



FILED
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BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS NOV 8 2016
STATE OF GEORGIA

KAREN WHITE,
Petitioner,
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:
:
v. :
:
GEORGIA PEACE OFFICER STANDARDS :
AND TRAINING COUNCIL, :
Respondent. :
:
:

K. Westray
Kevin Westray, Legal Assistant

: Docket No.: OSAH-POST-CERT-1707311-
: 70-Howells

INITIAL DECISION

This matter comes before this tribunal on Petitioner’s appeal of the decision of the Georgia Peace Officer Standards and Training (“POST”) Council (the “Council”) to revoke her peace officer certification. On September 27, 2016, this tribunal received the Council’s motion for summary determination supported by probative evidence. Petitioner did not file a response to the Council’s motion. On October 21, 2016, prior to commencement of the hearing in this matter, the undersigned notified the parties that she was granting the Council’s motion as to the violations of the POST Act; however, a hearing on the appropriate sanction would proceed. Petitioner Karen White appeared pro se. The Council was represented by Assistant Attorney General Kimberly L. Daniel. For the reasons that follow, the Council’s decision to revoke Petitioner’s peace officer certification is **AFFIRMED**.

I. Findings of Fact

1.

Petitioner is a certified peace officer. She was employed as a corrections officer at Hancock State Prison from July 16, 1998 until October 4, 2012, when she was terminated for cause. (Exhibits 1, 3, 4, attached to the Council’s Motion for Summary Determination (“MSD”).)

2.

On May 22, 2016 and June 8, 2012, Petitioner was interviewed by Georgia Department of Corrections internal affairs investigator A.C. Resseau. During the interviews, Petitioner admitted the following:

- She possessed an unauthorized weapon (i.e., a shank) around inmates housed in the most violent dorm in the prison;
- She used an unauthorized weapon (i.e., a shank) to remove paper and other items inmates had stuffed into cell door locks;
- She treated homosexual inmates differently than other inmates;¹
- She was not trained to treat homosexual inmates differently than other inmates and she knew that she should not do so;
- She gave special treatment to homosexual inmate Walter McCord;
- She allowed inmate McCord to walk around with her the day she used an unauthorized weapon (i.e., shank) to remove items stuffed into cell door locks, despite being aware of his reputation for violence; and
- She allowed inmate Walter McCord to walk around with her in the dorm during lockdown counts, despite knowing that all inmates must be locked down during counts.

(Exhibit 1, attached to MSD.) During the May 22, 2016 interview, Petitioner also admitted that there is a significant gang population in the prison and that there has been an increased amount of violence inflicted on the other inmates due to the increase in gang activity. (*Id.*)

3.

As a result of her actions, Petitioner was terminated from Hancock State Prison for violating a Georgia Department of Corrections Standard Operating Procedure regarding personal dealings with inmates. (Exhibits 3, 4, attached to MSD.)

¹ Petitioner stated that she has always treated homosexuals differently than others; even in her life outside of the prison. (Exhibit 1, attached to MSD.)

4.

After receiving notification of her termination, the Council conducted an investigation. As a result of the investigation, the Council determined that Petitioner's actions violated the POST Act, and on March 5, 2014 it voted to revoke Petitioner's certification. Thereafter, Petitioner appealed the Council's decision to revoke her certification. (Exhibits 5 – 7, attached to MSD.)

5.

Hancock State Prison has a "close" security classification. That means that the inmates housed there require close supervision, due to their behavior, tendency for violence, or involvement with drugs. In the past, Hancock State Prison has had attempted escapes, violence against the staff, and violence against other inmates. In November of 2011, the prison had an incident where prisoners took over part of the prison, set fires which caused major structural damage, and engaged in violence against other prisoners causing severe injuries. The incident did not result in any injury to staff, but it did require the staff to abandon their posts. (Testimony of Anna Resseau; *see* Exhibit 1, attached to MSD.)

6.

Walter McCord was and is a member of the "Bloods" gang. Although Petitioner was not aware of his gang affiliation, she was aware of his reputation for violence. (Testimony of Resseau.)

7.

When a corrections officer finds an unauthorized weapon, she should turn the weapon over to security and complete the appropriate paperwork. Possessing an unauthorized deadly

weapon around hardened inmates creates a risk that the weapon could be used on the officer, other staff, or other inmates. (Testimony of Resseau; Testimony of Phillip Stacy.)

II. Conclusions of Law

1.

On motion for summary determination, the moving party must show by supporting affidavits or other probative evidence that there is no genuine issue of material fact for determination. Ga. Comp. R. & Regs. 616-1-2-.15(1). When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials, but must show by supporting affidavit(s) or other probative evidence that there is a genuine issue of material fact for determination. Ga. Comp. R. & Regs. r. 616-1-2-.15(3).

Violation of O.C.G.A. § 35-8-7.1(6)

2.

The Council asserts that Petitioner engaged in unprofessional conduct in violation of Georgia Code section 35-8-7.1(6). “Unprofessional Conduct . . . includes any departure from or failure to conform to the minimum standards of acceptable and prevailing practice of a peace officer. Ga. Comp. R. & Regs. 464-2-.01(r).

3.

