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JUSTIN DANIELS

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:)
)
)
JUSTIN DANIELS) **DOCKET NO. 26.05-114168J**
)
)

INITIAL ORDER

This matter was heard on February 28, 2012 before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Tennessee Civil Service Commission, by video-conference. The State was represented by Mr. Bryce Coatney, Assistant General Counsel, Tennessee Department of Correction. Grievant Justin Daniels represented himself.

The record closed on April 16, 2012, when the State's Statement regarding discipline of other West TN State Penitentiary employees was filed.

The subject of this appeal is whether or not the Grievant engaged in misconduct; and if so, is termination the proper discipline.

After due consideration of the record and arguments of the parties, it is **DETERMINED** that Grievant Daniels engaged in misconduct and that termination is the proper discipline for the Grievant's misconduct.

This decision is based on the following:

FINDINGS OF FACT

1. West Tennessee State Penitentiary (WTSP) is operated by the Tennessee Department of Correction (TDOC) and houses inmates. Grievant Justin Daniels has worked for TDOC for nine (9) years, having attained the rank of Corporal six (6) years ago.

2. Corporal Todd Buchanon is a relief corporal which means he works in a variety of capacities. On the evening of May 5, 2011, Corporal Buchanon was serving as Sergeant of the Yard. Corporal Buchanon was escorting a nurse to Unit 1 when he observed ten to twelve (10-12) bags of Moon Lake potato chips on the core office desk in Grievant Daniels' Unit.

3. Moon Lake brand chips are not available outside of WTSP's walls and are only available through the inmate's commissary. Staff members are not permitted to obtain food or snacks from the inmate's commissary. After the nurse accomplished taking a blood pressure, Corporal Buchanon and the nurse noticed the chips again as they left the Unit.

4. Corporal Buchanon immediately reported the chips to Captain Kenneth Boyd.

5. Grievant Daniels never provided an explanation for why the chips were on his Unit's core office desk on May 5th without him (Daniels) reporting such to Captain Boyd, as he had done on an occasion several weeks before.

6. At that time at WTSP, staff members were not allowed to bring food from home or other sources, according to the testimony of the witnesses. The witnesses agreed that that policy was relaxed, at some point. Exhibit 1, Policy 504.01E makes specific provision for introduced food.

7. The food for WTSP staff members was contained in trays in the chow hall. Only inmates were allowed to purchase commissary items. Trading chow hall trays for commissary items was strictly forbidden.

8. When the Moon Lake brand chips were observed, it suggested that staff members were or a staff member was trading chow hall trays of food in exchange for commissary items from the inmates, a violation of Policy 504.01.1E and Policy 305.03 VI. H.

9. It seems that there were also Moon Lake chips and Little Debbie snacks in the locker in the core room. However, it seems that more than one person has a key to the locker. The focus of the misconduct, in this Order therefore, is on the ten to twelve (10-12) bags of Moon Lake chips that were sitting on top of the desk, in plain view of Corporal Buchanon, the nurse, and Grievant Daniels.

10. Corporal Buchanon admits that he did not observe Corporal Daniels handling the chips. The tape of activity in the core room, oddly, was too dark to show anyone handling the chips and so was not presented at the hearing.

11. Prior to this incident, Corporal Buchanon was aware of rumors that Corporal Daniels was passing notes between inmates. Specific examples of Grievant

passing notes were not presented at the hearing. Grievant was not terminated for passing notes.

12. Captain Boyd testified that staff had been watching for a while because it appeared that “every time that Mr. Daniels ... was working ... (and) come to get chow to take it back to their units it always be an excessive amount of food. We only have three officers down there at nighttime. And anywhere from five to six trays would go out every night. And also when ... they get back to the unit, we could hear them call Delta Pod door. And we, like I say, we’ve been listening to – couple, three months.” (TR 41-42).

13. Once Corporal Buchanon made his report, Captain Boyd called Grievant Daniels to his office. Captain Boyd has worked for TDOC since 1986, having started as a Correctional Officer.

14. Testimony regarding what happened in Captain Boyd’s office that evening differs significantly.

15. Grievant testified that he never engaged in the conduct of trading chow hall trays for commissary items and that the only reason he confessed to doing so was due to pressure from Captain Boyd. Grievant Daniels continued that Captain Boyd recommended that he do so, in order to avoid a full investigation and termination from employment.

16. Grievant Daniels further testified that when he met with Warden Henry Stewart, he was still under Captain Boyd’s influence and therefore pled guilty, although

he (Grievant) admits that the Warden did not badger or pressure him (Grievant) in any way.

17. Grievant continued that he feared reprisal from Captain Boyd if he had changed his statement in speaking with the Warden. Grievant admits that he did not think of declaring an “incompatible” with Captain Boyd, so that the two (2) of them would no longer be placed in the same shift/chain of command.

