



8-25-2009

TENNESSEE DEPARTMENT OF  
CORRECTION, Agency, vs. COREY CONLEY,  
Grievant.

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**BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION**

**IN THE MATTER OF:** )

)

**TENNESSEE DEPARTMENT** )

**OF CORRECTION,** )

)

**Agency,** )

)

**v.** )

**DOCKET NO.: 26.05-101167J**

)

**COREY CONLEY,** )

**Grievant.** )

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**INITIAL ORDER**

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The hearing in this matter was held on August 25, 2009, at West Tennessee State Penitentiary in Henning, Tennessee, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the

Tennessee Civil Service Commission. John Drummond, Staff Attorney, Tennessee Department of Correction, represented the State. Grievant Corey Conley, Sr. represented himself.

The subject of this appeal is whether or not Grievant Conley violated Tennessee Department of Correction Policy 305.03 (Employee/ Offender Interaction), Policy 302.08 (Code of Conduct and Oath of Correction Department Employees), and/or failed to exercise good judgment, and if so, what discipline, if any, is appropriate for Grievant's conduct.

After consideration of the record and arguments of the parties, it is **DETERMINED** that the Grievant did violate some, but not all, of those policies and that the proper discipline for Grievant's conduct is a **SUSPENSION** of **FIFTEEN (15) DAYS**, without pay.

This decision is based on the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. In October 2008, Grievant Corey Conley, Sr. was serving as a Correctional Corporal at West Tennessee State Penitentiary (WTSP). WTSP houses a variety of

inmates, from minimum to maximum security. Mr. Henry Steward is the Warden at WTSP.

2. At the time in question, Sgt. William Smith was the Grievant's immediate supervisor. Lt. Elmer Green was Sgt. Smith's supervisor and Captain Charles Sweat was Lt. Green's supervisor. Each of the three (3) supervisors has in excess of twenty-seven (27) years of experience in corrections, individually.

3. Since 2007, all Tennessee Department of Correction (TDOC) facilities have been tobacco-free. Tobacco is considered contraband in a TDOC facility.

4. On October 15, 2008, at approximately 12:45 am, Grievant Conley entered the dining hall at Site #2 at WTSP. Inmate Jackson, a food service worker, handed the Grievant a tray that consisted of French fries. Underneath the French fries was a package, more specifically, a sheet of folded paper with a note and one hundred dollars (\$100.00) in U.S. currency, all wrapped in a brown paper towel. There is dispute regarding the denominations of the bills that comprised the \$100, but all witnesses agree that the total amount was \$100.

5. The note written on the paper read:

Conley, Man, bring me two packs of Marlboro Lites, 100's. That's what I need before Treadway gets back. When you bring them, when you get your tray, eat on the side over next to the wall right. Put it in your tray and throw the tray thru the

window, the tray window. I will be back there waiting on you. Don't put the tray in the trash can; put it in the tray window. All right. Before Sunday night. Thursday night is a good night.

6. Grievant Conley does not dispute that he placed the package in his pants' pocket, when he discovered it on his tray.

7. Lt. Green, Sgt. Smith and Capt. Sweat testified that Grievant Conley initially sat down to eat alone, but then joined their table. Grievant Conley testified that he joined Green, Smith and Sweat immediately.

8. After the meal had concluded and the Grievant's meal companions had dispersed, about twenty (20) minutes later, Grievant Conley phoned Sgt. Smith and stated that he had received a note and cash. Sgt. Smith and Lt. Green met Grievant Conley in Operations. Grievant Conley handed the supervisors the money, note and brown paper towel wrapping. After Grievant Conley showed Lt. Green the note and the money that Inmate Jackson had given him, Lt. Green notified Capt. Sweat. After Capt. Sweat arrived, another conversation ensued with Sweat, Green and Conley.

9. Lt. Green asked the Grievant why he did not say something, as soon as he received the package. Grievant explained that he did not want to "set out" Inmate Jackson.

10. Capt. Sweat was surprised that the Grievant did not show surprise at a non-food item being on his food tray, especially given that the meal was being consumed inside a prison and that the tray was handed to him by an inmate.

11. Inmate Jackson was charged with violation of TDOC Policy 502.05.VI.A.66, Solicitation of Staff. When interviewed by Investigator Corporal Teresa Edwards, Inmate Jackson allegedly indicated that he was angry that the Grievant had dimed him out, since the two (2) of them were friends.

