

The Merit System Board



75 Langley Drive • Lawrenceville, GA 30046-6935
(tel) 770.822.7939 • (fax) 770.822.7929
www.gwinnettcounty.com

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April 11, 2013

FED EX – 8011 3385 0146

[Redacted]

RE: Executive Secretary's Recommended Decision
Appeal of Five (5) Days Suspension
Case #13-02

Dear Ms. [Redacted]:

I held an Executive Secretary Meeting (ESM) on Wednesday, March 20, 2013, concerning your appeal of the Notification of Disciplinary Action letter issued to you on February 13, 2013 by Deputy Warden Darrell Johnson. You and the Gwinnett County Department of Corrections (CD) representatives were given an opportunity to present documents and verbal information in support of your respective positions. I considered all the information provided at the ESM. I reviewed the grievance file. I also reviewed the CD Professional Standards Unit investigation report. My recommendation is that the grievance be denied. Should you wish to appeal my recommendation to the Merit System Board, you must submit your appeal to me in writing within seven (7) calendar days of receipt of this letter. If you have procedural questions, please contact Ms. Tandy Krogh by calling (770) 822-7939.

Parties Present at the Executive Secretary Meeting

For the Employer

Warden David W. Peek
Deputy Warden Darrell Johnson
Gwinnett County Department of Corrections

For the Employee

[Redacted]
Grievant

Issue

Was the five (5) days suspension of Sergeant [Redacted] for good cause, consistent with the Merit System Rules and Regulations (Merit Rules), fair and equitable?

Procedural History

On February 6, 2013, Deputy Warden Darrell Johnson issued a Notification of Intent to Suspend to Sergeant [Redacted] for several incidents in connection with her making a report of misconduct against her supervisor, Lieutenant Audrey

Parker. ██████ responded in writing on February 8, 2013, denying any misconduct. Johnson issued a Notification of Disciplinary Action dated February 13, 2013, imposing a five (5) days suspension. On February 19, 2013, ██████ timely appealed the disciplinary action to Warden David W. Peek. Peek denied the appeal in a memorandum dated February 28, 2013. By letter dated March 6, 2013, ██████ timely appealed to the Executive Secretary. An ESM was held as described above.

Position of the Department of Corrections

The CD argued that Williams made a serious allegation against her supervisor based on ██████ opinion, rather than facts. ██████ opinion was not supported by any of the other officers or inmates who were interviewed. ██████ made statements to the investigator about her supervisor, in an effort to justify her opinions, which were arguably slanderous. The investigation revealed two (2) incidents where ██████ should have reported an inmate's conduct, but failed to do so. The investigation also revealed that ██████ inappropriately discussed her suspicions concerning her supervisor with subordinate officers. The CD maintained that the evidence submitted supports the charges brought against ██████ and that the penalty was appropriate.

Position of the Grievant

██████ is adamant that she did nothing wrong, other than talking to subordinates about her supervisor. She remains convinced that her supervisor engaged in inappropriate conduct with an inmate. She alleges that there is a code of silence which kept other officers from coming forward with the truth. She maintains that she did not report the two (2) incidents because she was unsure of the inmate's intent. She contends that she was the victim of retaliation for reporting misconduct by her supervisor. She complained that she was the only officer required to take a polygraph test, which she passed. ██████ also claimed that the CD did not follow progressive discipline, especially since she is a 14 year employee with a clean disciplinary record prior to this disciplinary action.

Facts

On October 4, 2012, ██████ called Captain Donald Dagen and reported that Parker was acting suspiciously by spending a lot of time with inmate Rodrickus Williams in areas of the building that were not monitored by security cameras. Dagen immediately informed Johnson of the allegation. Johnson met with Williams the next day. He instructed ██████ to write a statement describing what she observed between Parker and inmate Williams. ██████ submitted a written statement to Johnson dated October 9, 2012, in which she set out her reasons for making the allegations against Parker. After reading ██████ written statement, Johnson forwarded the information to Peek. Peek directed the Professional Standards Unit (PSU) to investigate ██████' allegations. Lieutenant Scott Pickens conducted the investigation and prepared the report.

