

Dep't of Correction v. Baker

OATH Index No. 556/10 (Nov. 13, 2009)

ALJ found that correction officer engaged in undue familiarity with an inmate. Termination of employment recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
- against -
DOREEN BAKER
Respondent

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORNIOTTI, *Administrative Law Judge*

This employee disciplinary proceeding was referred by the Department of Correction pursuant to section 75 of the Civil Service Law. Doreen Baker, a correction officer, is charged with engaging in undue familiarity with an inmate in violation of the Department's rules. Petitioner alleged that respondent, without notifying and obtaining permission from the Department, resided with a former inmate and received approximately 180 telephone calls from inmates housed on Rikers Island (ALJ Ex. 1). Respondent denied the charges and claimed that a former inmate was involved with her daughter and that she was not obligated to notify her command about their relationship.

A hearing was conducted on October 23, 2009. Petitioner presented Security Deputy Hills, Investigator Tsui, Parole Officer Newton and documentary evidence. Respondent testified on her own behalf and called her daughter, Sheke, and the inmate's sister, Kadisha. I find that respondent engaged in misconduct as charged and recommend that her employment be terminated.

ANALYSIS

Officer Baker was assigned to Rikers Island at the Anna M. Kross Center ("AMKC") West Upper 19 as a steady housing officer on the 0700 to 1531 tour. From 2007 until his release

in March 2008, inmate Hunter was housed in West Upper 19 and worked in a housing detail under Baker's direction (Tr. 152). Baker and Hunter are both 39 years old.

Between November 26, 2007, and February 23, 2008, over 170 calls were placed by inmates housed on Rikers Island to a cell phone number ending in 3182 (Pet. Ex. 2). The number belongs to Baker. Investigator Tsui testified that according to the Inmate Financial Commissary Management System ("IFCOM") most of the calls were made when Baker was off-duty and that most were placed under Hunter's PIN number (Tr. 37-38). Tsui acknowledged that inmates share PIN numbers as currency and that it is not always possible to determine who made a call (Tr. 56, 69). Baker claimed that Hunter was calling her 20-year old daughter, Sheke without Baker's knowledge.

Hunter's 33-year old sister, Kadisha testified that she met Sheke in 2006 while Sheke was working at Century 21. Sheke would give her employee discounts and they became friends (Tr. 106-08). According to both witnesses, in November 2007 Kadisha invited Sheke to her house. While Kadisha was showing her around, Sheke saw a photograph of a man she thought was "cute" (Kadisha: Tr. 109; Sheke: Tr. 126). Kadisha told Sheke that was her incarcerated brother, Hunter. Kadisha asked if Sheke would like Hunter to call her and she agreed (Kadisha: Tr. 109-11; Sheke: Tr. 126). Sheke testified that in late November 2007 Hunter started calling her and that they would speak two or three times a day (Tr. 129). Sheke stated that she usually dates "older guys" and that Hunter told her that he was 33 years old (Tr. 137, 144).

Sheke claimed that she has two cell phones, a "sidekick" for texting and another one for calling. All the phones are in her mother's name and Sheke gives Baker \$50 a month towards the bill (Tr. 127-28). Baker testified that in November 2007 she had "three or four" cell phones in her name but that the only phone she used was the house phone (Tr. 164-65). She never carried a cell phone because she was "always at work" and would borrow a cell when she "needed to make a phone call or stuff of that nature" (Tr. 176).

On March 17, 2008, Hunter was released from AMKC and was placed under the supervision of the New York State Department of Parole ("Parole"). Parole Officers Newton, Houston, and White were involved with Hunter's case.

According to Newton and the "Inmate Chrono Report" (Pet. Ex. 10), on March 19, 2008, Hunter notified Parole that he would be residing with his "girlfriend, Doreen Baker" and her

three children, Sheke, Danny, and Devlin, ages 20, 15, and 11, respectively. Hunter provided Baker's home address as well as her cell phone number ending in 3349. That same day, Officer Houston spoke with Baker by telephone and asked her to provide a utility bill and a note stating that Hunter could reside with her. Baker was advised of the conditions of Hunter's release (Pet. Ex. 10 at 8).