12. According to Edwards, Grievant Conley admitted that, prior to the smoking ban, he brought Inmate Jackson cigarettes because he was appreciative of Inmate Jackson's meals and "extra benefit," i.e. breakfast sandwiches. At the hearing, Grievant Conley denied that he made that admission to Investigator Teresa Edwards.

13. Review of the Exhibits shows that they include the Grievant's handwritten statement – "Before the smoking ban ...I gave him cigarettes at Site 3. Known him maybe a year. He used to make us bacon-egg sandwiches, as a kitchen worker. He never asked for one. I saw him smoking ... he was helping me out so I gave him Newports. I been at Site 2 for a year. ..." Grievant Conley's statement was written on October 16, 2008, immediately after the incident in question.

14. It is **DETERMINED** that although Grievant Conley strongly argued that Edwards' Report was in error, it is **NOTED** that the Grievant never sought to explain his earlier written statement and did not object when it was admitted into evidence.

15. According to Edwards' Investigation Report and testimony, Grievant Conley had discussed with Inmate Jackson the number of his (Conley's) children and that he was experiencing financial stress. According to the Report, it was after that revelation that the arrangement of \$100 for cigarettes was developed.

16. Edwards identified two "red flags" concerning Grievant Conley's behavior after he observed the packet Inmate Jackson had placed underneath his food.

To me that's very odd, especially as an investigator, that I open my tray back up and I pull a piece of paper out -- once something has touched my food, I'm very particular about that. That would be a red flag to me why he didn't open that up right then and say, you know -- or make somebody else aware when there was a Captain and a Lieutenant and a Sergeant in the chow hall at the time or go to the table and sit down and pull it out and look at it, and open it up. That draws a red flag for an investigator right there, why, if he consciously pulled it out, and he admitted to us in the interview that, yeah, he pulled it out and put it into his pocket. He didn't think anything about it. That's extremely odd that you pull something out from underneath your food and don't look at it, in a penitentiary, that's very unusual.

17. For Ms. Edwards, Mr. Conley's uncritical acceptance and immediate concealment of the foreign object which he knew, or believed, had just been placed under his food by Inmate Jackson, and his unusual and unexplained delay in reporting it, were indicative of an ongoing appropriate staff / inmate interaction between Inmate Jackson and Conley. Ms. Edwards concluded and opined that Conley's behavior was not that of a "normal, rational" trained Corporal, faced with the kind of situation confronting Conley on October 15, 2008.

18. Although Grievant raised concerns about the accuracy of Edwards' Report, after he reviewed information on her background, training, and experience, the Grievant stipulated that Teresa Edwards "had more than enough professional training... to conduct a thorough investigation... [and] to be able to produce a detailed, precise and professional report."<sup>1</sup>

19. Inside a Tennessee prison such as WTSP, \$100 is "a lot of money for an inmate." \$100 is the "going rate" at which an inmate can buy two packs of cigarettes, which then could be sold individually to other inmates for \$10-\$15 apiece inside the prison compound. Capt. Sweat, Lt. Green, and Warden Steward, correctional veterans with decades of experience dealing with prison inmates, agreed that it would be highly unusual

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<sup>1</sup> See, Stipulation of Corey Conley.



for an inmate to give \$100 in cash to an officer, or anyone else for that matter, without expecting something in return.

20. Warden Steward testified, based on his extensive experience in corrections, that he considered the note from Inmate Jackson to be instructive, not solicitous. The Warden explained the basis for his conclusion as being that Jackson was telling rather than asking Conley what he wanted done, how he wanted the contraband tobacco transferred to him, where he wanted Conley to eat his dinner and afterwards to deposit his tray through the window, when he was through eating, not in the garbage can, as is traditional. 21.

Warden Steward did not believe that Inmate Jackson would have put that much money down “as a test,” but rather as a down payment for the officer to do something as promised. Inmate Jackson’s choice to address Corporal Conley as “Conley, Man,” suggested to Warden Steward that the two were “acquainted” and had “something established.”

22. Warden Steward noted also that (Officer) Treadway, who is usually in charge of the kitchen, is a “very experienced officer” habitually “aware of his surroundings, ... always vigilant, ... [and] looking for things ... Treadway would have noticed the reaction on the inmate, that’s why he [Jackson] didn’t want Treadway in there.” For these reasons, Warden Steward could not characterize Jackson’s communication with Conley as *solicitation*, as that term is used in TDOC Policy.