18. Captain Boyd testified that Grievant Daniels admitted that he had been exchanging chow hall trays for inmate commissary items. Grievant Daniels made a written statement to that effect. Captain Boyd specifically testified that he did not badger Grievant Daniels into confessing and vigorously denies that he suggested that Corporal Daniels state a falsehood in order to minimize punishment.

19. Captain Boyd does admit to saying, in effect, “I said now you know it’s on cameras, cameras will see everything, best thing you can do is tell the truth because too many people hearing it, people knows what’s going on.” (TR 42).

20. Captain Boyd did admit that Grievant Daniels had told him about a shift of staff possessing commissary items, but Captain Boyd indicated that that was weeks beforehand and was resolved.

21. On cross-examination, Captain Boyd admitted that Grievant Daniels did not come into his office and “squeal” on himself (Grievant). Captain Boyd described the scenario as, “You came in, you volunteered after I told you what you were doing then you volunteered it, wrote it out. ... Can’t make a grown man write something if he don’t want to write it.” (TR 52)

22. Grievant Daniels' demeanor at the hearing was quite relaxed. Grievant seemed confident and represented himself well. It is **DETERMINED** that Grievant did not have the demeanor of a person who is easily intimidated.

23. Grievant Daniels did not show any remorse. There is an argument that remorse should be lacking if Grievant is not guilty of the misconduct alleged. However, in this matter, Grievant did not appear remorseful over having told a falsehood in hope of a lesser punishment, assuming arguendo that Grievant's position in this matter is credible.

24. Corporal Buchanon's demeanor at the hearing was one of regretting that he was required to become involved in the entire scenario.

25. Captain Boyd's demeanor at the hearing was professional. Captain Boyd's testimony that he did not seek to intimidate the Grievant, but rather told Grievant to tell the truth, is **CREDIBLE**.

26. Within the last three years, twenty-eight (28) WTSP employees have been charged with violation of Policy 305.03, which concerns employee/inmate relationships. Twenty-three (23) of the twenty-eight (28) were terminated.

27. If one considers only the Policy 305.03 cases in which exchange of food was involved, there are only two (2) comparable cases – one of which resulted in termination; the second of which resulted in a three (3) day suspension. In the latter case, a substitute Warden made the decision and the employee was a correctional officer with only five (5) years of experience, not a ranked officer.

CONCLUSIONS OF LAW

1. As the Petitioner, the Tennessee Department of Correction bears the burden to show, by a preponderance of the evidence, that the Grievant violated Departmental and/or Civil Service policies and that termination is the proper discipline for such violation(s).

2. Grievant's discharge letter, dated August 24, 2011, delineates the reasons for termination as violation of Policy 305.3, Employee/Offender Relationships and as Conduct Unbecoming, Rule 1120-10-.06(8)¹. The discharge letter characterizes Grievant's misconduct as "inappropriate and compromise(ing) the safety and security of the staff, inmates, and the facility. You have relinquished your credibility and effectiveness to function as a member of the security cadre. ..."

3. Exhibit 2, TDOC Policy 305.3, Employee/Offender Interaction, edition May 1, 2008, (Exhibit 5 is the May 15, 1997 version of Policy 305.3) prohibits fraternization with inmates and family members of inmates.

Section VI A indicates that:

Employees shall conduct themselves in a professional manner when interacting with offenders.

Section VI C indicates that:

Conversation with inmates shall be limited to that necessary as part of the employee's duties. ...

Section VI H indicates that:

An employee shall not trade, barter, or enter into any business transaction or maintain any business interaction with offenders or their families ... nor shall an employee carry, mail, pass, or throw contraband in or out of any

¹ The Department of Human Resources revised its Rules in May 2011. Citation for conduct unbecoming in the "new" Rules is 1120-10-.05(11).

correctional institution. An employee shall not donate items to offenders or their families without prior approval of the Warden.

4. It is **CONCLUDED** that trading food items with inmates violates Policy 305.03, employee/offender relationships because interactions and conversations between employees and inmates are supposed to be strictly professional and are not to include trading or bartering. It is also **CONCLUDED** that such trading and bartering conduct is unbecoming a State employee.

5. Exhibit 1, TDOC Policy 504.01E, dated May 10, 2010, indicates that

Introduced food shall be wrapped in either clear see-through plastic, contained in a clear see-through plastic baggie, or in a clear see-through plastic container and shall

1. Not exceed the amount of food that can be eaten during one shift ...
4. Snack foods cannot be in original container.

6. It is **CONCLUDED** that the numerous Moon Lake chip bags may well have been in excess of food that can be eaten in one shift. It is definitely **CONCLUDED** that the chips were in their original, labeled container, i.e. bags with the maker of the chips shown; thus, it is **CONCLUDED** that Policy 504.01E was violated, though technically the Grievant was not charged with violation of this Policy.