Petitioner was terminated from her position as a corrections officer from Hancock State Prison because of her personal dealings with inmates. She admitted that she treated homosexual inmates differently from other inmates. She further admitted that she was not trained to do so and that she knew she should not do so. Petitioner admitted that she allowed homosexual inmate Walter McCord to walk with her during lockdown counts, despite knowing that all inmates are to

be locked down during counts. Finally, she admitted that she used an unauthorized weapon (i.e., a shank) to dislodge paper and other items from cell door locks in inmate McCord's presence, despite knowing his reputation for violence. These actions, through Petitioner's own admissions, depart from the minimum standards of acceptable and prevailing practice of a peace officer. Given the prison's history of violence and attempted escapes, Petitioner's actions put her, the staff, the other inmates, and the public at risk. Accordingly, Petitioner has engaged in unprofessional conduct in violation of Georgia Code section 35-8-7.1(6).

Violations of O.C.G.A. § 35-8-7.1(7), (8)

4.

The Council asserts that Petitioner's actions also violated subsections (7) and (8) of O.C.G.A. § 35-8-7.1. Section 35-8-7.1(7) grants the Council the authority to discipline a certified officer if the officer has "[v]iolated or attempted to violate a law, rule, or regulation of this state, any other state, the council, . . . , or any other lawful authority without regard to whether the violation is criminally punishable, so long as such law, rule, or regulation relates to or in part regulates the practice of an officer." O.C.G.A. § 35-8-7.1(7). Board of Corrections Rule 125-2-1-.01(d) provides as follows: "All personnel shall be required to adhere to applicable rules, regulations, policies, procedures and directives published by the Department of Corrections and local implementing procedures promulgated in consonance therewith." Ga. Comp. R. & Regs. 125-2-1-.01(d). Pursuant to Georgia Department of Corrections Standard Operating Procedure IV014-001, VI (2012) in effect during the relevant time period, correction officers were prohibited from having personal or unauthorized business dealings with inmates. Petitioner admitted that she treated inmate Walter McCord and other homosexual inmates differently from other inmates.

5.

Petitioner denied that she and McCord were friends. However, she admitted that she treated McCord differently than other inmates. She admitted that she did not require him to follow lock down procedures. Further, she was not trained to treat homosexual prisoners differently. Thus, she had no legitimate professional reason for doing so. Absent a professional reason for treating McCord or other homosexual inmates differently, her decision to do so can only be personal. Accordingly, Petitioner violated the Department of Corrections Standard Operating Procedure regarding personal or unauthorized business dealings with inmates. As a result, Petitioner violated Board of Corrections Rule 125-2-1-.01(d) and Georgia Code Section 35-8-7.1(7).

6.

Petitioner's actions are also indicative of untrustworthiness in violation of Georgia Code Section 35-8-7.1(8). Allowing an inmate with a reputation for violence to be in her presence when she is using a shank to dislodge items from cell door locks creates a risk that the inmate will gain access to the weapon. This puts Petitioner, other staff, and other inmates at risk. The Department of Corrections must be able to trust that officers working in prisons will take the necessary steps to prevent inmates from gaining access to weapons. Petitioner's actions indicate that she could not be trusted to follow the procedures and safety measures around at least one inmate (i.e., McCord).

Violation of O.C.G.A. § 35-8-7.1(11)

7.

The Council asserts that Petitioner violated Georgia Code section 35-8-7.1(11) when she was terminated from her employment with the Hancock State Prison. Petitioner was terminated

for violating the Standard Operating Procedure regarding personal dealings with inmates. Accordingly, Petitioner was terminated from her employing law enforcement unit for disciplinary reasons. O.C.G.A. § 35-8-7.1(11).

Sanction

8.

Georgia Code section 35-8-7.1(b)(1) authorizes the Council to take one or more of several listed actions, when it finds that a certified officer should be disciplined. In particular, the Council may administer a public or private reprimand, suspend any certificate for a definite period, limit or restrict any certificate, revoke any certificate, or condition the penalty, or withhold formal disposition, upon the peace officer's completing such care, counseling, or treatment, as directed by the Council. O.C.G.A. § 35-8-7.1(b)(1).

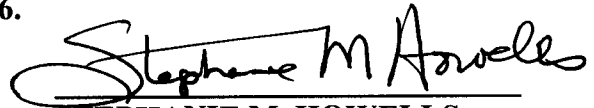
9.

Given the prison's history of violence and attempted escapes and the fact that the population of the prison includes a significant number of violent gang members, Petitioner's decision to relax the rules for an inmate with a known reputation for violence created a risk of harm to her, the staff and the other inmates. Further, her differentiation of the homosexual inmates could be seen as favoritism and could foster resentment among the other inmates. Such behavior is not the appropriate behavior of a certified jail officer and warrants revocation of her certificate.

III. Decision

For the foregoing reasons, the Council's motion for summary determination is **GRANTED** as to the violations of the POST Act. After the hearing on the appropriate sanction for such violations, the undersigned has concluded that Petitioner's certification should be **REVOKED**.

SO ORDERED this 8th day of November, 2016.



STEPHANIE M. HOWELLS
Administrative Law Judge