

in the unit while forty E1 inmates were elsewhere in the facility. Captain Todd then proceeded to inspect the Accountability Roster that is required for security consistent with Standard Operating Procedures. Captain Todd initialed the Accountability Roster at 09:53.¹ He observed that, in contrast to TJ's verbal accounting of forty prisoners out of the building, only eight had been signed out on the Accountability Roster. Captain Todd noted that, although the form listed scheduled events that would require inmates to report elsewhere outside of the unit, nothing on the Accountability Roster indicated that they had been checked out. One of the inmates, for example, was scheduled to be in the Law Library at 08:15 but had not been signed out and his whereabouts in E1 were unknown. (Testimony of Captain Todd; Respondent Exhibits 1 and 2).

4. Captain Todd approached TJ and asked her to explain the discrepancy between her verbal accounting and the Accountability Roster. According to Captain Todd, TJ mumbled something to the effect that she kept track of the inmates' whereabouts in her head. Captain Todd told her that was "not good enough" and called Lieutenant Chris Fields, the shift OIC and TJ's supervisor, to be present. Captain Todd instructed Lieutenant Fields to review the Accountability Roster and obtain a written statement from TJ regarding the incident. (Testimony of Captain Todd).

5. The written statement is not a punitive measure. Rather, it is a procedural method by which a staff member may explain his or her actions regarding an alleged infraction. (Testimony of Captain Todd).

Alleged Insubordination

6. Immediately after speaking with Captain Todd, Lieutenant Fields made copies of the deficient Accountability Roster and sent the originals back to TJ. He reviewed the Accountability Roster and instructed TJ to write her statement regarding the incident. Lieutenant Fields instructed TJ to bring the statement by his office after she completed her shift that evening. According to Lieutenant Fields, TJ never delivered her written statement to him as instructed. (Testimony of Lieutenant Fields; Respondent Exhibit 1).

7. Upon returning from a two-day break on Friday, TJ was again asked for her written statement. Despite TJ's assurances that she would drop the statement by later that day, she again failed to do so. (Testimony of Lieutenant Fields).

8. On Sunday of that week, Lieutenant Fields asked for TJ's written statement a third time. He explained to her that he had to have the statement by the end of the day because Captain Todd expected to review the statement when he returned on Monday. TJ called Lieutenant Fields and asked him to direct her to where in the policy it required 100% accountability of inmates. After a brief conversation, Lieutenant Fields told her to read the post orders and gave her a direct order to complete the statement by 11:00 a.m. (Testimony of Lieutenant Fields).

9. When Lieutenant Fields approached TJ at the appointed time, she had not written the statement and claimed that she did not have the appropriate form. Lieutenant Fields provided the

¹ After Captain Todd checked the Accountability Roster, other entries were made indicating that more than eight inmates were signed out after Captain Todd initialed it. (Respondent Exhibit 1).

form to her and then left to allow her time to fill it out while he completed his rounds. When he returned, TJ still had not completed the form. (Testimony of Lieutenant Fields).

10. Later that morning, TJ called Lieutenant Fields and told him that she had to be relieved so that she could go home. When Lieutenant Fields inquired as to why she wanted to leave, TJ told him that she "feared for her safety" and alleged that Lieutenant Fields or someone under his direction might do her harm. At that point, Lieutenant Fields called the Duty Officer, Captain Gerald, who called Mr. Dewberry. (Testimony of Lieutenant Fields; Testimony of Warden Kathy Seabolt).

11. TJ called Lieutenant Fields and asked for an outside line, informing him that she wanted to call 911 and tell them that she was being held against her will. Petitioner was on speaker phone when she made this statement and was overheard by Sergeant Nathan Allen, who was in the room with Lieutenant Fields. Lieutenant Fields told Petitioner that he would call Mr. Dewberry. (Testimony of Lieutenant Fields; Testimony of Sergeant Allen).

12. Reports of the conflict at LASP soon reached Kathy Seabolt, the Warden of LASP. She called Lieutenant Fields and advised him that she would come by and speak with TJ. (Testimony of Warden Kathy Seabolt).

13. At approximately 2:30 p.m., TJ was relieved of her post so that she could speak with Ms. Seabolt, who had arrived at LASP. When Ms. Seabolt spoke with TJ at the front of the facility, she refused to answer the warden's questions. Eventually, the two went into the OIC office, where Lieutenant Fields and Captain Gerald, the duty officer for the week, were already present, to continue the conversation. (Testimony of Warden Kathy Seabolt).

14. At some point in the conversation, TJ's school schedule was discussed. TJ requested that her hours be changed to accommodate her school schedule for the upcoming fall semester. Ms. Seabolt told TJ that such an accommodation was impossible. (Testimony of Trina Jackson; Testimony of Warden Kathy Seabolt).

