

IDAHO PERSONNEL COMMISSION
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**IDAHO PERSONNEL
COMMISSION**

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FILED

IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

CARYL FRASIER,)	
)	
Appellant,)	IPC NO. 19-2
)	
vs.)	DECISION AND ORDER ON
)	PETITION FOR REVIEW
IDAHO DEPT. OF CORRECTIONS,)	
)	
)	
Respondent.)	
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This matter is on petition for review from the June 18, 2019 *Memorandum Decision and Preliminary Order* (“*Preliminary Order*”) of Hearing Officer Elaine Eberharter-Maki (“Hearing Officer”) denying Appellant Caryl Frasier’s (“Appellant” or “Frasier”) appeal and upholding the Idaho Department of Correction’s (“Respondent” or “IDOC”) demotion of Appellant from correctional lieutenant to correctional corporal and his transfer to a different south Boise complex facility.

The Hearing Officer found that Respondent had met its burden of proof that Appellant’s conduct during two separate incidents constituted just cause for discipline under IDAPA 15.04.01.190.01 (“IPC Rule 190” or “Rule 190”). The Hearing Officer found that Appellant’s behavior constituted violation of multiple IDOC policies and standard operating procedures (“SOPs”) and constituted just cause for discipline pursuant to IPC Rule 190.01.a. b. and e. Appellant timely appealed the Hearing Officer’s Preliminary Order by filing Petition for Review on July 23, 2019.

The Idaho Personnel Commission (“Commission”) heard oral argument in this matter on September 25, 2020. Appellant is represented by V. Renee Karel, and Oscar Klaas, Deputy Attorney General, represents Respondent.

I.

FACTUAL BACKGROUND

The relevant facts are laid out by the Hearing Officer’s Findings of Fact in the Preliminary Order, and are based on the testimony and evidence at the evidentiary hearing and also include facts stipulated to by the parties. The facts aren’t at issue here and are not challenged on petition for review. A summary of the pertinent facts follows.

A. The First Incident

The first incident occurred late in the evening November 1, 2018 and continued into wee morning hours on November 2, 2018. An incident occurred involving an individual (referred to throughout the Preliminary Order and briefing of the Parties as “CC”) who was civilly committed to IDOC. Summarily, CC was found unresponsive in his cell on the floor, laying in urine and vomit and a medical emergency was called at 9:00 p.m. He became resistant and was ultimately sedated, cleaned up, and placed in a medical holding cell. By this time, Frasier’s shift began, at 10:00 p.m. and, as Shift Commander, he was fully briefed. Medical staff placed him naked, on his stomach with head turned aside, and with no mattress or smock provided. He subsequently urinated to the point where he was laying in a large pool of his urine.

Over the shift which lasted until 6:00 a.m., Frasier was repeatedly informed and updated about CC including multiple concerns from subordinate officers. He did nothing to address or remedy the situation, even after personally observing him 6 hours into his shift. CC remained as he was for over 8 hours, until a shift change, where within an hour another medical emergency was called and CC ended up in the ER for 4 days.

B. The Second Incident

Just a few days later, November 5, 2018, an attorney representing an inmate arrived at the Idaho Maximum Security Institute (“IMSI”) at 4:15 p.m., and was checked into the facility by Frasier. Frasier suspected the attorney was intoxicated from marijuana and then also smelled a strong odor of alcohol on his breath. Nonetheless, he handed

the attorney a visitor badge and allowed him to proceed unescorted to his meeting with the inmate.

Frasier then had the parking lot checked on security video to see if the attorney drove himself to the facility and found he had. He called Ada County non-emergency dispatch, and informed the dispatcher of the situation and of his suspicion of the attorney's intoxication. He also informed he could not detain the attorney when he leaves but didn't want him to drive if intoxicated.

He then contacted the Warden, Keith Yordy, as the duty officer, to inform him of the situation. By the time Mr. Frasier checked the attorney out, a law enforcement deputy had arrived and interviewed the attorney. The attorney didn't drive, and was picked up by someone else at 6:00 p.m.

II.

ISSUE

Did IDOC prove by a preponderance of the evidence that there was basis for discipline of Appellant pursuant to IPC Rule 190.01 a., b. and e.?

III.

STANDARD OF REVIEW

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. IDOC has the burden to prove cause for discipline by a preponderance of the evidence. IDAPA 15.04.01.201.07.