23. The content and tone of Inmate Jackson's note to Conley, and the fact that so much money accompanied it, suggested strongly to Capt. Sweat that Inmate Jackson was not "trying to start something," rather, that something was already going on between the inmate and the officer. The letter reflected a previous understanding between Conley and Jackson, specifically with respect to a transaction involving cash for cigarettes.

24. Warden Steward further testified that he recommended termination (not suspension) for Grievant not primarily based on the twenty (20) minutes of delay, which raised suspicion of collusion, but primarily based on his perception that Grievant Conley had not been fully forthcoming about his previous and then current relationship with Inmate Jackson. The Warden became convinced that the Grievant was "dirty" and could not be trusted. Trust is particularly important in a correctional environment

25. Grievant Conley testified that he did not have an inappropriate relationship/friendship with Inmate Jackson. On the other hand, the Grievant initially testified that he "did not find it odd that inmate Jackson placed a note underneath his food."

26. Grievant Conley explained the twenty (20) minute post-meal delay in several ways. First, Grievant Conley testified that he suspected that the note concerned, what he (Conley) considered, a non-urgent matter, such as threats towards an inmate or an officer. Grievant offered no explanation for why he waited to eat his French fries, if he thought the paper might contain information about a need for assistance.

27. Second, the Grievant continued that he was concerned that Inmate Jackson would be upset if he (Grievant Conley) “set” him (Inmate Jackson) “out.” In hypotheticals, Grievant noted Inmate Jackson’s access to hot water, knives, and other items in the dining hall.

28. Grievant was correct about Inmate Jackson being upset when he found out that he had been “set out” or “dined out,” according to Edwards’ Investigative Report. Thus, it would seem that fears for his (Conley’s) safety, framed hypothetically for purposes of his cross-examination of the State’s witnesses, actually might very well have motivated Conley’s lack of a demonstrative response to the discovery of the packet during the time he was in the dining room. However, if that is the case, the reasonableness of Mr. Conley’s delayed reaction to receiving the note and money from Inmate Jackson may well bolster the impression that Conley and Jackson had a deal, on which Conley reneged.

29. As of October 2008, Inmate Jackson had an extensive disciplinary record, which included multiple infractions for possession of free-world money and tobacco products. Inmate Jackson also had knowledge of Grievant Conley’s family and its financial condition, although the Grievant denies having shared such information with Inmate Jackson.

30. Grievant noted, correctly, that no specific time limit is provided in TDOC Policy for the term “prompt.” Grievant opined that notifying his supervisors of receipt of

the package within twenty (20) minutes falls within the responsibility to report such incidents “promptly.” Grievant testified that he did not return to his post or walk around the Unit Yard, prior to notifying his supervisors.

31. Grievant Conley did not call Inmate Jackson to testify, to confirm or deny the matters attributed to him through Edwards’ Report and testimony.

32. Although the Grievant’s character and habit for truthfulness were at issue, the Grievant did not call previous Supervisors, community associates, or others to testify in that regard.

33. The Commissioner of TDOC reduced the termination, proposed by Warden Steward for Grievant’s conduct, to a fifteen (15) day suspension, believing that the evidence presented to him, likely through a written report, did not “indicate unequivocally that [Grievant] and the inmate were interacting in a manner contrary to department policy.”

34. Subsequently, TDOC terminated the Grievant for other reasons and Grievant failed to appeal that second termination.

## CONCLUSIONS OF LAW

1. As the petitioning party, the Tennessee Department of Correction bears the burden to show, by a preponderance of the evidence, that misconduct occurred, that such conduct violated the Department of Correction's Rules, Policies, Procedures, Orders, Canons of Ethics, and/or statutes, and/or Department of Human Resources' Rules, and to demonstrate what discipline of Grievant, if any, is proper.

2. A case can be successfully proven by direct evidence, circumstantial evidence or by combination of direct and circumstantial evidence. *Everett v. Evans*, 30 Tenn. App. 450, 207 S.W.2d 350, 352; *Ross v. Griggs*, 41 Tenn. App. 491-498, 296 S.W.2d 641. Circumstantial evidence is defined by Professor Prosser in his action on Torts-1941-at page 291 as follows:

“Circumstantial evidence is evidence of a fact or set of facts from which the evidence of another fact may be reasonably inferred. It involves not only the assertion of witnesses as to what they have observed, but a process of reasoning by which a conclusion is drawn. Negligence may, of course, be proved by circumstantial evidence. The testimony of eye witnesses of the actor's conduct is not required and it may be inferred from the proof of other facts and circumstances.”

