)

Shante Briscoe (“Employee”) worked as a Senior Correctional Officer with Agency. (Tr. pg. 123). Employee testified that she had no prior adverse actions or disciplinary proceedings against her, and received excellent or outstanding performance ratings during her tenure. Employee stated that her rapport with Agency declined after she reported an injury she suffered while on duty. (Tr. pg. 124). According to Employee, she was at a doctor’s appointment on the day Elliott was incarcerated. Employee stated the following in pertinent part:

I had received a phone call. Actually, I had received a few phone calls, asking did I hear about what happened to Jarrell. His mom called because she was a little upset. She didn’t know...where to find him, what to do. She hadn’t heard from him, and she knew that I had worked in the...detention center. She wasn’t sure if he was in Maryland, D.C. or Virginia because they didn’t give her any information, even though he was arrested in the state of Maryland. So I told her...I’m off today...I’ll try to find out what I can when I get to work tomorrow.

Upon me arriving to work the next day, I saw Sergeant Marr sitting in the officers’ dining area where roll call is conduct[ed]....Prior to me going to the roll classroom, I had looked into the JACCS system...even though I wasn’t a supervisor, I did have a code because I worked in [the] special handling unit...I typed in his name, and I did a search for all jails...it revealed that he was...committed to [the] D.C. jail.

After finding that out...I informed Sergeant Marr because that is my direct supervisor....I explained to her that I just saw that my kids’ godfather has been locked up. I haven’t typed the memo yet...her exact words were, “Briscoe, you know how they treat you. Go document it immediately.” After that I went into Mr. Lundy and Lieutenant Armstrong’s office, which is adjacent to the roll call room...I asked Mr. Lundy to use his computer....After printing out the document in Mr. Lundy’s office, I went back to the roll call room...and showed Sergeant Marr....I waited until Captain Coley finished roll call...and [the memo] was released from my hand to his. I cannot say he read it to its entirety. He did skim across it. He stuck it in the back of papers and folders, and he just said, “Okay.” (Tr. pgs. 125-129).

On September 30, 2010, Employee stated that she was informed by Elliott’s mother that he wanted to call Employee. Employee told Elliott’s mother that he could not contact her at that time. (Tr. pg. 129). Employee testified that she subsequently spoke to the warden of the detention center. The warden asked Employee if she had made notification to her supervisors about Elliot’s presence, and she responded that she had. (Tr. pg. 130). The warden also asked Employee to whom she had made notification. Employee responded by stating that she had made notification to Captain Coley. The warden told Employee that she could not interact with Elliot. (Tr. pg. 131).

Employee testified that she made both written and verbal notification to Agency concerning her familiarity with Elliott. Employee stated that she and Elliot were not “loved ones;” however, he would pick her daughter up from school, or give rides to her son when needed. (Tr. pgs. 131-132). Employee did admit that she had a romantic relationship with Elliott in 2006 or 2007. (Tr. pg. 133). She was not aware of the existence of the three minute video surveillance tape that recorded an interaction between Elliott and her. Employee admitted that she saw Elliott in passing, and that he would attempt to speak to her. However, Employee stated that she told Elliot that he could not contact her. (Tr. pg. 134). She further testified that Agency’s Exhibit 8, a document with the names and ages of incarcerated inmates, was doodling, and there was no other reason for the document’s existence. (Tr. pg. 135). In contrast to Patten’s testimony, Employee stated that she was not given an opportunity to present witnesses during her interview with Patten, and that she never gave Patten a memorandum. (Tr. pg. 136). She also stated that she received verbal, not written notification of the Internal Affairs interview. Employee presented several of her personal calendars, on which she indicated the date on which she submitted the memorandum to Coley. (Tr. pg. 138).³

