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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 1601-0057-14
WILLIE COLEMAN,)	
Employee)	
)	Date of Issuance: May 19, 2016
v.)	
)	
D.C. DEPARTMENT OF CORRECTIONS,)	
Agency)	
)	
)	Arien P. Cannon, Esq.
)	Administrative Judge

Willie Coleman, Employee, *Pro se*
Lindsay Neinast, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Willie Coleman (“Employee”) filed a Petition for Appeals on February 24, 2014, with the Office of Employee Appeals (“OEA”), challenging the D.C. Department of Corrections’ decision to remove him from his position as a Correctional Officer. Employee’s termination became effective on June 12, 2013. Agency filed its Answer on March 31, 2014.

This matter was initially assigned to Administrative Judge (“AJ”) Stephanie Harris. This matter was reassigned to the undersigned on September 2, 2015. I convened a telephonic Status Conference on October 23, 2015, to receive an update on the case and to assess the parties’ arguments. A Prehearing Conference was held on November 24, 2015, to determine any factual disputes and to further assess whether an evidentiary hearing was warranted. Based upon the representation of the parties at the Prehearing Conference, Agency was afforded the opportunity to submit a Motion for Summary Disposition. As such, Agency submitted its motion on January 15, 2016. Employee submitted a response to Agency’s Motion for Summary Disposition on February 12, 2016.¹ Based upon the filings submitted by both parties, I have determined that an evidentiary hearing is not warranted. The record is now closed.

¹ Employee’s response is captioned “Employee’s Prehearing Statement.” However, this submission is being treated

JURISDICTION

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

ISSUE

Whether Agency is entitled to Summary Disposition; specifically, whether Agency had cause to remove Employee for any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: Neglect of Duty; and whether termination was appropriate under the circumstances.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Agency filed a Motion for Summary Disposition on January 15, 2016, asserting that there are no material and genuine issues of fact in the instant matter. Employee submitted a response to Agency's Motion for Summary Disposition on February 12, 2016. Employee was removed from his position with Agency, effective June 12, 2013. Employee's removal was based on "[a]ny on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: Neglect of Duty."² The facts in this matter are largely undisputed: an inmate ("inmate English") within Agency's custody was found hanging in his cell on November 30, 2012. The inmate was later pronounced dead from an apparent suicide.

As a result of the inmate's death, Agency's Office of Internal Affairs conducted an investigation and determined that Employee prepared a fraudulent Security Activity Record (SAR).³ The report also determined that Employee fraudulently prepared another log which indicated that the inmate was given a phone call on the date of his death, which the investigative report determined did not happen. Agency asserts that Employee acknowledged preparing the fraudulent documents during an interview with Internal Affairs. The SAR, used for inmates in segregation, notates when an Officer observes an inmate and the inmate's behavior at the time of the observation. For every activity observed, there is a corresponding numeric indicator: 1- Recreation; 2- Medical; 3- Reading; 4- Sleeping; 5- Laying down; 6- At door; 7- Showering; and 8- Eating.

OEA Rule 615, 59 DCR 2129 (March 16, 2012) provides that:

If, upon examination of the record in an appeal, it appears to the Administrative Judge that there are no material issues of fact, that a party is entitled to a decision as a matter of law, or that the appeal failed to state a claim upon which relief can be granted, the Administrative Judge may, after notifying the parties and giving them an opportunity to submit additional evidence or legal

as Employee's response to Agency's Motion for Summary Disposition.

² 6-B DCMR §§1603.3(f), 1619.6(b) (Table of Appropriate Penalties).

³ *Segregation* Activity Record and *Security* Activity Record appear to be used interchangeably throughout the record.

argument, render a summary disposition of the matter without further proceedings.

The District's personnel regulations further provide that there is a neglect of duty in the following instances: (1) failure to follow instructions or observe precautions regarding safety; (2) failure to carry out assigned tasks; or (3) careless or negligent work habits.⁴ Here, in Agency's Motion for Summary Disposition, it provides a copy of the Post Order ("Order") for South One, one of Agency's housing units for inmates, which was also the unit where the underlying facts of the instant matter occurred.⁵ The purpose of this Order is to establish policies and procedures for the safe, efficient and orderly operation of South One Housing Unit. On page two of the Order, it sets forth instructions for the Segregation Activity Record and the Thirty Minute Check Record. The Segregation Activity Record instructions provide that:

[T]his record will be completed on each inmate for each activity received (ie. Haircut, laundry, shave, shower, mail etc.). When the inmate completes or receives the activity the unit officer will indicate the behavior or activity of the inmate with the corresponding number, the time of the check and initials.

The Thirty Minute Check Record instructions provide that:

This record will be completed on each inmate for each irregular thirty (30) minute check. The unit officer conducting the check will indicate the behavior or activity of the inmate with the corresponding number, the time of the check and initials.