3. The State contends that the Grievant violated:

A. TDOC Policy Index # 305.03 VI.L. on Employee/Offender Relationships:

*An employee who witnesses or knows of a violation of this policy must promptly report the violation. Any employee who fails to promptly report a violation shall be subject to disciplinary action, up to and including termination.*

B. TDOC Policy Index 305.03.VI.H.:

*An employee shall not trade, barter, or enter into any business transaction or maintain any business interaction with offenders or their families except as outlined in Policy #510.02, nor shall an employee carry, mail, pass, or throw contraband in or out of any correctional institution. An employee shall not donate items to offenders or their families without prior approval of the Warden. Should an employee have knowledge of any employee engaged in such trafficking, it is the employee's duty to report such information to his/her supervisor. Failure to do so shall result in disciplinary action. Any attempt by an employee to communicate or do business with offenders or their families through their relatives and/or clearly identifiable close associates in an effort to circumvent this policy shall be a violation of this policy.*

4. The State also contended, and the Letter of Termination and Letter of Fifteen (15) day Suspension also charge, that the Grievant violated Policy 302.08, Code of

Conduct and Oath of Correction Department Employees. However, review of the record<sup>2</sup> shows that the State did not place into evidence the Grievant's signed Oath. Therefore, violation of that Code and Oath will not be considered here.

5. In its Proposed Order, the State contended that the Grievant violated TDOP Rule 1120-10-06 (8), which sets forth the disciplinary offense of "Conduct unbecoming of an employee in the state service" by his violation of Department Policy #305.03 and his false and misleading statements. Since conduct unbecoming is considered a very egregious offense, but was not listed in either the Grievant's discharge letter or his suspension letter, that specific offense will not be considered here. Rather, the focus, in determining the outcome in this matter, will be on whether or not the TDOC policies, listed in the letter of termination/letter of fifteen (15) day suspension, were violated.

6. The Letter of Fifteen (15) day Suspension also speaks of the Grievant's alleged exercise of poor judgment.

7. Based on the demeanor of Warden Steward, Lt. Green, Sgt. Smith, Capt. Sweat, and Investigator Edwards, and the consistency of their testimony with that of one another, it is **CONCLUDED** that their testimony is **CREDIBLE** and it is **CREDITED**.

8. Based on the Grievant's lack of testimony, comment or explanation for the stark discrepancy between his written statement ("Before the smoking ban, ... I gave him

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<sup>2</sup> If the State believes that it did place such into evidence, a Petition for Reconsideration may be in order.

cigarettes at Site 3. ... He used to make us bacon-egg sandwiches, as a kitchen worker. He never asked for one. I saw him smoking ... he was helping me out so I gave him Newports. ...) and his testimony at the hearing that he had never given Inmate Jackson cigarettes, his failure to call Inmate Jackson as a witness (Adverse Inference is taken), and his failure to call character witnesses concerning his habit for truthfulness, and in light of the written statement's consistency with the testimony of the other witnesses and the Investigative Report, it is **CONCLUDED** that the Grievant's written statement was truthful and that his testimony denying exchange of cigarettes with Jackson is less than truthful.

9. After due consideration, it is **CONCLUDED** that Grievant Conley's delay of twenty (20) minutes in reporting receipt of the package from Inmate Jackson does **NOT VIOLATE** Policy Index # 305.03.VI.L., in light of Inmate Jackson's immediate access to hot water, knives, and other kitchen equipment, in the dining hall.

10. Based on:

A. The testimony of credible witnesses, who do not have a significant stake in the outcome of this matter, the Exhibits and Report, logical inferences and reasonable explanations,

B. Grievant Conley's previous history of bringing Inmate Jackson cigarettes, as described in his own hand,



C. Grievant Conley's lack of surprise at an object being beneath his French fries,

D. Grievant Conley's decision to place a package with allegedly unknown contents into his pants' pocket, which a reasonable person would not do in the free world and which a reasonable, trained, experienced Corporal would not do in a correctional environment,

E. Grievant Conley's odd and unexplained<sup>3</sup>, but clearly stated desire not to "sell out" Inmate Jackson,

F. Grievant's own written statement, which contradicts his testimony,

G. The non-solicitous nature of the note from Inmate Jackson, i.e. the note itself does not appear to inquire as to whether or not the Grievant might be willing to obtain cigarettes, but rather assumes that the Grievant will do so, then lays out the manner in which the cigarettes are to be delivered and suggests the night of the week for delivery,

H. The Grievant's decline to call Inmate Jackson as a witness, so that he could confirm or dispute the statements that Edwards' claims Jackson made in her Report,

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<sup>3</sup> As an Officer who routinely enforces TDOC Policies, it is not clear why the Grievant would have any reluctance to see Inmate Jackson disciplined for possession of contraband (cash).