In her written statement dated October 9, 2012, ██████ stated that she informed Parker in May 2012 that Officers Fullwood and Carstens had told her inmate ██████ was known for masturbating when a female officer was assigned to his dorm. The PSU investigation revealed that no one had actually seen inmate ██████ masturbating.

██████████ stated that she observed inmate Williams standing naked at the entrance to the shower while Parker was sitting at the officer station. ██████████ left the area because she was "uncomfortable." Later, ██████████ stated that Fullwood told her inmate Williams did that for Parker. Fullwood denied making the comment attributed to her by ██████████. ██████████ did not report inmate Williams' shower conduct, nor did she address his conduct with him.

On October 4, 2012, ██████████ saw inmate Williams leaving the restroom and pulling up his pants. She saw his penis and observed that he did not have on underwear. ██████████ wasn't sure what inmate Williams' intent was, so she did not report his conduct. ██████████ did not indicate how this incident is connected to Parker.

In her written statement, ██████████ related several times when she was monitoring the security cameras, and she observed Parker and inmate Williams enter a location where there was no coverage by the cameras. Many times the location was a janitorial closet. Inmate Williams told the PSU investigator that he was instructed to take the wrappings off toilet paper rolls, which he did at the janitorial closet. Inmate Williams stated that it took some time to unwrap the toilet paper. ██████████ acknowledged that she herself had escorted inmates to areas where there was no security camera coverage, including the janitorial closet.

██████████ thought it was suspicious that Parker escorted inmate Williams to an off camera area to vacuum. She thought it was suspicious in part because she stated Officer Covington later told her the area needed to be vacuumed. Covington did not recall such a conversation with ██████████.

██████████ stated that there were at least two (2) utility officers available every night, yet Parker made herself available to escort inmate Williams. However, many of the officers interviewed by PSU reported a chronic shortage of utility officers and noted that supervisors were always filling in.

Officer Evans allegedly told ██████████ that he saw Parker and inmate Williams talking in a hall one day, and that they looked suspicious to him. Officer Evans denied making such a comment to ██████████ when asked during the PSU investigation.

The PSU investigation included interviewing all officers assigned to the morning shift - approximately 20 officers. None of the officers reported seeing or hearing any inappropriate behavior between inmate Williams and Parker. Several heard rumors of inappropriate behavior between the two, but had not observed anything themselves.

Inmate Williams was interviewed by the PSU investigator. He denied any personal or sexual relationship with any officers, including Parker.

Parker was interviewed by the PSU investigator. She stated that she frequently escorted inmate Williams, and others, because of staff shortages. She explained her trips with inmate Williams to the janitorial closet, where he would unwrap toilet paper rolls.

Parker stated that her relationship with ██████████ had been excellent, both before and after Parker's promotion to Lieutenant on July 21, 2012. Parker stated that ██████████ had never indicated to her that ██████████ had a problem with her behavior. Parker denied any personal or sexual relationship with inmate Williams.

██████████ told the PSU investigator that she became suspicious of Parker in May 2012, but was certain by July 2012 that there was something inappropriate going on between Parker and inmate Williams. ██████████ stated that she never saw any inappropriate contact between them, nor did she hear any inappropriate words exchanged between them. Nevertheless, ██████████ stated that she would bet her paycheck that something inappropriate was happening.

██████████ acknowledged speaking to officers Fullwood and Evans about her suspicions. She subsequently also acknowledged that she should not have spoken to those subordinate officers about her suspicions.

██████████ told the PSU investigator that she did not trust Parker working around men. She attributed her lack of trust to rumors she heard seven (7) years ago about Parker and another inmate having sexual contact. ██████████ stated that Parker appeared to be the type of person that will sleep around with men for money. ██████████ said that she and Parker got along well when they were both sergeants, and that they got along for the most part since Parker's promotion.

