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DISTRICT OF COLUMBIA
BEFORE THE
THE OFFICE OF EMPLOYEE APPEALS

IN THE MATTER OF)	
WILLIE CEASAR, JR.)	
EMPLOYEE)	OEA Matter No. 1601-0080-04
V.)	
D.C. DEPARTMENT OF CORRECTIONS)	Date of Issuance:
AGENCY)	February 16, 2006
	Rohulamin Quander, Esq.
	Senior Administrative Judge

Vincent Wilkins, Esq., Employee Representative
Fred Staten, Jr., Agency Representative

INITIAL DECISION

BACKGROUND

On June 4, 2004, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals (the "Office"), challenging the 45-day suspension from his position as Chaplain, DS-12, as well as his demotion from the position of Director, Chaplaincy Services, DS-13 with the D.C. Department of Corrections (the "Agency"), based upon a charge of "Malfeasance," in the performance of his job-related duties.

The above-referenced adverse action resulted from Employee's alleged noncompliance with provisions of *Agency Program Statement Number 4352.1, Inmate/Offender Deaths, Section (e), Notification Of Next Of Kin*, ("PS 4352.1" and the "PS"), Paragraphs (1) through (3), issued on June 6, 2003. Specifically, Employee failed to timely give official notification to the family of former Inmate Karen Miller, following her death on January 22, 2004.

Employee did not dispute the fact that he received official notification of the inmate's death from Lieutenant Tyrone Harrison, an Agency employee, on January 22, 2004, and agreed

that it was his own responsibility to make timely notification to the deceased's next of kin. However, he asserted certain affirmative defenses concerning the amount of other chaplaincy-related work that he was engaged in at the time of the inmate's death, coupled with the great difficulty encountered in locating the inmate's family, due to incorrect and non current telephone numbers and address contacts. During the pendency of this matter, but before the evidentiary hearing was conducted, Employee, who has several years of creditable government service, elected to retire. He has pursued this matter in hopes of getting the demotion and 45-day suspension removed from his career record.

JURISDICTION

The Office has jurisdiction over Employee's appeal pursuant to D.C. Official Code § 1-606.03(a) (2001).

ISSUES

The issues to be decided are:

- a. Whether the evidence of alleged "Malfeasance" will support a finding of "cause", to justify Employee's suspension by the Agency for 45 days, plus demotion from the position, Director, Chaplaincy Services, DS-13, to Chaplain, DS-12, as that term is defined by District of Columbia Office of Personnel (the "DCOP") Rule 1603.3, 47 D.C. Reg. 7094, 7096 (2000).

By its terms, the definition of "cause" set forth in Rule 1603.3 includes "Malfeasance", which is defined as any on duty or employment related act or omission that interferes with the efficiency or integrity of government operations. Therefore, Agency must prove that Employee committed Malfeasance in the performance of his job-related duties.

- b. If Agency's action was taken for cause, whether Employee's violation of the cause standard was "*de minimus*".

Agency could not have subjected Employee to an adverse action if his violation of the cause standard was *de minimus*. See DCOP Rule 1603.5, 47 D.C. Reg. at 7097. The DCOP rules do not, however, define the term "*de minimus*", and this Office has not considered whether a violation of the new cause standard was *de minimus*. The parties presented arguments on this issue in their respective written closing arguments.

- c. If Employee's violation of the cause standard was not *de minimus*, whether the penalty Agency imposed was appropriate, given any aggravating or mitigating circumstances that may have existed.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Stipulated Exhibits:

The parties stipulated to Joint Exhibits #1 through #6. These Joints Exhibits consisted of:

- JE #1 - A Memorandum, dated March 12, 2004, from Steven A. Smith, Warden, D.C. Jail and the proposing official, requesting an adverse action against Employee for alleged malfeasance;
- JE #2 - Advance written notice of proposal to terminate, issued to Employee by Warden Smith, dated March 15, 2003;¹
- JE #3 - Employee's written rebuttal to the proposed action, March 29, 2004;
- JE #4 - Hearing Officer's Report, April 6, 2004;
- JE #5 - Final Notice of Decision by Odie Washington, Agency Director and Deciding Official, May 5, 2004; and
- JE #6 - Program Statement 1280.2B, Reporting and Notification Procedures for Significant Incidents and Extraordinary Circumstances, issued on September 15, 2000.²