On March 25, 2008, Hunter gave Parole a copy of a utility bill with Baker's address and a loose leaf piece of paper stating: "I Doreen Baker give [] Hunter permission to reside at my address" (Tr. 74, 81, 96; Pet. Ex. 10 at 8). Baker denied that she provided Hunter with these documents (Tr. 163).¹

Baker testified that she learned that Sheke was seeing Hunter in March 2008 when Baker saw him in her house (Tr. 154). Baker was upset and Sheke explained that she "loved" Hunter and wanted the chance to build a relationship with him (Tr. 156). Baker talked to Sheke about the problems of dating someone like Hunter but Sheke ignored her advice. According to Sheke, in late March she started a physical relationship with Hunter and they would "hang out" at her house (Tr. 130-31). Sheke did not tell her mother about Hunter and they usually stayed downstairs. One time her mother saw Hunter and recognized him. Sheke never gave Hunter permission to live in her house but he kept a few articles of clothing in her room and he would sleep there "often" (Tr. 131, 142). Kadisha testified that after Hunter was released, she called Sheke and on at least three occasions Hunter was with Sheke (Tr. 112).

On April 18, 2008, Parole Officers Newton and White went to Baker's house for a home visit to see where Hunter was living. Newton testified that Hunter answered the door. As part of her inspection, she asked to see where Hunter was sleeping. Hunter brought Newton to a bedroom and introduced Doreen Baker as his "girlfriend" (Tr. 76). Newton testified that during the visit she spoke to Baker privately about Hunter living with her children. According to Newton, Baker stated that she was aware of Hunter's drug use and criminal history and that she supported his rehabilitation (Tr. 75-78; Pet. Ex. 10 at 8). Newton did not see any children and did not know that Baker was a correction officer (Tr. 74, 77). Sheke testified that she answered the door and left Newton alone with Hunter (Tr. 133-33). Baker admitted that she was home

¹ The letter and utility bill were not produced at the hearing because they are in Hunter's file where he is currently incarcerated (Tr. 96).

during the home visit but claimed that when Hunter and Newton came to her bedroom she only said hello. Baker denied that Hunter introduced her as his girlfriend or that she spoke to Newton about Hunter's drug history. Baker testified that she was not feeling well that day, that she had no idea why Newton was there, and that she did not know if any other parole officers were present (Tr. 158-61, 170).

Newton testified that on April 22, 2008, Hunter informed her that Baker was a correction officer. Newton told Hunter that Baker had to notify her command about her living with a former inmate in order to secure the safety of all persons involved (Tr. 79; Pet Ex. 10 at 7). Newton reported this to her supervisor (Tr. 80). Baker testified that she spoke with Newton and told her that she did not need to notify her command about her daughter's relationship with an inmate (Tr. 163). Baker did not notify the Department that Hunter was sleeping at her house (Pet. Ex. 1) even though she acknowledged that he would stay there "from time to time" (Tr. 172).

On June 3, 2008, Hunter advised Parole that his residence had changed. Newton went several times to the new address but never saw Hunter there (Tr. 84; Pets. Exs. 6, 10 at 5).

In June 2008 the Department received complaints that Baker was living with Hunter. One complaint was made by Baker's husband and one complainant provided Baker's cell phone numbers ending in 3182 and 3499, respectively (Tr. 14-15, 30-31). Investigator Tsui was assigned to investigate the matter.

Sheke testified that she stopped seeing Hunter in August or September 2008 (Tr. 134-35).

On September 26, 2008, Hunter was arrested and returned to AMKC (Pet. Ex. 10 at 2). Baker did not notify the Department that she knew Hunter. Baker testified that she had Hunter transferred out of her facility on an "overload" (Tr. 157).

IFCOM records indicate that between September 28, and November 8, 2008, Hunter called Baker's number ending in 3499 six times (Pet. Ex. 3).

On November 6, 2008, Officer Newton faxed Investigator Tsui a printout from Parole (Pet. Ex. 6) indicating that Hunter was living at Baker's address between April 4, and June 26, 2008. On the coversheet Newton wrote that Baker was told that she would have to notify her command and that Parole would have to verify this notification to ensure her safety.

