

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2022B035**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

CASEY MILLER,
Complainant,

v.

DEPARTMENT OF CORRECTIONS, CANON MINIMUM CENTERS,
Respondent.

Senior Administrative Law Judge (ALJ) Susan J. Tyburski held the evidentiary hearing via web conference on June 15-16, 2022. The record was closed after receipt of post-hearing submissions by the parties on June 17, 2022.

Throughout the hearing, Complainant appeared in person and through her attorney, Casey J. Leier, Esq. Respondent appeared through its attorney, Senior Assistant Attorney General Vincent E. Morscher, Esq. Respondent's advisory witness was Warden Stephanie Sandoval.

A list of exhibits admitted into evidence and a list of witnesses who testified at hearing are attached in an Appendix.

MATTER APPEALED

Complainant, a certified employee, appeals Respondent's imposition of a disciplinary pay reduction. Complainant argues that she did not commit the act for which she was disciplined, and that Respondent's disciplinary action was arbitrary, capricious, and contrary to rule or law. Respondent argues that Complainant committed the act for which she was disciplined, and that its disciplinary action was not arbitrary, capricious, or contrary to rule or law.

For the reasons discussed below, Respondent's decision to impose a disciplinary pay reduction on Complainant is **affirmed**.

ISSUES TO BE DETERMINED

- 1.) Is Complainant entitled to a directed verdict?
- 2.) Did Complainant commit the act for which she was disciplined?
- 3.) Was Respondent's disciplinary action arbitrary, capricious, or contrary to rule or law?
- 4.) Is Complainant entitled to attorney fees?

FINDINGS OF FACT

Background

1. Complainant is a certified state employee within the State Personnel System, employed with the Department of Corrections (DOC or Respondent). (Stipulated fact.)
2. Complainant was first hired by DOC in July 2014. She resigned from employment on April 15, 2015, during her probationary period. (Stipulated fact.)
3. Complainant was rehired by DOC on January 3, 2019, and completed the Training Academy. (Stipulated fact.)
4. Complainant attended and completed training that addressed how inmates may manipulate correctional staff, including "Games Inmates Play." (Stipulated fact.)
5. After the Training Academy, Complainant was assigned to Fremont Correctional Facility in Canon City as a Correctional Officer I. (Stipulated fact.)
6. Complainant became a certified employee on January 21, 2020. (Stipulated fact.)
7. During her employment with Respondent, Complainant has consistently received Level II "Satisfactory" performance evaluations.
8. Prior to the disciplinary action at issue in this case, Complainant had never received a corrective or disciplinary action.
9. Siobhan Burtlow was the Warden of Fremont Correctional Facility during the relevant time period. (Stipulated fact.) Prior to July 14, 2021, Warden Burtlow was Complainant's appointing authority.
10. Correctional Officers are prohibited from passing contraband to offenders. (Stipulated fact.)
11. Offender J.B.¹ has a history of bringing drugs into Respondent's facilities.

Complainant's Interactions with Offender J.B.

12. On June 27, 2021, Lieutenant (Lt.)² James Hill submitted an incident report describing an argument he had with Complainant after he sent offenders from B pod in Living Unit (LU) 1 to the east side dining hall, instead of to the west side dining hall where they usually go for meals. Offender J.B. was in LU 1's B pod.
13. In his incident report, Lt. Hill reported that Complainant showed "an unreasonable interest and concern for where" the offenders in B pod were eating. Lt. Hill also described

¹ Initials are used to protect the offender's identity. The offender's identity is not relevant to this Initial Decision.

² At the time Lt. Hill submitted this incident report, he was a Sergeant. By the time Lt. Hill testified in the evidentiary hearing, he had been promoted to Lieutenant.

Complainant going “out of her way to be in” the west side dining hall “while feeding LU 1 B pod” and standing by offender J.B. while he was eating. Lt. Hill stated that he has observed Complainant “continually” walking with offender J.B. on the way to the dining hall, to “medical” or back to LU 1, and has heard other offenders say, “well look who is walking with him that is no surprise.”