The following facts are not in dispute:

1. On January 22, 2004, Karen Miller, an inmate in the D.C. Department of Corrections, was pronounced dead from natural causes at 8:21 a.m. at the Greater Southeast Community Hospital. At approximately 9:30 a.m., Lieutenant Tyrone Harrison, Officer In Charge (the "OIC") of the Medical Holding Unit (the "MHU") of the Agency, notified Employee of the inmate's death, and also provided Employee with contact telephone number (202) 562-0509 for the deceased's sister, Cynthia Jackson.
2. Employee, as Director of Chaplaincy Services, was responsible for making notification to the deceased's family. His initial efforts to reach Jackson by telephone were unsuccessful, as the telephone number on file was not correct.
3. Ultimately, the deceased's next of kin was not notified of her death until February 10, 2004, some nineteen days after her death, but only due to an intervention from the Agency's supervisory staff.
4. A subsequent investigation was conducted by the Agency's Office of Internal Affairs (the "OIA"), to determine whether any of Agency's employees was negligent in the performance of duties and responsibilities regarding the non timely death notification pursuant to PS 4352.1(e).
5. Employee, a twenty-two year Agency employee, who occupied the position of Director, Chaplaincy Services, DS-13, was interviewed regarding his knowledge and notification pertaining to the inmate's death.

¹ The date of the document is a clerical error, reciting March 15, 2003, instead of the correct date, March 15, 2004.

² This is a preceding PS, which was superseded in part by PS 4352.1, especially with regard to notification of next of kin in the event of an inmate's death while in Agency's custody.

6. Based upon the investigation as to Employee's notification efforts related to the death of the inmate, the OIA Investigation Report (the "Report") and/or the Agency Hearing Officer's Report on the Proposed Removal, made the following findings:

- Chaplain Ceasar's (the "Employee") initial attempt to contact the deceased's next of kin with the initial telephone number received from Lieutenant Harrison on the morning of January 22, 2004, was unsuccessful.
- When Employee called (202) 562-0509 on January 22, 2004, the telephone number provided by Harrison, the woman who answered denied any knowledge of, or connection to the deceased.
- On February 5, 2004, Employee, accompanied by Pamela Young, his secretary, jointly mailed two certified letters, return receipt requested, at the Central Detention Facility Mailroom. Each letter was postmarked "February 5, 2004", by the mailroom's postage meter, and immediately forwarded to the U.S. Postal Service, where each letter likewise received a postmark date of February 5, 2004.
- Both of the certified letters were addressed to Cynthia Jackson, inmate's sister and listed next of kin. One letter was addressed to 3310 10th Place, S.E., Washington, D.C.³ The other letter was addressed to 518 57th Place, N.E., Washington, D.C. Both pieces of certified mail were eventually returned to the Facility's mailroom as undeliverable.
- The investigation concluded that, other than the initial contact efforts made on January 22, 2004, the investigators could not substantiate whether Employee made any other attempts to contact deceased's family prior to the unsuccessful efforts of February 5, 2004, or that any success was achieved in making contact before February 10, 2004.
- Although each letter bore a postmark date of February 5, 2004, a subsequent review of the letters' contents revealed that they were each dated "January 29, 2004."

7. PS 4352.1, § 7(e), Notification of Next of Kin, provides that:

- (1) After receiving notification of the death of an inmate/offender, the DOC Chaplain shall within eight hours, notify the inmate/offender's next of kin listed in JACCS and/or the official inmate/offender record by telephone. All attempts to contact the next of kin shall be documented on the Next of Kin Notification Form and filed in the inmate/offender's record.
- (2) If attempts to contact the next of kin by telephone within eight hours are unsuccessful, the Chaplain shall compose a letter notifying the next of kin

³The zip codes for the letters, 20032 and 20019, were handwritten on each mailing receipt.

of the death and instructing them to contact the DOC Chaplain at Central Detention Facility for details and additional information. The letter shall be sent by express certified mail, return receipt requested, by the close of the next business day.