On November 12, 2008, Tsui conducted an MEO-16 interview with Baker (Pet. Ex. 4). Initially, Baker denied having any friends who had been in the Department's custody and stated that she knew Hunter from her housing facility. Baker denied receiving calls from Hunter and stated that he had a relationship with her daughter. Baker stated that she spoke to Officer Newton about Hunter's desire to reside in her home and that Newton advised her it was impossible because of Baker's job. She admitted that Hunter would stay at her house from "time to time." Baker stated that she had three cell phones including one ending in 3499 and that she shared them with her daughter.

On November 15, 2008, Sheke visited Hunter at AMKC (Pet. Ex. 8). Sheke testified she went to ask Hunter whether he was starting rumors and telling people that he was having a relationship with her mother (Tr. 135).

The Department "has the burden of proving its case by a fair preponderance of the credible evidence." *Dep't of Correction v. Hall*, OATH Index No. 400/08, at 2 (Oct. 18, 2007). Petitioner alleged that respondent violated the following rules which provide:

Rule 3.25.040: Members of the Department shall not indulge in any undue familiarity with inmates nor shall they permit undue familiarity on the part of the inmates toward themselves.

Rule 3.25.050: Members of the Department shall immediately notify their Commanding Officer whenever a relative, friend, or a person with whom the member had a verifiable previous relationship, is incarcerated and housed at the same facility.

Rule 3.25.060: Except as required by their official duties, members of the Department shall not correspond with inmates or former inmates.

Thus, correction officers have several responsibilities: first, not to consort with inmates; second, if a friend or relative becomes incarcerated at the employee's facility, to immediately notify the commanding officer; and third not to correspond with inmates and former inmates. Here, it was undisputed that Hunter was twice housed in Baker's facility, that he called Baker's two cell phones approximately 180 times while incarcerated at AMKC, that after he was released Hunter was an overnight guest in Baker's house on more than one occasion, and that Baker failed to notify her command about knowing Hunter apart from being an inmate in her facility.

At issue is whether the relationship was between Hunter and Sheke as claimed by the defense, and whether Baker complied with the reporting requirements of the undue familiarity rules.

Where the facts are disputed, as they are here, resolution depends on an assessment of the witnesses' relative credibility. In making credibility determinations, this tribunal has considered "witness demeanor, consistency of a witness' testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness' testimony comports with common sense and human experience." *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98, at 2-3 (Feb. 4, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998). After weighing the testimony of the witnesses and considering what comports with common sense, I find it more likely than not that Baker received calls from Hunter while he was incarcerated in her housing unit and that he resided with her after being released. I further find that Baker had a duty to notify her command that she had a friend incarcerated in her housing facility and that she failed to do so.

Parole Officer Newton was a credible witness. Respondent's argument that Newton had too many cases to remember what occurred (Tr. 86-87, 186) was not persuasive. Newton provided clear, concise, and detailed testimony. Respondent acknowledged that Newton's description of her house and vehicle was, for the most part, accurate (Tr. 160, 171). Moreover, Newton's testimony was corroborated by documents prepared by her and other parole officers contemporaneously with the events described. Newton had no discernible motive to fabricate that Hunter introduced Baker as his "girlfriend," that Newton and Baker had a private conversation about an inmate living with her children, and that Sheke was not seen during the home visit. Indeed, making false or inaccurate entries in Parole records could lead to Newton's discipline. Baker's testimony that she stayed in bed because she was not feeling well and just said hello when a parole officer entered her bedroom with a former inmate from her facility was unbelievable.

Respondent also argued that Hunter had been untruthful to Parole in the past and that he was unreliable because of his drug history (Tr. 9, 188-89). However, there was no apparent reason for him to make false statements to Parole about the name, address, and telephone number of his girlfriend who he identified as Doreen Baker on several occasions. Hunter made these representations to Parole before disclosing that Baker was a correction officer and never

expressly stated that Sheke was his girlfriend. The incomplete May 27, 2008, entry in the Inmate Chrono Report that Hunter stated his “[girlfriend’s] mother will allow him to live” (Pet. Ex. 10 at 6) is insufficient to establish that Hunter was referring to Baker’s daughter as claimed by the defense (Tr. 190). This statement was made after Parole learned that Baker was a correction officer and after Baker was directed by Parole to notify her command that a former inmate was residing in her home.