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Uncontested Facts

1. Agency hired Employee as a Correctional Officer on October 15, 2007.
2. On June 1, 2010, Employee received and signed a copy of Agency’s memorandum entitled “Staff/Inmate Over-Familiarity.” The memorandum, dated May 25, 2010, forbade Agency employees from becoming “over-familiar with inmates, former inmates, and/or the families of inmates.”⁴
3. On September 15, 2010, Elliot was admitted to the Central Detention Facility as a result of narcotics trafficking charges.
4. On November 17, 2010, Agency issued to Employee a twenty (20) day Advance Notice of Proposed Removal based on the following cause: any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations.
5. The adverse action was based on an alleged inappropriate relationship that Employee maintained with Elliot.
6. On February 8, 2011, Employee received final written notice of her termination.
7. Employee subsequently filed a Petition for Appeal with OEA on February 10, 2011.

³ The calendars were not submitted into evidence.

⁴ Agency Answer to Petition for Appeal, Exhibit 3 (March 16, 2011).

Whether Agency's adverse action was taken for cause.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue.

In accordance with Section 1651 (1) of the CMPA (D.C. Official Code §1-616.51 (2001)), disciplinary actions may only be taken for cause. Section 1603.3 of the District Personnel Manual ("DPM") defines cause to include "[a]ny on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations."⁵

Investigation Report:

The investigation determined that Inmate Jarrell Elliott was engaged in an ongoing narcotics trafficking conspiracy during the time in which he was romantically involved with Corporal Shante Briscoe. Corporal Shante Briscoe was the subject of an ongoing United States District Court grand jury investigation by United States Attorney's Office regarding illegal narcotics trafficking.

Corporal Shante Briscoe failed to report to her supervisor her preexisting relationship with Inmate Elliott for approximately 15 days after confirming Inmate Elliott's presence in the Central Detention Facility, which was a violation of DOC Program Statement 3300.1.

Corporal Shante Briscoe was romantically involved in a relationship with Inmate Elliott during his incarceration at the Central Detention Facility in violation of Program Statement 3300.1, Section 8A. The letters recovered from Corporal Briscoe's home by federal agents, in addition to letters recovered from Inmate Elliott's cell and information provided by the USAO supports this.

Corporal Shante Briscoe was in possession of Inmate Jarrell Elliott co-defendant's names and approximate ages. As a correctional officer, Corporal Briscoe is in a position that would allow her to obtain personal information as well as housing assignments of those co-defendants.

⁵ Chapter 16 DPM § 1603.3.

Employee Code of Ethics and Conduct:

Section 8 of Agency's Employee Code of Ethics and Conduct 3301.1⁶ was received by Employee on September 13, 2010. The document states in relevant part the following:

Employee/Inmate Relationships

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

C. Employees shall keep their conversation with inmates on a professional level at all times, and shall refrain from discussing their personal lives and activities with them.

G. Employees shall not develop personal relationships with inmates outside their professional responsibilities.

H. Employees shall not develop social relationships with the families of inmates outside their professional responsibilities. An employee having pre-existing relationships with inmates or their families must report them to his/her supervisor.

J. Employees who have an immediate relative who is incarcerated in CDF or a DOC contract facility shall obtain the written recommendation of their immediate supervisor and the affected Warden's approval to visit the inmate. Such visits shall only occur during an employee's non-duty hours and the employee shall not wear any part of his/her official uniform.

Staff/Inmate Over-Familiarity Memorandum:

Agency's May 25, 2010 Staff/Inmate Over-Familiarity Memorandum⁷ was required to be signed by all Agency employees. The memorandum states in pertinent part the following:

Departmental policies and procedures are clear regarding the expectations placed upon employees....Anything other than authorized physical contact, authorized verbal or written communication or any other authorized involvement with inmates or their families is a violation of policies and procedures, and in some cases can be a violation of the law....The following guidelines can be used to further professional growth and to assist others:

⁶ Agency's Exhibit 11.

⁷ Agency's Exhibit 2.