- (3) If there is no response to the express certified mail, the Chaplain shall make notification to the Deputy Warden for Programs. The Deputy Warden for Programs shall contact the Community Corrections Administrator who shall assign the case to the Warrant Squad.
- (4) A Warrant Squad investigator shall conduct an investigation to locate the inmate/offender's next of kin.
- (5) If the next of kin is located, the investigator shall hand deliver the Chaplain's letter. (Agency Exhib. #10, Pp. 4-5)

8. The Investigation Report concluded that Employee violated the notification of next of kin provisions of § 7(c), 1) and 2) of PS 4352.1.

9. Employee admitted that it was one of his job-related responsibilities to contact the next of kin upon the death of an inmate, and that when he could not contact the deceased's next of kin by telephone on January 22, 2004, he had a specific and direct responsibility, pursuant to the PS, to ensure that a notification letter was written and mailed to her next of kin by the close of business on January 23, 2004.

10. On Page 3 of the Position Description for Chaplain, § 14, it states that, "Incumbent shall in case of an inmate's death, notify the next-of-kin consistent with the notification of next-of-kin policy. In case of death in the inmate [sic] immediate family the incumbent shall notify the inmate." (Agency Exhib. #16)

11. Employee participated in the drafting of the Position Description of Director, Chaplaincy Services, DS-13, and was the sole incumbent. Employee's Position Description as Director, Chaplaincy Services, DS-0060-13, mandates, *inter alia* in the section on the position's Major Duties, Knowledge Required By The Position, and Supervisory Controls, that the incumbent shall:

- Notify relative(s) in a manner consistent with institutional policy directives, when an inmate is severely ill/injured or dies. Accordingly, notifies the inmate when an immediate family member becomes severely ill/injured or dies.
- Keep abreast of current department policies, procedures and practices.
- Be knowledgeable of a broad range of religious concepts and principles. Skilled in planning, directing and coordinating an overall religious and volunteer program in a correctional facility.

- Possess the ability to develop and administer a full program within the District of Columbia Department of Corrections without the benefit of a higher level chaplain supervisor. Manages resources, assets and develops requisites for the department's budgetary needs.
- Possess the ability to work on an on-call basis beyond regular shift, responding to emergency situations, hospitalizations, deaths, etc., as required.
- Is expected to independently plan, design and manage the Chaplaincy/Volunteer Program for the District of Columbia Department of Corrections. Reviews of work would occur to ensure the completion of program goals and objectives as supervision of the job provides broad administrative directives. (Agency Exhib. #17)

Other Factual Considerations:

Testimony of Debbie Marbury: Debbie Marbury, witness for Employee, was assigned to the Agency's mail room at the D.C. Jail. The mail that is received from the facility's staff is taken to the U.S. Post Office on a daily basis.

Testimony of Steven A. Smith: Seven A. Smith, a warden at the facility, is the Agency official who requested that Employee be terminated based upon the OIA Investigation, which noted Employee's failure to timely notify the deceased next of kin following her death on January 22, 2004. (Joint Exhib. #1) It was he who also issued the twenty-day advance notice of proposed termination to Employee, dated March 15, 2003⁴. The specifications for removal were outlined in detail in the OIA Investigation Report regarding the inmate's death and Employee's failure to timely notify her next of kin, consistent with both the PS and the PD. (Joint Exhib. #2) He recommended that Employee be terminated for the cause of Malfeasance. Prior to February 9, 2004, he was unaware that Inmate Miller's next of kin had not been notified of her death.

Testimony of Leona Bennett: Leona Bennett was Employee's immediate supervisor and served as Deputy Warden for Programs at the time of the decedent's death. Despite Employee's testimony to the contrary, she maintained that she was not aware of the death until on or about February 9, 2004, when she was notified through a memorandum from Father Michael Bryant, a volunteer chaplain. Upon learning that the next of kin had not been notified, she immediately contacted the Agency's Warrant Squad, to have them locate the next of kin. On the next day, the Warrant Squad provided a telephone number and address of the next of kin. This information was provided to Employee, who in turn contacted the family.