Agency provided a copy of the SAR for November 30, 2012, the day of the incident, in a Prehearing Statement it submitted on September 8, 2014.⁶ The SAR indicates that inmate English was reading at 2:07 p.m., 2:38 p.m., 3:08 p.m., and 3:39 p.m., based upon the numeric value under the indicated times. Although neither Employee's name nor signature appears on this form, he does not dispute that he actually completed the form for the various inmates. Inmate English was found hanging in his cell at approximately 2:36 p.m. and pronounced dead at the Prince Georges County General Hospital at 3:49 p.m. Thus, it would be impossible for the Security Activity Report to be an accurate account of what inmate English was truly observed doing; particularly for the 2:38 p.m., 3:08 p.m., and 3:39 p.m. entries. The investigative report determined that Employee prematurely completed the SAR at the beginning of his shift, without making inmate observations at the times indicated on the report. Employee does not dispute this assertion in his response to Agency's Motion for Summary Disposition.

Employee's main argument is that three other correctional officers on duty at the time were equally responsible for patrolling the areas of the cell block to observe inmates. Employee also contends that he was singled out as the scapegoat for the incident, while the other correctional officers were not disciplined.

⁴ See D.C. Mun. Regs. tit. 16 § 1619.1(6)(c). Table of Appropriate Penalties.

⁵ See Agency's Motion for Summary Disposition, Attachment C (January 15, 2016).

⁶ See Tab 4. The same document was also submitted on March 31, 2014.

The undersigned was able to view the surveillance footage, in camera, submitted with Agency's Motion for Summary Disposition.⁷ This footage shows the reaction of several correctional officers and other Agency staff responding to inmate English being found in his cell. It is not disputed that Corporal Makle found inmate English in his cell around 2:36 p.m. as he was conducting his unit count.⁸ Employee's contention that he was singled out as a scapegoat for the suicide of an inmate is without merit. The cause for Employee's removal is based on the untrue notations made in Agency's SAR, which indicate that inmate English was reading at a time which was impossible considering the time inmate English was found hanging in his cell. Employee does not deny making these notations in the SAR. While other employees may have had a responsibility in patrolling the South One Unit, Employee does not assert that anyone other than himself made the untrue notations in the SAR.

Based on a review of the record⁹, it appears that there are no material issues of fact, and that Agency is entitled to a decision as a matter of law that it had cause to take adverse action against Employee for "neglect of duty." Employee's action of prematurely notating that he observed inmate English reading at 2:38 p.m., 3:08 p.m., and 3:39 p.m. on November 30, 2012, when in actuality the inmate was found hanging in his cell at 2:36 p.m., and pronounced dead at 3:49 p.m., clearly indicates that Employee failed to carry out his assigned task of observing inmate English during irregular thirty (30) minute intervals as required by the Post Order for South One Unit. Employee's actions also demonstrate careless and negligent work habits and rise to the level of neglect of duty. As such, I find that Agency had cause to take adverse action against Employee.

Appropriateness of penalty

Agency has the primary discretion in selecting an appropriate penalty for Employee's conduct, not the undersigned.¹⁰ This Office may only amend Agency's penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of reasonableness.¹¹ 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.¹²

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. The Table of Appropriate Penalties, as set forth in Chapter 16 § 1619.1(6), of the District Personnel Manual, provides that

⁷ Agency's Motion for Summary Disposition, Attachment D (January 15, 2016). Instructions for viewing the surveillance footage have also been made part of the record.

⁸ The time stamp on the surveillance footage is on a 24-hour clock. As such, the time stamp indicated on the surveillance footage reads 14:36.

⁹ Including, consideration of the surveillance footage, Agency's Prehearing Statement submitted September 8, 2014 (Tab 4, which includes the SAR), and Employee's response to Agency's Motion for Summary Disposition.

¹⁰ See *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

¹¹ See *Id.*

¹² See *Id.*

the appropriate penalty for a first time offense for neglect of duty ranges from a reprimand to removal. Additionally, Agency considered relevant *Douglas* factors in its decision to remove Employee. In its Final Decision regarding proposed removal, Agency's deciding official writes, "I considered the twelve 'Douglas Factors'...and specifically relied on factors: (1) the nature and seriousness of the offense, (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position, (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisors' confidence in the employee's ability to perform assigned duties, (6) the consistency of the penalty with those imposed upon other employees for the same or similar offenses, and (9) the clarity with which the employee was on notice of any rules that were violated."¹³ Accordingly, I find that the penalty imposed against Employee was appropriate and that Agency did not exceed the limits of reasonableness when invoking its managerial discretion.

ORDER

It is hereby **ORDERED** that Agency's Motion for Summary Disposition is **GRANTED**; it is further **ORDERED** that Agency's removal of Employee is **UPHELD**.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

¹³ Agency's Pre-Hearing Statement and Supporting Documents, Tab 1 at 3 (September 8, 2014).