Both Baker and her daughter had a motive to lie in order to protect Baker’s job. I am, however, unable to discern a motive for Kadisha to lie about introducing Sheke to Hunter unless she was doing her brother a favor. While it is possible that Kadisha became friends with Sheke while she was working as a cashier at Century 21, it is a bizarre coincidence. I further find the defense witnesses’ testimony that Hunter repeatedly called Sheke while he was incarcerated in her mother’s housing unit and that Hunter had the relationship with Sheke, although consistent, incredible for the following reasons.

First, it is unlikely that Baker would maintain a family cell phone plan, give Sheke one phone for calling and another for texting, and not keep one herself. It seems more likely that Baker, a single mother working long hours including overtime, would carry a cell phone and give the others to her children so that they could keep in touch.

Second, Sheke testified that her relationship with Hunter lasted from March to August/September 2008. This testimony was inconsistent with IFCOM records that show Hunter called one of Baker’s numbers six times between September 28, and November 8, 2008. Sheke did not explain why Hunter called her after the relationship was allegedly over.

Third, it is strange that while Sheke was allegedly speaking to Hunter two and three times a day, that she never went to visit him even though her mother went there regularly. Sheke’s claims that she did not know that Hunter was in her mother’s facility and that she was too busy to visit him were not credible (Tr. 140-42). Rather, it seems more likely that Sheke went to visit Hunter after Baker was questioned about her undue familiarity with him in the MEO-16 interview in order to create a paper trail for Baker’s defense, not to confront Hunter about starting rumors of his relationship with Baker. Indeed, unbeknownst to Baker, the Department became aware of her relationship with Hunter three months before he was returned to the Department’s custody.

Fourth, while it is possible that Kadisha introduced her 20-year old friend to her incarcerated 38-year old brother after Sheke thought his picture was “cute” and that they quickly became intimate, it seems more likely that Hunter and Baker, who are the same age, started a relationship after seeing each other almost daily in West Upper 19. Sheke’s and Kadisha’s testimony regarding Sheke’s introduction to Hunter seemed rehearsed.

Fifth, Baker testified that she has lived at her current address since 2007 (Tr. 147). However, on April 10, 2008, Baker provided the Department with an Employee Personal Information Form stating that she was living at a different address (Resp. Ex. A). Baker acknowledged that the address listed was “incorrect” but claimed that she was spending a lot of time there with her husband. Baker, who is currently separated from her husband (Tr. 147), testified, “I just really left the information at that address, for no specific reason more than that’s what they had” (Tr. 180). This document and nonsensical testimony was presumably offered to show that Baker was with her husband at the time Hunter was staying in her house. However, it is further evidence that Baker was trying to deceive the Department about living with a former inmate who had given her address to Parole.

I find Officer Newton’s testimony established by a preponderance of the evidence that Baker was living with Hunter after his release from her housing facility. Moreover, the IFCOM records established that approximately 180 calls were placed to Baker’s two cell phone numbers by inmates housed at AMKC. Baker’s claim that the calls were placed to her daughter was not credible. Finally, respondent had a duty to notify her command about her relationship with Hunter and she failed to do so.

FINDINGS AND CONCLUSIONS

1. Respondent engaged in undue familiarity in that she resided with a former inmate in violation of Department rule 3.25.040.
2. Respondent failed to notify her command that she had a relationship with an inmate housed in her facility in violation of Department rule 3.25.050.
3. Respondent received approximately 180 calls from inmate(s) housed in her facility in violation of Department rule 3.25.060.

RECOMMENDATION

Upon making these findings, I obtained and reviewed an abstract of respondent's work history for purposes of recommending an appropriate penalty. Respondent was appointed to the Department in 2002 and has no prior disciplinary history. The Department Advocate seeks respondent's termination from employment.