Pursuant to both the PS and PD, Employee had specific responsibilities to give timely notification to the family. If he could not contact the next of kin within eight hours, then he was to immediately send out certified letters, and to also notify her as his supervisor. Neither of these actions occurred. Once the investigation into this matter was concluded, the witness was demoted from her position of Deputy Warden for Programs to Chief Case Manager. She

⁴Although the letter was dated "March 15, 2003, this was clerical error, as the correct date should have been March 15, 2004, arising out of the discovery of the problem on or about February 9, 2004.

personally gave Employee a copy of the PS on Inmate/Offender Deaths in June 2003, when she first received her own copy.

Testimony of Dennis Harrison: Dennis Harrison, Deputy Warden for Operations, knew of Inmate Miller's death on January 22, 2004, but had limited information about the matter at that time. Familiar with PS 4352.1, he enumerated the chaplain's responsibilities under the PS. While he did not recall Employee telling him that he was experiencing problems in notifying the deceased's next of kin, he recalled Employee commenting that the amount of work he had at the moment was considerable, as he was the only chaplain on staff.

Testimony of Wanda Patton: Wanda Patton, Supervisory Criminal Investigator, was assigned to investigate the facts and circumstances surrounding Agency's failure to make notification to the deceased next of kin. She concluded that Employee depended upon Lieutenant Harrison to get back to him with better contact information for the deceased's family, and determined that Employee placed too much reliance upon Harrison, resulting in a violation of the PS in not following proper procedures for making next of kin notification.

Employee had long standing experience in preparing and issuing next of kin notification letters. She cited a prior letter, dated December 27, 2003, written by Employee just a month before this incident, which letter was issued to Laverne Pittman, next of kin of Inmate Fred Thornton, who died while in Agency's custody on December 25, 2003. Further, the language stated in the letter to Ms. Pittman was consistent with the current next of kin notification language provisions of PS 4352.1. (Agency Exhib. #13)

Testimony of Willie Ceasar, Jr., Employee: Employee admitted that one of his job-related responsibilities was to notify the next of kin in the event of an inmate's death, and that such requirement is enumerated in PS 4352.1. (Tr., Vol. II, P. 24) Further, he acknowledged that, according to the PS, he was also responsible to complete a notification form, which is then placed in the inmate's file. However, at the time of the inmate's death, he had never completed one of these forms, despite having previously completed numerous death notifications. (Joint Exhib. #3, P. 3; Joint Exhib. #4, Pp. 3 & 6; Agency Exhib. #2, P. 2)

The essence of Employee's position is that, despite the delayed notification to the deceased's next of kin upon the occasion of her death, a weighing of the aggravating and mitigating factors involved with the demands on his time and the many obligations he had to address, and given his long standing, credible service at the facility, it does not rise to the level of malfeasance or a lack of attention to duty, such that would warrant his termination of employment.

On cross examination, Employee testified, "Had I been familiar with the policy like I should have been, I would have known that I should have made the notification within eight hours." (Tr., Vol. II, P. 59) He further testified on cross examination that "My testimony is that I was not a paper person who took the time to sit down and read. I was too busy in the cellblocks where I spent 99 percent of my time taking care of the needs of the inmate population. I was a hands on minister. I was in there ministering to the population. I was never a person to sit behind my desk and read paper work." (Tr., Vol. II, Pp. 60 & 61)

He admitted that he only became familiar with PS 4352.1, after the inmate in question's death, reading the document for the first time when he obtained another copy of the policy from Ms. Bennett. He also admitted to having received his first copy of the PS in about June 2003, when it was initially issued, but never read the document at that time. Rather than amending his job duties to reflect the new PS, Employee adhered to the tenets of the job training he had received earlier, primarily focused upon what was imparted to him by Rev. Manny Moore, during a job training session conducted in 1991. (Tr., Vol. II, Pp. 61-62)

Employee's sworn testimony at the evidentiary hearing regarding when Leona Bennett first gave him a copy of PS 4352.1, contradicts the sworn answers he previously gave to Wanda Patton on February 15, 2004, in his sworn statement to her during the OIA Investigation.⁵ His testimony also contradicts his written statement of defense submitted by his counsel to the Hearing Officer. (Joint Exhib. #3) Further, Employee disputed Bennett's testimony as to whether he told her, prior to February 9, 2004, that he was experiencing difficulty in contacting the deceased's family. (Tr. Vol. II, Pp. 87-88; 96)