14. On July 4, 2021, Sergeant (Sgt.) Gabriel Danyeur informed Lt. Margaret Stroup that Complainant was “spending a lot of time” in Living Unit (LU) 1 and talking with offender J.B. Sgt. Danyeur also reported that Complainant regularly stands by the exit door in the dining hall near where offender J.B. sits during meals, talks with J.B. and walks with him back to LU 1.

15. On July 7, 2021, Sgt. Danyeur submitted the following incident report:

On July 4, 2021, I, Sgt. Danyeur, and a few other staff had been noticing CO Miller spending a little extra time with offender [J.B.] out of Living Unit 1. She has been observed talking to this same offender in the Dining Hall on numerous occasions and sometimes walking with him back to Living Unit 1. This has been going on for at least a few weeks now. I felt this may turn into a problem, and after hearing other staff talk about it, I decided to take this matter to my Shift Commander, Lt. Stroup.

16. Lt. Stroup reviewed camera footage of LU 1 on July 4, 2021, and saw that offender J.B. routinely walked with Complainant during the three rounds she conducted in LU 1.

17. On July 7, 2021, Lt. Stroup submitted an incident report describing her observations of Complainant interacting with offender J.B. She also described a conversation she had with Complainant on July 5, 2021 about offender J.B. “talking with her lately.” Complainant wondered whether “Captain Londenberg is setting her up in some way by having [offender J.B.] talk to her.”

18. On July 7, 2021, Lt. Stroup submitted the following second incident report:

On July 7, 2021 at approximately 1342 hours, I, Lt. M. Stroup, was notified by Sgt. Danyeur that Officer Miller (assigned to LU 5 for the day) had to be called back to her unit due to her not being in Living Unit 5. Captain Londenberg called Officer Miller on the radio to return to Living Unit 5. I reviewed the camera footage and observed Officer Miller outside on the sidewalk in front of Living Unit 3. At 1337 hours, Living Unit 1 was called to lunch. Offender [J.B.] was observed on the camera leave the unit and on the other camera view, Officer Miller can be observed walking to meet offender [J.B.] on the sidewalk. Officer Miller walks with offender [J.B.] to the West side Dining hall. Camera footage was downloaded and forwarded to OIG ...

19. On July 12, 2021, a slip of paper containing suspected drugs was found in offender J.B.’s baseball cap during a strip search. Offender J.B. was removed from LU 1 and placed in LU 5, a more restrictive unit used for problem offenders.

20. Following offender J.B.’s transfer to LU 5 on July 12, 2021, Complainant left her post in LU 1 and went to LU 5, cell #5A-1-14, which was occupied by offender J.B. (Stipulated fact.)

21. After she entered LU 5, Complainant walked directly to the door of offender J.B.'s cell, took something out of her pocket and handed it towards the cell door.

22. The cell doors in LU 5 have narrow gaps through which slips of paper could be passed.

Professional Standards Investigations

23. Administrative Regulation (AR) 1150-04 provides "methods of investigation for allegations of misconduct or illegal conduct that undermines the public's faith, trust, and confidence in the DOC, and jeopardizes the safety of DOC employees, contract workers, volunteers, offenders, and visitors." These investigations are conducted by the Office of the Inspector General (OIG). AR 1150-04(I).

24. OIG conducts criminal and administrative (Professional Standards) investigations. Subjects of criminal investigations are given *Miranda* warnings. Subjects of administrative (Professional Standards) investigations are given *Garrity* Advisements.

25. AR 1150-04(III)(C) defines an "Internal Administrative Investigation Advisement (Also referred to as the *Garrity* Advisement)" as follows:

Formal advisement given to an individual whereby a refusal to cooperate and respond truthfully to questions in an administrative investigation is deemed insubordination and in violation of AR 1450-01, *Code of Conduct*. (Italics in original.)

26. AR 1150-04(III)(D)(1) provides:

Cooperation by DOC Employees, Contract Workers, and Volunteers: DOC employees, contract workers, and volunteers contacted in regard to any authorized Professional Standards investigation or inquiry, will cooperate and relate fully and truthfully their knowledge of all issues pertaining to the alleged conduct under investigation. Failure of any individual to cooperate and give truthful information may be cause for corrective and/or disciplinary action up to and including termination.