In determining whether IDOC has met its burden of proof, it does not necessarily have to prove that a specific policy was violated.

There need not be a specific policy prohibiting an act or omission before a classified state employee may be disciplined for such an act or omission. Indeed, it is impractical (and likely impossible) to write a policy that would cover every conceivable manner and circumstance whereby an employee might commit a "for cause" violation.

While there are instances where the violation of an express policy provides grounds for discipline under Rule 190.01, it certainly isn't the exclusive basis for such discipline. In fact, often there is not a specific, express policy prohibiting certain employee conduct, yet, clearly such conduct is subject to discipline under Rule 190.01. (Citation omitted).

Discipline must be based upon one of the reasons set forth in IPC Rule 190. Any one violation of Rule 190 supports the level of discipline the state agency decides to enforce. *Idaho Dept. of Health & Welfare v. Arnold*, IPC No. 04-26. If cause for discipline exists, IPC does not have jurisdiction to decide the level of discipline the agency decides to impose.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, any transcript submitted, and briefs submitted by the parties. I.C. § 67-5317(1). Findings of fact must be supported by substantial and competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1). *Zweigart v. Idaho State University*, IPC No. 08-13 (Decision and Order on Petition for Review, July 30, 2009). *Marsa Plummer vs. Idaho Industrial Commission*, IPC 17-1 (2017).

IV.

DISCUSSION

As clearly set forth in the Preliminary Order and in the record in this case, there are two separate incidents, days apart, at the beginning of November 2018, which resulted in disciplinary action. The Hearing Officer found that IDOC met its burden on proving by a preponderance of the evidence that Frasier violated Rule 190.a, b., and e. The Hearing Officer's findings are supported by substantial and competent evidence in the record.

A. Applicable Rule 190 Provisions and IDOC Policies

Rule 190 a. b. and e. provide as follows:

- a. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the agency or the Division of Human Resources and Idaho Personnel Commission.

- b. Inefficiency, incompetency, or negligence in performing duties, or job performance that fails to meet established performance standards.
- e. Insubordination or conduct unbecoming a state employee or conduct detrimental to the good order and discipline in the agency.

IDOC policies alleged to be violated by Frasier include, in relevant part:

1) IDOC Policy 217, Ethics and Standards of Conduct, Standard of Operating Procedure (SOP) 217.07.01.001:

The department intends that the conduct of IDOC employees reflect the highest standards of public service. This standard operating procedure (SOP) provides employees with guidance to use whenever an employee is faced with a decision regarding duties, actions, conduct, or interaction with others both on and off the job.

Employees of IDOC are expected to adhere to and positively exemplify the values as established by the department. The values include having respect for one another, bringing a positive attitude to work each day, and having integrity to do the right thing.

Each employee must conduct himself in a manner that will not discredit the department or the state of Idaho. Each employee must demonstrate the highest standards of integrity, honesty, objectivity, impartiality, and professionalism to promote public confidence, understanding, and trust in the department and its employees. An employee must not engage in any activity that might compromise the mission, vision, or values of the department; safety of its employees, offenders, and the public; or his ability to carry out assigned duties and responsibilities in an efficient, unbiased, and professional manner.

Employees must serve the public, other employees, and offenders with respect, concern, courtesy, and responsiveness without discrimination, harassment, or retaliation to include age, race, color, national origin, sex, political beliefs, marital status, and religion.

Employees must strive for professional excellence and obey lawful orders from a supervisor or any superior in charge, and properly and safely carry out the duties of the position, including making every reasonable effort to ensure community safety.

Employees must adhere to applicable laws, rules, regulations, policies, standard operating procedures, division directives, field memorandums, post orders, etc. in the performance of assigned duties.

Exhibit 513, pp. 1-2

2) IDOC SOP 604.02.01.001, Visiting, Standard Procedures:

3. The violation of visiting rules may result in the temporary or permanent loss of visiting privileges. Visiting room staff and supervisors must become familiar with the visiting rules. (See *Visiting Rules for Inmates and Visitors*).

Exhibit 515, p. 3.

3) IDOC SOP 604.02.01.001, Visiting, References, Rules for Meeting with Inmates:

15. Under the Influence: Access is denied to individuals suspected of being under the influence of intoxicating beverages or drugs and access privileges may be temporarily or permanently revoked.

Exhibit 516, p. 2.