7. At the hearing, Grievant asserted that he was not guilty of having exchanged food trays for commissary items. Grievant asserted that he only admitted to such conduct because he was intimidated by Captain Boyd into thinking that it was in his (Grievant's) best interest to, essentially, take a plea in exchange for a lesser punishment.

8. Grievant's assertion forces the Undersigned to determine the difficult question of was the Grievant stating falsehoods to Captain Boyd and to the Warden OR did the

Grievant state falsehoods to the Undersigned, now that he knows that admitting guilt to Boyd and the Warden does not result in a punishment less than termination.

9. One factor in determining the answer, here, is that Captain Boyd made reference to the cameras in the course of making his inquiry of Grievant. If Grievant were truly innocent, it is unclear why the Grievant would not have exclaimed something to the effect of, “Captain, the cameras will show my innocence. Someone else must have engaged in trading with the inmates.” Another factor in determining the answer is why would the Grievant have permitted the “forbidden” chips to have remained on the core desk in his Unit on May 5th; why would the Grievant not have reported the chips to Captain Boyd, as he did several weeks earlier when forbidden chips were present.

10. Overall, based on the above, the demeanor of the witnesses and Grievant and the scenario as a whole, it is **CONCLUDED** by a preponderance of the evidence that it is **NOT CREDIBLE** that the Grievant, a veteran of nine (9) years, having earned the rank of Corporal, would be so intimidated by Captain Boyd that he would lie to the Warden about whether or not he was guilty of having exchanged food trays. Rather, it is **CONCLUDED** that Grievant Daniels **DID TRADE** chow hall trays for commissary items, in violation of Policy 305.3, by a preponderance of the evidence. Were this civil matter a criminal one, where beyond a reasonable doubt is the standard of proof, the decision in this matter would be reversed.

11. 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. Reese v. Tennessee Civil

Service Commission, 699 SW 2nd 808, 812 (Tenn. App. 1985). Policies and rules in a prison are present to ensure security and should not be taken lightly. Security is risked when employees choose to ignore the prohibition of entering into a social or nonprofessional relationship with an inmate.

12. The instances in which termination should be the first discipline administered are rare when the employee's overall work performance has been excellent. In the Matter of Department of Correction v Rick Moore, Docket No. 26.05-12-0018J, p.16, para. 11. Also, In the Matter of Department of Human Services v. Phyllis McDonald and Alice Lucas-Mason, Docket Nos. 26.11-12-0031J and 26.11-12-0033J, p.6, para. 2.

13. 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 provides 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. At first glance, termination for food exchanges with inmates, rather than a thirty (30) day suspension, seemed harsh to the Undersigned. However, enforcement of anti-fraternization policies is key in a correctional environment. Given that twenty-three

(23) of twenty-eight (28) fellow staff members were terminated for fraternization, i.e. Policy 305.03, including for food-related offenses, it is **CONCLUDED** that termination would not be an excessive punishment, in this matter, and is consistent with punishments meted out to others.

15. Based on the above and

- A. Given Grievant's rank as a Corporal,
- B. Given Grievant's nine (9) years of experience as a TDOC employee,
- C. Given Grievant's violation of Policy 305.03,
- D. Given Grievant's unbecoming conduct as a State employee, i.e. trading and bartering with inmates,
- E. Given Grievant's clear willingness to state falsehoods – either to Captain Boyd and the Warden or to the Undersigned – raising issues of credibility,
- F. Given that the stating of falsehoods is conduct unbecoming a State employee,
- G. Given, arguendo, the possibility that Grievant could be easily intimidated by a fellow staff member leading to the question of whether the Grievant could be easily intimidated by an inmate,
- H. Given that Grievant's admitted decision to pursue “a deal,” at the expense of the truth raises issues of underlying character² and credibility,

² Good character would seem important in a correctional environment, both for the smooth operation of the institution, as well as showing a positive role model for the inmates.

it is hereby **ORDERED** that Grievant Daniels be **TERMINATED**, as the appropriate discipline for Grievant Daniel's misconduct, as an average³ employee, despite no prior discipline⁴.

This Initial Order entered and effective this the ___ day of __April __, 2012.

Mattielyn B. Williams
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State
this 25 day of April, 2012

Thomas G. Stovall, Director
Administrative Procedures Division

³ Grievant did not present his evaluation scores or in any way suggest that he had been an exemplary employee.

⁴ Grievant did not indicate whether or not he had received prior discipline. The State did not indicate that the Grievant had received prior discipline.