I find that Employee's sworn testimony before me makes it clear that Leona Bennett, then Deputy Warden for Programs and Employee's immediate supervisor, provided him with a copy of PS 4352.1 immediately following the June 6, 2003 issuance. I further find that Employee, upon receiving the PS, neglected to read and implement the newly clarified and enacted policy. Consequently, his ignorance of the PS resulted in an untimely notification to the deceased's next of kin. Additionally, the PS mandated that the Employee prepare and maintain a "Next of Kin Notification Form", to verify his efforts to make notification to the next of kin. By admitting that he failed to complete that form as well, he created no paper trail of his required notification efforts on behalf of the deceased.

I find that the adverse action against the Employee resulted from his specific failure to follow the next of kin notification provisions of Section (e) of the PS, as enumerated at Finding of Fact #7, *supra*.

CONCLUSIONS OF LAW

Based upon the evidence presented in this entire record before me, I conclude that Employee committed Malfeasance by not reading and complying with PS 4352.1, in order to have a clear sense of direction regarding the update of Agency's next of kin notification policy when inmates die while in Agency's custody. As a consequence, the deceased's family did not have the courtesy of a reasonable, timely notification of her death, which circumstance was hurtful to them and likewise also created a media embarrassment to the Agency. The Employee's malfeasance was of such a magnitude that it constituted more than a *de minimis* violation of the cause standard, and therefore warrants the penalty imposed.

Further, based on the foregoing Findings Of Fact, I conclude that Agency had probable cause to discipline Employee on a charge of Malfeasance, as defined at DCOP Rule 1603.3, as

⁵ See page 4 of the statement, which was not admitted into the evidentiary hearing as a formal exhibit, but was attached to Agency's Prehearing Statement, submitted on October 4, 2004.

“... any on duty or employment related act or omission that interferes with the efficiency or integrity of government operations”, and that the Agency has met its burden of proof by a preponderance of the evidence submitted, pursuant to OEA’s Rules and Regulations.

I have likewise considered several mitigating and aggravating factors. Employee was a well liked and respected long time employee; had a good performance record; worked under considerable stress associated with the lack of staff and other resources, and the need to respond quickly to a communication crisis; and was an excellent candidate for job-related rehabilitation and appropriately amending his duties in order to fully comply with the requirements of PS 4352.1.

On the other hand, Employee’s conduct in the face of this crisis left a lot to be desired. He was inconsistent about when he first learned of the issuance of PS 4352.1, including denying that he initially received a copy in June 2003, when the PS was issued; failed to review and implement the mandates of a critical document when it was issued, thereby creating a crisis in communication that could easily have been avoided; absent the receipt or review of the new PS, failed to pursue timely notification efforts of the next of kin, which human compassion dictated were his obligation; and directly contributed to causing the Agency a huge embarrassment, once the media learned of the communication mishap and Agency’s negligent conduct in failing to notify the deceased’s family in a more timely manner.

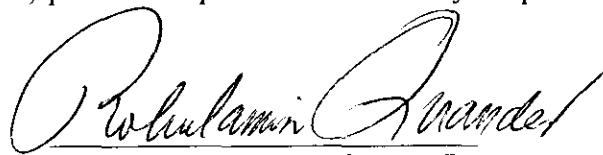
ORDER

The foregoing having been considered, it is hereby,

ORDERED, that Agency’s action of imposing discipline upon Employee is UPHELD; and that Agency has established by a preponderance of the evidence presented, that Employee committed malfeasance when he failed to timely notify the next of kin of Inmate Karen Miller’s death; and, it is

FURTHER ORDERED, that the imposition of a reduction in grade from Director of Chaplaincy Services, DS-13, to Chaplain, DS-12, plus the imposition of a 45-day suspension without pay, are both likewise UPHELD.

FOR THE OFFICE:



ROHULAMIN QUANDER, Esq.
Senior Administrative Judge