B. Incident 1

1. Rule 190.01.a

As set forth in the record (Exhibit 517), Frasier was a Shift Commander and had pertinent job responsibilities as follows:

- Interpret and direct enforcement of prison directives and policy, institutional rules and procedures, Post Orders and Field Memorandums.
- Enforce facility entrance and egress security protocols, and key control.
- Have a good working knowledge of the Incident Command System (ICS) and adhere to protocol during emergencies
- Have a good working knowledge of policy and be able to make good decisions when situations arise which are not covered by policy. If in doubt, seek assistance and clarification from a higher authority.
- Keep the institutional duty officer advised as outlined per SOP 105.02.01.002, Duty Officers.

The Hearing Officer found that this position requires utilizing judgment, tact, common sense, and to pay careful attention to detail in the discharge of duties in line with IDOC and IMSI policy and procedure. This is supported by testimony from Warden Keith Yordy and Exhibit 517. From the undisputed facts, Frasier was notified by four different correctional officers during his eight-hour shift that they were concerned about the state of CC, and all four informed him he was lying naked on the cell floor in a prone position in a pool of urine. He was notified early on in his shift, yet he failed to even visit the medical unit where CC was placed until almost six hours into his shift. When he did visit the medical unit, his visit lasted close to five minutes, during which he attempted to speak to CC to discuss the use of force incident that had occurred, not whether he was in distress or to gauge his medical condition, other than to assess whether he could answer questions. He took no proactive steps to address CC's medical or physical needs.

Further, while Frasier did attempt to speak to medical staff regarding CC's condition when he visited the medical unit (he ultimately did not, since no one was there at the time), he never took proactive measures to track down medical staff and investigate what actions, if any, medical staff had taken with CC over the last six hours. Frasier's main contention in the face of these facts is that he felt uncomfortable overriding medical staff's decisions regarding CC and he believed no policy existed that allowed him to countermand medical staff and address CC's condition, lying naked and mostly unresponsive in a pool of his own urine. This is without merit and the Hearing Officer elaborates on this issue convincingly at pp. 17-18 of the Preliminary Order. We concur.

It is noteworthy Frasier never consulted with medical staff during his shift and he didn't take proactive measures to do so. This undermines his position on this point, and further, there is a policy that allows for countermanding a doctor's order. See Preliminary Order, p. 17.

Needless to say, Frasier's actions seem to fall well short of IDOC Policy 217 which requires employees to have integrity to do the right thing and serve the offenders with "respect, concern, courtesy, and responsiveness". Exhibit 513. This failure to perform the duties of his Shift Commander position and carry out his obligations provides grounds for discipline under Rule 190.01 a.

2. Rule 190.01.b

From these facts, set forth in the prior section and not reiterated here, clearly there is substantial and competent evidence for the Hearing Officer to find Frasier's behavior or lack thereof, consisted of incompetency and/or negligence in performing his duties and failure to meet established performance standards. We find his job performance was in violation of IDOC Policy 217 and also resulted in a violation of Rule 190.01.b.

Frasier argues that his prior performance reports show he was not incompetent in his duties. This argument misses the mark. IDOC disciplined Frasier for his incompetence in handling these specific incidents, not for overall or cumulative incompetence in his role as a Shift Commander.

Frasier also argues the Hearing Officer's conclusion that he was negligent in performing his duties failed to analyze the proper elements for the tort of negligence. We rejected a similar argument in *Worman v. IDOC*, IPC 04-24 (2007). In *Worman*, the employee argued the failure to apply the four part test for excessive force required in constitutional tort claims brought under 42 U.S.C. § 1983 was reversible error. *Id.* at 18-19. We disagreed, noting that IPC hearings are "significantly different" than Section 1983 tort claims and only required the employer to prove proper cause for discipline under DHR Rule 190.01 by a preponderance of the evidence. *Id.* The same rationale applies here.

3. Rule 190.01.e

The findings of the Hearing Officer, as detailed in the previous two sections, also support her findings that IDOC clearly established Frasier's behavior during the CC incident constituted conduct unbecoming a state employee and was detrimental to good order and discipline. Frasier was the Shift Commander; the highest ranking officer at IMSI during his November 1-2 shift. His failure to act in any meaningful way to investigate medical staff action or inaction, or to address CC's medical and physical needs during his 8 hour shift (he didn't even visit the unit for the first almost 6 hours) violated IDOC Policy, as set forth above. Violations of state agency policy and rule have amounted to conduct unbecoming and detrimental to good order and discipline. *Idaho State University v. Schorsch*, IPC No. 11-10 (Decision and Order on Petition for Review, October 10, 2012, p. 14).