27. AR 1150-04(III)(D)(4) provides, in pertinent part: "DOC employees ... under administrative investigation may be given the 'Internal Administrative Investigation Advisement'... When an individual is given the 'Internal Administrative Investigation Advisement,' but not a *Miranda* warning, they must cooperate with the investigation which includes answering all questions fully and truthfully."

28. AR 1450-01(IV)(E)(4) provides, in pertinent part: "During the course of an official DOC investigation, DOC employees ... will cooperate fully by providing all pertinent information that they may have. Full cooperation involves responding to all questions and providing a signed statement or affidavit, if requested."

29. As members of a law enforcement agency, DOC employees' full cooperation during a Professional Standards investigation is essential to the safety and security of DOC prison facilities.

30. Administrative Regulation (AR) 100-01(IV)(A)(1) requires all DOC employees “to know the content of and adhere to all administrative regulations...”

31. Complainant received regular training concerning her professional responsibilities, including the contents of AR 1150-04 and AR 1450-01.

Complainant’s Professional Standards Investigation

32. On July 14, 2021, Warden Burtlow notified Complainant:

It has come to my attention that you may have violated Administrative Regulation 1450-01 Code of Conduct and Administrative Regulation 100-19 *Communication with Offenders* with allegations of inappropriate communication and conduct.

Due to the serious nature of the allegations, a thorough investigation must be conducted.

33. Warden Burtlow placed Complainant on administrative leave pending a Professional Standards investigation. Warden Burtlow instructed Complainant: “As the appointing authority, it is my expectation that you fully cooperate with all aspects of the Professional Standards investigative process.”

34. On August 24, 2021, Complainant was interviewed by OIG Investigators Maureen Sheridan and Stacey Pray. Complainant’s attorney, Casey Leier, participated by telephone.

35. At the beginning of the interview, Complainant was provided the following *Garrity* Advisement:

You are the subject of or a witness in an internal department investigation commonly referred to as a Professional Standards Investigation. You are ordered to cooperate with this investigation and provide statements that are both truthful and complete. Your failure to provide statements, answer questions, or fully cooperate with this investigation may result in corrective and/or disciplinary action as provided by the rules of the State Personnel Board and Administrative Regulations. Statements that you provide during this Professional Standards Investigation cannot be used against you in a criminal action.

36. Following this Advisement, Complainant confirmed that she understood the following:

I understand that I do not have the right to remain silent and am ordered to answer questions fully and truthfully and to fully cooperate as required by Administrative Regulations 1150-4, 1150-15, and 1450-1.

I understand that my refusal to answer questions fully and truthfully and to cooperate fully may result in corrective and/or disciplinary action up to and including termination as provided by the rules of the State Personnel Board and Administrative Regulations.

I understand that statements I provided during this investigation or any evidence that is derived from my statements will not be used against me in a criminal proceeding, but may be used against me when considering whether to impose corrective and/or disciplinary action as provided by the rules of the State Personnel Board and Administrative Regulations.

37. Complainant told the investigators that, on July 12, 2021, she could not remember giving offender J.B. anything. Complainant stated that, whatever it was, it was not something she was not supposed to give the offender.

38. Complainant was "irritated" with the investigators' questions, and was not fully cooperative or forthcoming during the Professional Standards investigative interview.

Respondent's Disciplinary Action

39. On July 14, 2021, Warden Burtlow delegated appointing authority to Warden Stephanie Sandoval, the Warden at Canon Minimum Centers, to handle the issues related to Complainant's contacts with offender J.B.

40. On September 24, 2021, Warden Sandoval held a Rule 6-10 meeting with Complainant and Mr. Leier. Warden Sandoval's representative, Associate Warden David Lindsay, was also present. The purpose of the meeting was to discuss Complainant's interactions with offender J.B.

41. Warden Sandoval asked Complainant a series of questions about her conduct, her interactions with offender J.B. and her responsibilities as a Correctional Officer. Warden Sandoval granted Complainant's request to provide answers to these questions in writing by October 1, 2021.