Parker took a polygraph test. The results showed no deception on her part. She passed the polygraph test.

Discussion and Conclusion

██████████ was suspended under Section 420.000 of the Merit Rules, specifically Item 10 (Violation of County Ordinances, Merit System Rules and Regulations, administrative policies or department rules). The CD Manual provisions cited as having been violated were Rule 1 (Duty to Abide by All Laws and Orders), Rule 4 (Insubordination) and Rule 58 (Duty to Be Corrections Officials). The CD also cited the Gwinnett County CD Policies and Procedures Manual Code of Ethics (Manual), and the Gwinnett County CD Post Orders-General, Section J (Dealing with Inmates/Residents) (Post Orders).

The Merit Rules created an evidentiary standard of preponderant evidence (Section 220 (4) – “by the greater weight of the evidence”). The CD had to prove by preponderant evidence that ██████████ committed the cited violations.

Section 420.000 of the Merit Rules, specifically Item 10 (Violation of County Ordinances, Merit System Rules and Regulations, administrative policies or department rules) was violated in this case if the CD proved a violation of CD Rules, the Manual or the Post Orders. Rule 1 – Duty to Abide by all Laws and Orders – is essentially the CD's reiteration of the Merit Rules, Item 10.

Rule 4 – Insubordination is defined as requiring CD employees to treat supervisors with respect and to refrain from becoming ... demeaning towards any supervisor. Such disrespectful or inappropriate conduct may be physical, verbal, expressed or implied. This definition of insubordination encompasses more conduct than simply not following a supervisor's direction.

Rule 58 - (Duty to Be Corrections Officials) requires CD employees to comply with Post Orders and to enforce the rule of inmate/resident behavior. The Manual Code of Ethics states that officers will never act officiously or permit personal feeling, prejudices, animosities, or friendships to influence decisions. The Post Orders – General Section J, Item 5 requires officers to actively supervise inmates and to consistently enforce all rules, regulations and inmate handbook provisions.

██████████ argued that she did not do anything to warrant disciplinary action against her. She reported what she still believes was inappropriate conduct by Parker, and she was the only one disciplined.

At the ESM, ██████████ continued to insist that Parker and inmate Williams engaged in misconduct. She has thoroughly convinced herself that she is correct. However, just because ██████████ firmly believes she is correct, does not make it so.

██████████ suspicions are just that – suspicions unsupported by any objective evidence. ██████████ has developed tunnel vision on this matter. ██████████ told Parker about inmate Williams' rumored masturbating before female officers. She said she did so because she wanted Parker to be aware of the behavior. ██████████ apparently never considered the possibility that Parker escorted inmate Williams in part because of what ██████████ told her and a desire to not place other female officers in an isolated position.

██████████ acknowledged that she herself escorted inmate Williams and other inmates to locations that were not covered by the security cameras. She apparently did not find anything suspicious about her activities, but when Parker engaged in similar activities, those activities were suspicious to ██████████

██████████ considered ten (10) minute stops by Parker and inmate Williams at the janitorial closet to be suspicious. Parker and inmate Williams were interviewed separately by the PSU investigator. Interestingly, they both told the investigator that inmate Williams had to unwrap toilet paper rolls, which took some time to do. They either did a very good job of coordinating their stories, or they were truthful when responding to the PSU investigator's question. I find no reason to question their truthfulness.

██████████ acknowledged that she made a mistake when she confided in subordinate officers about her suspicions concerning Parker. She realizes now that she should have only raised her suspicions with her superiors.

██████████' remarks to the PSU investigator about why she did not trust Parker around men in the workplace were arguably slanderous. The fact that ██████████ would rely on a rumor concerning Parker from seven (7) years ago to form an opinion about Parker's character, and then express that opinion to the PSU investigator, or for that matter anyone, demonstrates how divorced from reality Williams is when it comes to Parker and inmate Williams.