1. Read, understand, and follow all departmental policies and procedures. When in doubt, check with your supervisor, as ignorance of the rules is no excuse.
2. Do not single out inmates to provide special privileges.
3. Hold all inmates accountable for their behavior in a fair and consistent manner.
4. Do not establish a personal relationship with any inmate. If you have a personal/family relationship with an individual committed to the department, immediately report this to your supervisor via established procedures.
5. Do no discuss any issue with an inmate that you could not, nor would not, discuss with all inmates.
9. If you ever believe that you may have innocently compromised or violated the above or any departmental rule or regulation, immediately report this to your supervisor....

I find that there is substantial evidence in the record to support a finding that Employee violated the Employee Code of Ethics and Conduct, as well as Agency's policy regarding staff-inmate over familiarity. In brief summation, these policies forbid Department of Corrections employees from developing intimate or personal relationships with incarcerated employees. The guidelines were implemented for the purpose of protecting the integrity and safety of Agency's operations.

In this case, Employee received and signed for copies of the aforementioned documents⁸, and there is no evidence in the record to support a finding that Employee was misled or did not comprehend Agency's policy prohibiting over-familiar relationships with inmates. The testimony adduced during the evidentiary hearing further supports a finding that Employee violated Agency's policies regarding the prohibition of staff/inmate relationships. I find that Patten provided credible testimony regarding her personal observation of the video surveillance wherein Employee and Elliott were videotaped communicating with each other in the detention facility for approximately three minutes. Employee's own testimony bolsters a finding that she had, in the least, some familial relationship with Elliot. Employee testified that Elliot was her children's godfather, and that he would pick her daughter up from school, or give rides to her son when needed. Employee acknowledged that she had a romantic relationship with Elliott in 2006 or 2007 and admitted to seeing Elliott in passing while she was on duty. These facts support a finding that Employee and Elliot had a pre-existing relationship prior to his arrest and confinement at the Central Detention Center.

⁸ Agency Exhibit 3.

As a result of the search warrant, executed in Employee's home on October 12, 2010, the FBI procured a zip drive, which contained three letters written to Elliot from Employee.⁹ In one letter from Employee to Elliot, dated October 9, 2010, Employee states the following: "Hello again Daddy...I'm really missing you these days...I have gotten so used to talking to you every day that now it feels like I need to write you every day...."¹⁰ The FBI also retrieved a document which listed the names and birthdays of Elliot's co-defendants. Contrary to Employee's protestations, I find no compelling evidence in the record to challenge the veracity of the Office of Internal Affairs' Final Investigative Report.¹¹ Although Employee denied that the letters were found in her home, the evidence presented in this case supports a contrary conclusion. I find that the content of the letters found in Employee homes establishes that she was involved in an ongoing friendship and/or relationship with Elliot. I further find that Patten provided truthful and credible testimony to this tribunal regarding the evidence she reviewed in Employee's investigation. Employee was made aware of Agency's policy with respect to the formation and/or continuation of relationships with inmates, whether they are platonic, intimate, or familial. I further find that Employee had an understanding of Agency's policies and violated such guidelines by continuing to communicate with Elliot while she was employed by Agency.

Agency's policies, as enumerated in the Staff/Inmate Over-Familiarity Memorandum and Employee Code of Ethics and Conduct, require that employees immediately report to their supervisors the existence of any pre-existing relationships with inmates. Employee testified that she made both written and verbal notification to Agency concerning her familiarity with Elliott. Employee stated that she informed Sergeant Marr of her previous relationship with Elliot and subsequently used Lundy's computer to type the notification. In support of her position, Employee provided a copy of a memorandum that was purportedly addressed to Assistant Deputy Warden, Orlando Harper, Captain Nora Talley, and Captain Walter Coley. The memorandum, dated September 17, 2020, is signed by Employee, and states the following:

On Thursday, September 16, 2010, I received notification that the godfather of my children was arrested and housed at the Central Detention Facility. Upon my arrival on Friday, September 17, 2010, I searched for his name using the JACCS system and found him to be housed in Northeast Three housing unit cell 75.