42. On October 1, 2021, Mr. Leier requested a ten-day extension to respond to Warden Sandoval's questions.

43. On October 15, 2021, Mr. Leier informed Warden Sandoval that Complainant declined to answer the Warden's questions.

44. Complainant asked Warden Sandoval to talk with Officer Scott Smith concerning Complainant's character. Warden Sandoval talked with Officer Smith on October 18, 2021.

45. At Complainant's request, Warden Sandoval provided Complainant with a copy of the questions the Warden wanted Complainant to answer, as well as copies of the administrative regulations, documentation, photos and video discussed in the Rule 6-10 meeting.

46. Warden Sandoval issued a Notice of Corrective and Disciplinary Action on November 2, 2021. The discipline imposed was a reduction of base pay by \$250 per month for six months, effective November 1, 2021, for a total of \$1,500.00. (Stipulated fact.)

47. Warden Sandoval found that Complainant was "insubordinate" towards the professional standards investigators by refusing to obey their direct order to provide specific information, despite being given a *Garrity* Advisement. Warden Sandoval concluded:

You have failed to uphold your affirmative duty to conduct yourself in a manner which reflects honesty, integrity and truthfulness at all times. You are required to cooperate and relate fully and truthfully your knowledge of all issues pertaining to the alleged conduct under investigation.

48. As justification for disciplinary action, Warden Sandoval cited Board Rule 6-12(B)(6): "False statements or omissions of material fact during the course of employment."

49. On November 12, 2021, Complainant filed a timely appeal of the Disciplinary Action.

ANALYSIS

A. BURDEN OF PROOF

The Colorado Constitution guarantees that certified state employees "shall hold their respective positions during efficient service." Colo. Const. Art. XII, § 13(8). A certified state employee may be disciplined "only for just cause based on constitutionally specified criteria." *Dep't of Institutions v. Kinchen*, 886 P.2d 700, 707 (Colo. 1994).

Section 13(8) lists the following specific criteria upon which discipline may be based:

... written findings of failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform his duties, or final conviction of a felony or any other offense which involves moral turpitude, or written charges thereof may be filed by any person with the appointing authority, which shall be promptly determined.

Colo. Const. Art. XII, § 13(8).

The Colorado Supreme Court has clarified certified employees' rights in two crucial decisions. In *Kinchen*, the Supreme Court held that Respondent has the burden to prove by a preponderance of the evidence that the alleged misconduct on which the discipline was based occurred in a *de novo* hearing. *Kinchen*, 886 P.2d at 706-708. In discharging an employee, an appointing authority must establish a constitutionally authorized ground. *Id.* at 707. The ALJ is required to make "an independent finding of whether the evidence presented justifies a dismissal for cause." *Id.* at 706. The Colorado Supreme Court explained that, in attempting to justify a decision to discipline a certified public employee, this burden of proof is appropriate because "the appointing authority is the party attempting to overcome the presumption of satisfactory service" by the employee. *Id.* at 708.

The Colorado Supreme Court recently clarified the two-part inquiry required in an ALJ's review of a disciplinary action:

[I]n reviewing an appointing authority's disciplinary action, the ALJ must logically focus on two analytical inquiries: (1) whether the alleged misconduct occurred; and if it did, (2) whether the appointing authority's disciplinary action in response to that misconduct was arbitrary, capricious, or contrary to rule or law.

Dep't of Corrections v. Stiles, 477 P.3d 709, 717 (Colo. 2020). The Colorado Supreme Court explained that the second analytical inquiry is necessary if the appointing authority establishes that the conduct on which the discipline is based occurred:

If the appointing authority establishes by a preponderance of the evidence that the alleged misconduct occurred, the Board or the ALJ must turn to the second analytical inquiry. At that stage, the Board or the ALJ must review the appointing authority's decision in accordance with the statutorily mandated standard of arbitrary, capricious, or contrary to rule or law.

Id. at 718. See also § 24-50-103(6), C.R.S.