15. Eventually, TJ told the warden that she was afraid of the staff at LASP. Specifically, TJ expressed her fears that Lieutenant Fields would order an inmate to physically harm her. Ms. Seabolt told TJ that, if she was in fear for her safety, then she could not allow her to remain at LASP and asked for her badge. TJ asked the warden if she was being fired, and Ms. Seabolt explained that she was not being fired but that it was policy to collect badges when staff members were unexpectedly sent home. (Testimony of Warden Kathy Seabolt; Testimony of Lieutenant Fields).

16. TJ obtained a receipt for her badge and went home. She was placed on suspension while LASP conducted an investigation into the incident. (Testimony of Warden Kathy Seabolt).

TJ's Written Statement

17. Regarding the production of TJ's statement, Warden Seabolt does not recall such a written statement. Lieutenant Fields' recalled that TJ eventually produced her statement at about 3:00

p.m. while in the presence of Warden Seabolt; however, the statement was deficient in that TJ indicated on it that it had been written under duress. (Testimony of Kathy Seabolt; Testimony of Lieutenant Fields).

18. TJ testified that she submitted two statements to Lieutenant Fields, the first on August 20 and the second on August 25. According to TJ, she gave her original statement to a cadet with instructions that it be delivered to Lieutenant Fields the day after the Accountability Roster incident, but submitted a second one on August 25 after Lieutenant Fields told her that he never received the first. TJ testified that the latter statement was thrown away by Warden Seabolt just before she was asked for her badge. (Testimony of Trina Jackson).

19. At the hearing on this matter, TJ tendered two statements into evidence: one dated August 20, 2013 and a second dated August 25, 2013. TJ testified that these were copies of the two statements she had submitted to Lieutenant Fields and Warden Seabolt respectively. Neither Warden Seabolt nor Lieutenant Fields recalls seeing either of the statements. According to Lieutenant Fields, statements of this kind are ordinarily two-sided with a space in which a witness may acknowledge receiving the statement. The statements are signed by no one other than TJ. (Petitioner Exhibits 1, 3; Testimony of Trina Jackson; Testimony of Lieutenant Fields; Testimony of Kathy Seabolt).

Determination of Adverse Action

20. GDOC issued three notices of dismissal to Petitioner. The first that TJ appealed on August 30, 2013 was issued on August 29, 2013 and said that she would be dismissed on August 30, 2013. Petitioner did not sign this, or any, dismissal notice. This notice provided as follows:

This action is being taken as a result of your actions on August 20, 2013 and August 25, 2013. On August 20, 2013, you failed to follow policy relating to inmate accountability. On August 25, 2013, after numerous attempts, you did not submit a statement (regarding the August 20, 2013 incident) when asked by your supervisor and this is considered to be insubordination. Your lack of professionalism leaves no further option but to terminate your employment.

(Petitioner's Exhibit 4).

21. GDOC issued a second notice of dismissal to TJ on September 5, 2013. This letter clarified that TJ's dismissal from employment was based on "Inmate Accountability, Untimely Reporting/Documentation/Filing, Insubordination, and Unprofessional Conduct." The letter further provided that TJ would be placed on suspension with pay until September 13, 2013 with dismissal effective on September 14, 2013. GDOC included a list of charges against TJ with this letter that read as follows:

CHARGE I:

NEGLIGENCE or INEFFICIENCY IN PERFORMING ASSIGNED DUTIES, in that you, Trina Jackson, on or around August 25, 2013, failed to maintain accurate

inmate accountability.

CHARGE II:

MISCONDUCT and/or INSUBORDINATION, in that you, Trina Jackson, on or around August 25, 2013, refused to follow a direct order given to you by your supervisor, Lieutenant Fields, to complete a witness statement

CHARGE III:

MISCONDUCT, in that you, Trina Jackson, on or around August 25, 2013, engaged in unprofessional conduct by attempting to make a false emergency 911 call from the facility.

(Petitioner Exhibit 2).

22. In a third notice of dismissal sent to TJ on September 13, 2013, GDOC reiterated the charges for which TJ was dismissed and modified her dismissal date to September 20, 2013. (Petitioner Exhibit 5).

23. At the hearing, TJ attributed her termination to retaliation for hostile work environment grievances that she filed against Ms. Seabolt earlier this year. TJ claims to have complied with orders from her superiors at LASP and insists that she correctly performed the inmate count that led to the original demand for her written statement. She firmly denied the allegations that she attempted to call 911. She explained that the need for the meeting between her and Warden Seabolt on August 25 stemmed from Lieutenant Fields' conduct after she asked him about the Standard Operating Procedure. Specifically, she recalled being upset at Lieutenant Fields' slamming the phone down "in her ear." Overall, TJ's opinions suggest a conspiratorial climate and actions by superiors that are not supported by the record and are not credible.² (Testimony of Trina Jackson).