Based on the documentary and testimonial evidence produced at trial, I find that Employee did not make proper notification of her relationship with Elliot, as required by Agency policy. Employee's testimony was in direct conflict with that of Patten and Coley. Employee's version of the document she says she gave to Agency only contains her signature. Patten testified that when an employee notifies Agency that they have a loved one in the same jail where they are working, the notification will either "go through the chain of command so the other managers will know, so they will not assign that person to an area where they will come in contact with that individual or they will transfer the inmate out of the jail." According to Patten, the version of the document she received was neither signed nor dated by any of the individuals who purportedly received the memorandum. She further stated that the warden did not have a record of anyone receiving Employee's notification.

⁹ Agency Exhibit 4.

¹⁰ Agency Exhibit 6.

¹¹ Agency Exhibit 1; *See* Final Report OIA-10-10-006.

In addition, Coley testified that he never signed off on the September 17, 2010 memorandum from Employee, despite having his name listed on the document. Although Lundy testified that he did remember Employee using his computer to draft a document, he could not corroborate Employee's assertion that she gave proper notice to Agency. I do not find Employee's testimony to be credible in this case, as the document she submitted to this tribunal was self-serving and could not be authenticated by any other witness testimony. I find that Employee did not notify her supervisor of her pre-existing relationship with Elliot until approximately fifteen (15) days after confirming that Elliott was an inmate at the Central Detention Facility. Employee's failure to properly notify Agency was a violation of section 8J of the Employee Code of Ethics and Conduct 3301.1.¹²

Based on the foregoing, I find that Agency had cause to terminate Employee as required by section 1603.3 of DPM. Employee violated Agency's policy prohibiting over-familial relationship with inmates. Employee also failed to properly notify Agency of her relationship with Elliot. I find that Agency's charge of "[a]ny on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations" is supported by substantial documentary and testimonial evidence. As such, Agency had cause to remove Employee from her position as a Correctional Officer.

Whether the penalty was appropriate under the circumstances.

With respect to Agency's decision to terminate Employee, any review by this Office of the agency decision selecting an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.¹³ Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but simply to ensure that "managerial discretion has been legitimately invoked and properly exercised."¹⁴ When the charge is upheld, this Office has held that it will leave Agency's penalty "undisturbed" when "the penalty is within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment."¹⁵

Agency has the discretion to impose a penalty, which cannot be reversed unless "OEA finds that the agency failed to weigh relevant factors or that the agency's judgment clearly exceeded the limits of reasonableness."¹⁶ The Table of Appropriate Penalties, found in Section 1619 of the DPM, provides general guidelines for imposing disciplinary sanctions when there is a finding of cause. The penalty for a first offense of any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations is reprimand to removal.

¹² Agency's Exhibit 11.

¹³ See *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, Opinion and Order on Petition for Review (March 18, 1994); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, Opinion and Order on Petition for Review (July 2, 1994).

¹⁴ *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985). 1601-0417-10

¹⁵ *Employee v. Agency*, OEA Matter No. 1601-0158-81, Opinion and Order on Petition for Review, 32 D.C. Reg. 2915, 2916 (1985).

¹⁶ See *Stokes v. District of Columbia*, 502 A.2d 1006, 1011 (D.C. 1985).

In this case, I find that Employee's failure to adhere to the Agency's policies and procedures regarding inmate over-familiarity constitutes an on-duty act or omission that interfered with the efficiency and integrity of Agency's operations. I further find that Agency acted reasonably within the parameters established in the Table of Penalties. Based on the foregoing, I conclude that Agency's decision to terminate Employee as the appropriate penalty for her actions was not an abuse of discretion and should be upheld.

Discrimination

With respect to Employee's claim that Agency's action of terminating her was retaliatory in nature, I find that this issue is outside the purview of OEA's jurisdiction.¹⁷ This is not to say that Employee may not pursue these grievances elsewhere; however, I am unable to address the merits, if any, of these claims.

ORDER

It is hereby **ORDERED** that Agency's action is upheld.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

¹⁷ Employee claims she was targeted for termination based on an injury she sustained while on-duty.