I. The taking of an Adverse Inference regarding the testimony of Inmate Jackson,

J. Grievant's failure to dispute Inmate Jackson's statements, generally, as well as failure to dispute Jackson's statements, merely because he is a prison inmate,

K. Inmate Jackson's knowledge of Grievant's family and its financial condition, although Grievant denies having discussed such with him,

L. Grievant's failure to call previous Supervisors and other potential character witnesses with regard to the Grievant's reputation for truthfulness,

by a preponderance of the evidence, it is **CONCLUDED** that Grievant Conley **VIOLATED** TDOC Policy Index 305.03.VI.H. and **FAILED** to exercise **GOOD JUDGMENT**, for a reasonable, trained, experienced correctional officer, with the rank of Corporal.

11. With violations having been proven, one must next consider the appropriate discipline, if any.

12. It is well-established that correctional institutions are unique places "fraught with serious security concerns." Bell v. Wolfish , 441 U.S. 520, 559, 99 S. Ct. 1861, 1989

(1979). The position of correctional officer is recognized as a sensitive one. Reece v. Tennessee Civil Service Commission, 699 SW 2nd 808, 812 (Tenn. App. 1985).

13. Progressive discipline is certainly preferable to termination, if circumstances allow it. However, in certain cases, “the good of the service” requires an employee’s removal, rather than his rehabilitation, and places the good of the institution and its mission over the needs and interests of the individual employee. In Kelly v. Tennessee Civil Service Commission, 1999 WL 1072566 (Tenn. Ct. App. Nov. 30, 1999), the Tennessee Court of Appeals clarified the requirements of progressive discipline under T.C.A. § 8-30-330, which provide that “supervisors are expected to administer discipline beginning at the lowest appropriate step.” *Id.* at \*4. The Court explained that:

“[p]rogressive discipline does not require a supervisor to begin at the lowest level of discipline regardless of the nature of the employee’s conduct. It simply means that the supervisor should impose the lowest appropriate punishment taking into account the nature of severity of the employee’s behavior.” *Id.* In addition, “supervisors have the discretion to determine what punishment fits the offense.” *Id.*

14. T.C.A. §8-30-330(c) sets forth that when corrective action is necessary:

*The supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance.*

15. It appears that the Grievant has not been subject to earlier disciplinary action by TDOC.

16. Since Grievant's conduct in bartering with an Inmate is serious, a written reprimand would not be sufficient. A suspension, of some length, would be reasonable.

17. After due consideration, based on the above, it is hereby **ORDERED** that Grievant Corey Conley, Sr. receive the discipline of a **SUSPENSION FOR FIFTEEN (15) DAYS**, without pay. Further, the Grievant is to be made whole, for any work time missed beyond the suspension of fifteen (15) days and the date of his (second) termination, for other causes.

18. As a practical matter, the State may need to review the time period between the Grievant's initial termination, the Commissioner's reduction of the discipline to a suspension of fifteen (15) days, and the Grievant's subsequent termination, in order to verify that the Grievant has been made whole, with regard to money and other benefits, to which he would be entitled, if and only if the Grievant was not made whole earlier, when the Commissioner of TDOC reduced the Grievant's discipline from termination to a fifteen (15) day suspension.

19. If such review shows that the Grievant may be owed funds, etc., such are to be **PAID** to the Grievant on a timely basis, contingent upon the Grievant's providing the State official records (ex. copies of paychecks, etc.) of any monies earned by Grievant

during the pendency of this appeal, so that the funds which the State must pay are reduced by the requisite amount, consistent with applicable law.

This Initial Order entered and effective this the \_\_\_1st\_\_\_ day of \_\_April,\_\_ 2010.

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Mattielyn B. Williams

Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 1st day of April, 2010.

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Thomas G. Stovall, Director

Administrative Procedures Division