III. Conclusions of Law

1. An adverse action denotes a disciplinary action taken by an appointing authority, which results in the suspension without pay, demotion, reduction in salary, or dismissal of a permanent employee. Ga. Comp. R. & Regs. 478-1-15.101. GDOC's decision to dismiss TJ constitutes an

² TJ suggests that she saw Warden Sellers, the Warden at the facility where she previously worked, with a female companion at a restaurant off-site and that because she saw them together that Warden Sellers sought to have her removed from the prior facility. (Testimony of TJ). Warden Sellers testified that the woman with whom he was observed by TJ having a business-related dinner was a contractor who was not under his control or direction. (Testimony of Warden Sellers). TJ filed two grievances in which she alleged retaliation by both Warden Sellers and Warden Seabolt whom she opined to be acting in concert against TJ with Warden Sellers. (Testimony of Patrick Wolf, complaint investigator.) Patrick Wolf, the complaint investigator to whom TJ's grievances were assigned, found the grievances to be unsubstantiated. (Testimony of Patrick Wolf). TJ's initial reassignment to LASP followed an altercation at the prior facility. (Testimony of Patrick Wolf). Shortly following the initial reassignment, TJ requested family medical leave that was granted. (Testimony of Patrick Wolf).

adverse action within the meaning of this rule.

2. GDOC may dismiss an employee for numerous specified reasons, including “negligence or inefficiency in performing assigned duties; inability or unfitness to perform assigned duties; insubordination; misconduct; conduct reflecting discredit on the department; commission of a felony or other crime involving moral turpitude; chronic tardiness or absenteeism; failure to report for or remain at work without justifiable cause; failure to process performance appraisals in a timely manner; or political activity in violation of 478-1-.08.” Ga. Comp. R & Regs. 478-1-.24(7)(b)(3). In TJ’s case, GDOC specifically cited misconduct, negligence, insubordination, and inefficiency as the underlying basis for her dismissal.

Negligence/Inefficiency - Violation of GDOC’s Standard Operating Procedure Regarding Inmate Accountability

3. According to GDOC’s Standard Operating Procedures, “[e]ach dorm or housing unit officer will maintain an accountability log accurate to the minute, making it possible to give an accounting of the whereabouts of each inmate assigned to the dorm/housing unit. This log shall include cell/room number, bed number, inmate name, inmate number, race, in or out time, assignment of inmate and destination of inmate.” Georgia Department of Corrections, *Standard Operating Procedures* § VI(B)(18) (Counting Procedures).

4. GDOC produced evidence that demonstrated that TJ failed to adequately account for the inmates she was responsible for in her duties as a correctional officer. TJ did not keep an account of the inmates in B-Unit as she was required to do according to the Standard Operating Procedure. According to both Captain Todd and Lieutenant Fields, TJ gave a verbal accounting of B-Unit inmates that grossly differed than the number of inmates actually present in the unit. Captain Todd testified that he even noted specific instances of absent inmates whom TJ could not account for at the time the discrepancy was uncovered.

Insubordination/Misconduct - Violation of GDOC’s Policy Regarding Employee Standards of Conduct

5. GDOC’s Standard Operating Procedure requires employees to “comply with all lawful orders and directives issued by one of their superiors in their chain of command.” Georgia Department of Corrections, *Standard Operating Procedures* § IV(A)(4)(b) (Employee Standards of Conduct).

6. GDOC demonstrated at the hearing of this matter that TJ failed to adhere to this standard and in so doing exhibited both insubordination and misconduct. TJ did not produce her written statement as she was ordered to by both Captain Todd and Lieutenant Fields, her superiors in the chain of command, despite having been given numerous opportunities to do so over the course of a week. Moreover, TJ engaged in misconduct in both her resistance to orders to produce her statement and in her attempt to call 911, which was witnessed by both Lieutenant Fields and Sergeant Allen.

Appropriateness of Sanction

7. While GDOC may consider progressive disciplinary steps that would include a review of past employment issues, GDOC is not required to do so and may dismiss an employee for acts of misconduct such as those here described. Whether viewed independently or in conjunction with prior employment history, the sanction of dismissal that was chosen is entirely reasonable given the seriousness of TJ's negligence and misconduct within a penal setting that requires strict procedures for the safety of staff and inmates. Insubordination is not tolerable in such a setting.

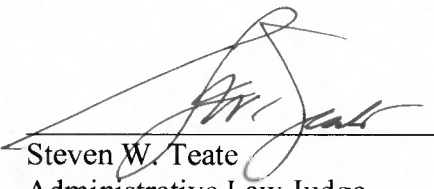
Burden of Proof

8. GDOC bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is by preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). GDOC has submitted sufficient evidence supporting its conclusion that dismissal was appropriate due to TJ's misconduct, insubordination, inefficiency, and negligence. TJ's evidence fails to effectively rebut any of the allegations upon which this action was based.

IV. Decision

For the foregoing reasons, GDOC's decision to terminate TJ per notice issued on September 13, 2013 is **AFFIRMED**.

SO ORDERED, this 18th day of November 2013.



Steven W. Teate
Administrative Law Judge