C. Incident 2

As the Shift Commander, pursuant to IMSI Post Order 504-10-001 (Exhibit 517), Frasier was responsible to “[h]ave a good working knowledge of policy and be able to make good decisions when situations arise which are not covered by policy. If in doubt, seek assistance and clarification from a higher authority.” IDOC policy prohibits individuals suspected of being intoxicated because the decreased decision-making abilities and lowered inhibitions associated with intoxication poses a safety and security threat to the institution, staff, inmates, and the intoxicated person.

IDOC SOP 604.02.01.001, Visiting provides in pertinent part:

3. The violation of visiting rules may result in the temporary or permanent loss of visiting privileges. Visiting room staff and supervisors must become familiar with the visiting rules. (See Visiting Rules for Inmates and Visitors)

Exhibit 15, IDOC at 253. This SOP, as well as SOP 604.02.01.002 Attorney and Professional Individual Access to Inmates (Exhibit 514), both reference a document entitled, “Rules for Meeting with Inmates,” which provides in part:

15. Under the Influence: Access is denied to individuals suspected of being under the influence of intoxicating beverages or drugs and access privileges may be temporarily or permanently revoked.

This incident regarding the attorney suspected of being under the influence occurred later on the same day that Frasier spoke with Deputy Warden Hargrove and was advised to call the duty officer whenever he was uncertain about policy. Frasier testified this situation required him to balance competing interests of the IDOC rule against permitting suspected intoxicated individuals into the prison against turning the attorney away and (1) possible driving under the influence by the attorney, and (2) concern for an offender’s constitutional right to legal counsel. This isn’t necessarily unreasonable, but he did not have to decide in isolation and he should have consulted the duty officer once he suspected the attorney was under the influence. The fact of the matter is the facts clearly show Frasier suspected the attorney of being under the

influence and that is all that need be present. Allowing his entrance violated IDOC SOP 604.02.01.002.

By failing to properly enforce the Visiting SOP or consult the Duty Officer, Frasier failed to perform the duties and carry out the obligations imposed on him by the rules of IDOC. This provided cause for discipline under Rule 190.01.a. There is also cause under Rule 190.01.b for negligence, incompetence, or job performance that fails to meet the established performance standards for an IMSI Shift Commander, and the ethical requirements for an IDOC employee. Warden Yordy testified that admitting a person suspected of being drunk also threatened the good order and discipline in IDOC, which is cause for discipline under Rule 190.01.e, as intoxicated individuals represent a safety concern to themselves and others due to their lowered inhibitions and cognitive abilities. Thus, by permitting the attorney access to IMSI, Frasier threatened the good order and discipline at IDOC, which provides cause for discipline under Rule 190.01.e.

V.

CONCLUSION

The Hearing Officer found IDOC met its burden of proof that Appellant Frasier failed to meet performance standards established by IDOC and failed to comply with the IDOC Policy and SOP. The findings and conclusions are supported by substantial and competent evidence in the administrative record.

We find that IDOC has proven by a preponderance of the evidence that Appellant violated IPC Rule 190.01 a., b. and e. IDOC had just cause in terminating him from employment. The Commission unanimously affirms Respondent's termination of Appellant.

Commissioners Mark Holubar, Nancy Merrill, Sarah E. Griffin, and Amy Manning
CONCUR.

VII.

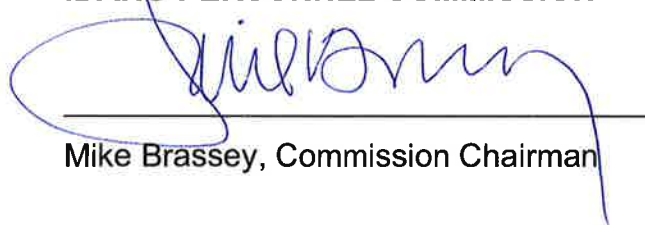
STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision.

Idaho Code § 67-5318.

**BY ORDER OF THE
IDAHO PERSONNEL COMMISSION**



Mike Brassey, Commission Chairman


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by the method stated below on this 3RD day of November, 2020.

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