The fact that Parker was promoted to Lieutenant in July 2012, and ██████████ was not, at least raises some question about the timing of Williams' suspicions and her decision to report her suspicions. Parker thought that she and ██████████ got along fine both before and after Parker's promotion. ██████████ thought the relationship was not as good after Parker was promoted. While the CD did not assert that ██████████ acted out of jealousy, the timing is at least suspect.

There is a line to be walked between encouraging and requiring employees to report misconduct and then disciplining employees who do report what they believe is misconduct. I think the CD would agree that ██████████ would not have been disciplined had she stuck to reporting what she considered to be suspicious facts. In this case and taking a view most favorable to ██████████, the suspicious facts are that Parker spent a good deal of time escorting inmate Williams to areas that were not always under surveillance by the security cameras, and occasionally spent up to ten (10) minutes out of view of the security cameras. Such a report may or may not have led to a PSU investigation, but it in all likelihood would not have led to any disciplinary action against ██████████. The CD might have counseled ██████████ that she needed more facts before making a report of misconduct in the future, or just told her that what she had was not enough to warrant an investigation.

██████████ did not just report suspicious facts. She reported a lot of supposition and speculation. For example, ██████████ reported that she saw inmate Williams standing naked in the shower door while Parker was sitting at the officer station. ██████████ never stated that Parker also saw that inmate Williams was naked. Without that connection, I see no legitimate purpose for ██████████ including the incident in her written statement. If Parker was unaware of inmate Williams' misconduct, I fail to see how this incident is related to an allegation of inappropriate conduct between Parker and inmate Williams.

Once the PSU concluded its investigation, it became apparent that ██████████ allegation of misconduct by Parker was unsubstantiated. However, the PSU investigation revealed misconduct by ██████████ in not reporting inmate Williams standing naked in the shower door and exposing his penis while exiting the restroom. It also revealed that ██████████ inappropriately discussed her suspicions with subordinate officers. Those discussions likely led to the rumors that several officers reported hearing concerning Parker and inmate Williams.

What ██████ told the PSU investigator about why she did not trust Parker was arguably slanderous. While employees are encouraged and required to cooperate and be forthcoming during investigations, they are not free to justify unsupported opinions by rumor and character assassination.

I do not agree with ██████ that she was entrapped by the PSU investigator to say the things she did about Parker. The investigator in no way directed her down the path she chose.

The fact that ██████ passed the polygraph test only shows that she believed what she reported. It does not alter the fact that what ██████ believes is not supported by the objective evidence.

I find no evidence that the CD took disciplinary action against ██████ in retaliation for her reporting allegations of misconduct by Parker. The PSU investigation revealed misconduct by ██████ that the CD could not ignore.

The Merit Rules set out a policy of progressive discipline. ██████ argued that progressive discipline was not followed in this case. Williams is a 14 year employee with a clean disciplinary record prior to this case. Peek contended that he took those facts into consideration when he upheld the 5 days suspension. He maintained that a more severe disciplinary action would have been appropriate in the absence of ██████ years of service and clean disciplinary record. Progressive discipline does not mean that the CD must start with the mildest form of discipline, regardless of the type of violations committed. ██████ misconduct covered several violations. I have no authority to alter the severity of the discipline imposed, even if I was inclined to disagree with that penalty – which I am not.

I find that the CD proved by preponderant evidence all the charges.

Recommended Decision

I recommend that the five (5) days suspension be sustained and that the grievance be denied.

Yours Truly,

Harry G. Mason / TKK

Harry G. Mason
Executive Secretary

c: Kenneth Poe, Director of Human Resources
Hazel McMullin, Deputy Director of Human Resources
Warden David Peek, Corrections
Johnanna Weathers, Human Resources Manager