B. COMPLAINANT'S MOTION FOR A DIRECTED VERDICT.

At the close of Respondent's case, Complainant moved for a directed verdict under C.R.C.P. 50, arguing that Respondent failed to meet its burden of proof to establish that Complainant engaged in misconduct. The ALJ took this motion under advisement and Complainant proceeded with her case. After a careful review of the evidence submitted by Respondent during its case in chief, as discussed further below, the ALJ finds that Respondent met its burden of proof as defined in Colo. Const. Art. XII, § 13(8) and *Kinchen*, 886 P.2d at 706-708. Therefore, Complainant's motion for a directed verdict is denied.

C. COMPLAINANT COMMITTED THE ACT FOR WHICH SHE WAS DISCIPLINED.

When Warden Burtlow placed Complainant on administrative leave on July 14, 2021, she ordered Complainant "to fully cooperate with all aspects of the Professional Standards investigative process." At the outset of the Professional Standards interview on August 24, 2021, OIG Investigators Sheridan and Pray provided Complainant with a *Garrity* Advisement. Per this Advisement, Complainant was "ordered to cooperate with this investigation and provide statements that are both truthful and complete." Complainant was warned that her "failure to provide statements, answer questions, or fully cooperate with this investigation may result in corrective and/or disciplinary action as provided by the rules of the State Personnel Board and Administrative Regulations." Complainant was informed that her statements during the Professional Standards investigation could not be used against her in a criminal action.

After receiving this *Garrity* Advisement, Complainant confirmed her understanding that she did not have a right to remain silent during the Professional Standards interview, and that she was "ordered to answer questions fully and truthfully and to fully cooperate." Complainant confirmed her understanding that a failure to fully cooperate with the investigation could result in corrective or disciplinary action.

During the Professional Standards investigation, the OIG Investigators showed Complainant photographs of her interactions with offender J.B. The investigators also described a video from July 12, 2021 that showed Complainant approaching offender J.B.'s cell in LU 5, taking something out of her pocket and handing it towards the cell door. Complainant did not offer any explanation of these actions. Complainant told the investigators that she could not remember giving offender J.B. anything and stated that, whatever it was, it was not something she was not supposed to give offender J.B. Investigator Sheridan testified that Complainant's responses during the interview were "short and sharp," and that Complainant was "not forthcoming" about her actions. The audio recording of the Professional Standards interview confirms these observations.

Warden Sandoval found that Complainant was “insubordinate” towards the Professional Standards investigators by refusing to obey their direct order to provide specific information, despite being given a *Garrity* Advisement. Both Warden Burtlow and Warden Sandoval testified that employees’ full cooperation during a Professional Standards investigation is essential to the safety and security of Respondent’s prison facilities. All of these facts were established by Respondent during its case in chief. Therefore, Respondent met its burden of proof to establish Complainant’s misconduct as defined in Colo. Const. Art. XII, § 13(8) and *Kinchen*, 886 P.2d at 706-708.

During the evidentiary hearing, Complainant offered a more detailed explanation of her actions on July 12, 2021. Complainant explained that she was asked to deliver a load of laundry for offender J.B. and then decided to do a security round in LU 5. When Complainant entered LU 5, Offender J.B. called her over to his cell and Complainant walked over to see what he wanted. Complainant denied passing anything to offender J.B. through his cell door. When asked why she did not provide this explanation during the Professional Standards interview, Complainant explained that she was “irritated” by the investigators’ questions and admitted that she was not fully cooperative.

The preponderance of the evidence establishes that Complainant failed to fully cooperate with the Professional Standards investigation. Complainant’s failure to fully cooperate violated Respondent’s regulations concerning employees’ responsibilities in Professional Standards investigations, AR 1150-04(C) and (D), as well as Respondent’s Code of Conduct, AR 1450-01(IV)(E)(4). Therefore, Complainant committed the act for which she was disciplined.

D. RESPONDENT’S IMPOSITION OF A DISCIPLINARY PAY REDUCTION WAS NOT ARBITRARY, CAPRICIOUS, OR CONTRARY TO RULE OR LAW.

In determining whether an agency’s decision is arbitrary or capricious, the ALJ must determine whether the agency has (1) neglected or refused to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it, (2) failed to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion, or (3) exercised its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable persons fairly and honestly considering the evidence must reach contrary conclusions. *Lawley v. Dep’t of Higher Educ.*, 36 P.3d 1239, 1252 (Colo. 2001).