With rare exception, the penalty for undue familiarity has been termination of employment. This is particularly the case where the undue familiarity is between correction officers and inmates within their care, custody, and control. *See Dep't of Correction v. Hernandez*, OATH Index No. 1339/06 (Oct. 4, 2006), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD07-46-SA (Apr. 17, 2007) (termination of captain who gave his private cell phone number to an inmate and engaged in numerous phone conversations with her over a number of months); *Dep't of Correction v. Daniel*, OATH Index No. 1874/04 (July 20, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-46-SA (Apr. 24, 2006) (termination of correction officer who provided an inmate with his home phone number and solicited a future relationship with the inmate, and consequently received a phone call at home from the inmate); *Dep't of Correction v. Isom*, OATH Index No. 1995/01 (Oct. 23, 2001), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD03-04-SA (Feb. 5, 2003) (termination of correction officer where an inmate in the officer's command made about 150 telephone calls to her home); *Dep't of Correction v. Carattini*, OATH Index No. 1313/99 (June 11, 1999), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 00-68-SA (July 6, 2000) (termination of correction officer for having a relationship with an inmate during his incarceration in her facility and then marrying him without making notification to the Department); *Dep't of Correction v. Narvaez*, OATH Index No. 262/96 (Nov. 15, 1995) (termination where officer visited, telephoned, and wrote to an inmate incarcerated in upstate prisons, and also arranged delivery of a package from herself to the inmate, while the inmate was housed in her facility); *Medina v. Sielaff*, 182 A.D.2d 424 (1st Dep't 1992) (termination of probationary correction officer for fraternizing with an inmate); *Dep't of Correction v. Smith*, OATH Index No. 427/98 (May 5, 1998) (termination where officer received numerous telephone calls from inmates at her residence).

Cases in which termination for undue familiarity has not been recommended either involve mitigating facts, or situations in which an inmate was not housed at the officer's facility.

See Dep't of Correction v. Sanitago, OATH Index No. 2163/96 (Nov. 1, 1996) (45-day suspension for correction officer who had corresponded with, received telephone calls from, and sent occasional packages to female state inmate; ALJ noted that the inmate was not housed at respondent's facility, and that respondent credibly professed ignorance that prohibition against undue familiarity extended to state inmates); *Dep't of Correction v. Allen*, OATH Index No. 1722/03 (Apr. 6, 2004), *modified on penalty*, Comm'n Dec. (May 13, 2004), *modified on penalty*, NYC Civ. Serv. Comm'n Item No. CD06-95-M (Aug. 29, 2006) (60-day suspension recommended where respondent failed to notify command that her son was incarcerated in her facility and had prohibited contact with her son; ALJ credited mother's fear that her son's safety would be endangered if the familial relationship was known; Commissioner imposed termination but Civil Service Commission modified to a time-served suspension).

Here, respondent received numerous calls from at least one inmate housed in her facility and resided with him after his release. Respondent also failed to notify her command about her familiarity with this inmate as directed by Parole and as required by the Department. Despite respondent's seven-year tenure and clear record this misconduct merits termination. It is also very troubling that in addition to lying twice under oath, respondent allowed two young women to perjure themselves for her benefit. This dishonesty, calling into question respondent's character, is also deserving of consideration when framing an appropriate penalty. *Police Dep't v. Torres*, OATH Index No. 618/97, at 7 (June 23, 1997), *modified on penalty*, Comm'r Dec. (Dec. 29, 1998) (ALJ cited as an aggravating factor respondent's coercion of his fiancé to corroborate his lies, but Commission declined to penalize respondent for his dishonesty where respondent would be so charged in a subsequent proceeding); *Dep't of Correction v. Pankey*, Index No. 302/91 (Dec. 6, 1990) (respondent's coercion of girlfriend to corroborate his lies considered as an aggravating factor).

Accordingly, I recommend that respondent be terminated from her employment.

Alessandra F. Zoragniotti
Administrative Law Judge

November 13, 2009

SUBMITTED TO:

DORA B. SCHIRO

Commissioner

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