Board Rule 6-11, “Factors to Consider in Taking Discipline,” provides, in pertinent part:

- A. The decision to take disciplinary action of a certified state employee shall be based upon:
 - 1. The nature, extent, seriousness, and effect of the performance issues or conduct;
 - 2. Type and frequency of prior unsatisfactory performance or conduct (including any prior performance improvement plans, corrective actions or disciplinary actions);
 - 3. The period of time since any prior unsatisfactory performance or conduct;
 - 4. Prior performance evaluations;
 - 5. Mitigating circumstances; and
 - 6. Information discussed during the Rule 6-10 meeting, including information

presented by the employee.

Warden Sandoval gave Complainant an opportunity to explain her actions during the Rule 6-10 meeting. When Complainant asked for an opportunity to provide answers to the Warden's questions in writing, Warden Sandoval agreed to give Complainant one week to respond. Warden Sandoval subsequently granted Complainant's request for a 10-day extension of time to respond. At the end of the extension period, Complainant notified Warden Sandoval, through her attorney, that she declined to answer the Warden's questions.

Warden Sandoval provided Complainant with copies of all the relevant documents Complainant requested. At Complainant's request, Warden Sandoval also spoke with Officer Scott Smith, who provided a character reference for Complainant.

Warden Sandoval reviewed the transcript of the Professional Standards interview, the Professional Standards investigation report, the July 12, 2021 video of Complainant in LU 5, screen shots showing Complainant talking with offender J.B. and the incident reports filed by other employees, as well as background information concerning offender J.B. The ALJ finds that Warden Sandoval used "reasonable diligence and care to procure" evidence concerning Complainant's actions, and gave "candid and honest consideration" of this evidence. *Lawley v. Dep't of Higher Educ.*, 36 P.3d at 1252.

Warden Sandoval found no definitive evidence that Complainant had passed contraband to offender J.B. While Complainant's frequent interactions with offender J.B. raised concerns, Warden Sandoval did not find evidence of an inappropriate relationship between Complainant and offender J.B. However, Warden Sandoval did find that Complainant refused to fully cooperate with the Professional Standards investigation after being given a *Garrity* Advisement, and that such refusal was a serious offense.

Warden Sandoval reviewed Complainant's performance evaluations and confirmed that Complainant had not previously received a corrective or disciplinary action. Warden Sandoval believed that Complainant could learn from this experience and avoid similar behavior in the future. Because cooperation with a Professional Standards investigation is essential to maintaining a safe environment in Respondent's prison facilities, Warden Sandoval concluded that a corrective action alone was insufficient. For these reasons, Warden Sandoval decided to impose a six-month disciplinary pay reduction on Complainant.

The preponderance of the evidence establishes that Warden Sandoval fairly considered the factors outlined in Board Rule 6-11 before reaching her decision. The ALJ finds that Warden Sandoval's decision to impose a six-month disciplinary pay reduction on Complainant was not "based on conclusions from the evidence such that reasonable [persons] fairly and honestly considering the evidence must reach contrary conclusions." *Lawley*, 36 P.3d at 1252. Therefore, the ALJ finds that Respondent's decision to discipline Complainant was not arbitrary, capricious, or contrary to rule or law. §24-50-103(6), C.R.S.

E. COMPLAINANT'S CLAIM FOR ATTORNEY FEES AND COSTS.

§ 24-50-125.5(1), C.R.S., provides, in pertinent part:

Upon final resolution of any proceeding related to the provisions of this article, if it is found that the personnel action from which the proceeding arose ... was instituted frivolously, in bad faith, maliciously, or as a means of harassment or

was otherwise groundless ... the department, agency, board, or commission taking such personnel action shall be liable for any attorney fees and other costs incurred by the employee ... against whom such personnel action was taken...

A frivolous personnel action is an action for which “no rational argument based on the evidence or law was presented.” Board Rule 8-51(B)(1). Personnel actions that are “in bad faith, malicious, or as a means of harassment” are actions “pursued to annoy or harass, made to be abusive, stubbornly litigious, or disrespectful of the truth.” Board Rule 8-51(B)(2). A groundless personnel action “means that despite having a valid legal theory, a party fails to offer or produce any competent evidence to support the theory.” Board Rule 8-51(B)(3).

As discussed above, the ALJ finds that Complainant committed the act for which she was disciplined. Complainant failed to establish that Respondent’s disciplinary decision was arbitrary, capricious, or contrary to rule or law. Therefore, under § 24-50-125.5(1), C.R.S., Complainant is not entitled to an award of attorney fees and costs.

CONCLUSIONS OF LAW

1. Respondent met its burden of proof in its case in chief.
2. Complainant committed the act for which she was disciplined.
3. Respondent’s decision to impose a six-month disciplinary reduction of Complainant’s pay was not arbitrary, capricious, or contrary to rule or law.
4. Complainant is not entitled to an award of attorney fees and costs.

ORDER

Complainant’s motion for a directed verdict is **denied**. Respondent’s six-month disciplinary reduction of Complainant’s pay is **affirmed**. Attorney fees and costs are not awarded. Complainant’s appeal is **dismissed with prejudice**.

Dated this 1st day
of July, 2022, at
Denver, Colorado.

/s/ [REDACTED]
Susan J. Tyburski
Senior Administrative Law Judge
State Personnel Board
1525 Sherman Street, 4th Floor
Denver, CO 80203

CERTIFICATE OF SERVICE

This is to certify that on the 1st day of July, 2022, I electronically served true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** and the attached **NOTICE OF APPEAL RIGHTS** addressed as follows:

Casey J. Leier, Esq.
Levanthal Lewis Kuhn Taylor Swan PC
cleier@ll.law

Vincent Morscher, Esq..
Senior Assistant Attorney General
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APPENDIX

EXHIBITS

COMPLAINANT'S EXHIBITS ADMITTED: The following exhibit was stipulated into evidence: X. The following additional exhibits were admitted into evidence without objection: I, Z, AA, EE, TT.

RESPONDENT'S EXHIBITS ADMITTED: The following exhibits were stipulated into evidence: Exhibits 1, 3-13. The following additional exhibit was admitted into evidence without objection: Exhibit 2.

WITNESSES

The following is a list of witnesses who testified in the evidentiary hearing:

Margaret Stroup, Lieutenant
Gabriel Danyeur, Sergeant
James Hill, Lieutenant
Mary McCormick, Lieutenant
Maureen Sheridan, Investigator
Siobhan Burtlow, Warden
Stephanie Sandoval, Warden
Shelby Kinney, former Correctional Officer I
Scott Smith, Correctional Officer I
Casey Miller, Complainant

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS:

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is served to the parties. § 24-4-105(15), C.R.S. and Board Rule 8-53(A)(2).
3. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is served to the parties. §§ 24-4-105(14)(a)(II) and 24-50-125.4(4), C.R.S. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. *Vendetti v. Univ. of S. Colo.*, 793 P.2d 657 (Colo. App. 1990) and § 24-4-105(14) and (15), C.R.S.
4. The parties are hereby advised that this constitutes the Board's motion, pursuant to § 24-4-105(14)(a)(II), C.R.S., to review this Initial Decision regardless of whether the parties file exceptions.

RECORD ON APPEAL

The cost to prepare the electronic record on appeal in this case is \$5.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. Board Rule 8-53(C). That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 59 days of the date of the designation of record. See Board Rule 8-53(A)(5)-(7). For additional information contact the State Personnel Board office at (303) 866-3300 or email at dpa_state.personnelboard@state.co.us.

BRIEFS ON APPEAL

When the Certificate of Record of Hearing Proceedings is served to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-54.

ORAL ARGUMENT ON APPEAL TO THE BOARD

In general, no oral argument is permitted. Board Rule 8-55(C).

MOTION FOR RECONSIDERATION

Motions for reconsideration are discouraged. See Board Rule 8-47(K).