

**IN THE MATTER OF  
VETERANS PREFERENCE ACT HEARING BETWEEN**

DANIEL BOEGEMAN,	)	
	)	
Veteran,	)	
	)	
and	)	<b>DECISION AND ORDER</b>
	)	
STATE OF MINNESOTA,	)	
DEPARTMENT OF CORRECTIONS,	)	<b>BMS Case No. 19-VP-1104</b>
	)	
Employer.	)	
	)	
	)	

Hearing Officer: Stephen F. Befort

Hearing dates: November 8, 2019  
November 14, 2019

Date Post-Hearing Briefs received: December 16, 2019

Date of decision: January 13, 2020

**APPEARANCES**

For the Veteran: Marshall Tanick

For the Employer: Jacob Champion

**INTRODUCTION**

The State of Minnesota, Department of Corrections (Department or Employer) terminated Daniel Boegeman from his position as a Correctional Officer on April 26, 2019 for

misconduct and a variety of policy violations. Mr. Boegeman requested a hearing challenging his termination under the Veterans Preference Act, Minn. Stat. § 197.46, and he selected to have his case heard before a single arbitrator. During a two-day Veterans Preference Act hearing, each party was given a full opportunity to present their case through the testimony of witnesses and the introduction of exhibits.

### **LEGAL STANDARD**

The Veterans Preference Act provides that a covered veteran may be discharged from public employment only for incompetence or misconduct. Minn. Stat. § 197.46. The Minnesota Supreme Court has interpreted these grounds as the equivalent of a “just cause” standard for discharge. AFSCME Council 96 v. Arrowhead Regional Corrections Board, 356 N.W.2d 295, 297-98 (Minn. 1984). In Ekstedt v. Village of New Hope, 292 Minn. 152, 193 N.W.2d 821 (1972), the Court explained that:

. . . the cause [for discharge] must be one which specifically relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. The cause must be one touching the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office.

193 N.W.2d at 828. The burden of establishing the statutory grounds for discharge lies with the public employer. Johnson v. Village of Cohasset, 263 Minn. 425, 116 N.W. 2d 692, 698 (1962).

The Minnesota Supreme Court also has clarified the responsibilities of the hearing officer(s) in applying this standard. In Matter of Schrader, 394 N.W.2d 796 (Minn. 1986), the Court stated that:

“[in] conducting a veterans preference hearing the task of the hearing board is twofold: first, to determine whether the employer has acted reasonably; second, to determine whether extenuating circumstances exist justifying a modification in the disciplinary sanction.”

## **ISSUES**

1. Did the Employer act reasonably in deciding to terminate Daniel Boegeman from his position as a correctional officer?
2. Even if the Employer did act reasonably, do extenuating circumstances warrant a modification of the termination penalty?

## **FACTUAL BACKGROUND**

The Employer initially hired Daniel Boegeman as a Corrections Officer in 1994. Since 1996, he has served at the Shakopee Women's Prison. At the time of his discharge, Boegeman worked as a Squad Sergeant Corrections Officer, serving as the lead worker for a squad of correctional officers. In that capacity, his duties included overseeing the movement of offenders, conducting searches and fire drills, and responding to incidents involving offenders.

Sergeant Boegeman generally has received good performance evaluations, and several testifying co-workers described his work ethic in glowing terms. Boegeman's 2016 evaluation noted some areas of needed improvement, and the Employer placed Boegeman on a performance improvement plan. In 2016, the Employer also issued Boegeman an oral reprimand for engaging in an inappropriate conversation with an offender, Courtney Robinson. Since that time, Boegeman's performance evaluations have indicated that he has met or exceeded performance expectations.

The events leading to this grievance has its origins in a confidential report that another Correctional Officer, Jeff Anderson, was engaging in sexual conduct with Offender Courtney

Robinson. Robinson additionally alleged that other correctional staff workers at the Shakopee facility were harassing her in an apparent attempt to keep her quiet about the alleged sexual relationship. Robinson claimed that these officers shot rubber bands at her, placed tape over her mouth on her identification badge, and contrived to revoke her privileges. Upon learning of these allegations, The Employer assigned Special Investigator Diana Magaard to investigate the allegations and moved Robinson into a different residential unit (Monahan). At this point, Sergeant Boegeman complained to Magaard about the move, claiming that Robinson was a problem inmate who would foment lies for a new audience to gain special treatment,

Following the discharge of CO Anderson, Magaard's investigation evolved into an examination of the conduct of four other correctional officers including CO Boegeman. Magaard eventually issued an Investigation Report which alleged that Boegeman engaged in four acts of misconduct.

The most serious of these acts is the allegation that Sergeant Boegeman bribed one offender to assault another offender. In her Investigation Report, Magaard summarized becoming aware of this allegation as follows:

Offender Robinson also told me [Magaard] that she was told by Offender Stephanie Kelly #226977, that Sgt. Dan Boegeman had offered to pay her (Offender Kelly) to assault her. Offender Robinson was at breakfast when she was told by Offender Kelly and then they went to the officer's shack in the courtyard and Offender Kelly attempted to collect payment from Sgt. Boegeman. Offender Robinson explained that Sgt. Boegeman laughed and asked Offender Kelly if she wanted noodles or hot Cheetos as payment for assaulting Robinson.

Maagard met again with Courtney Robinson on January 11, 2019 at which time Robinson arrived at Magaard's office with a black eye. Robinson stated that she had accidentally fallen against a nightstand and denied that she had been assaulted. Kelly also denied having assaulted

Robinson. For her part, Magaard testified that the black eye looked more like the result of a punch than an accidental fall.

In her Investigation Report, Maagard stated that the assault allegation was “not supported by obtainable evidence.” Nonetheless, Magaard concluded and testified at the hearing that she believed that Boegeman had asked Kelly to assault Robinson.

Second, Magaard alleged that Boegeman violated Employer policy by discussing ongoing investigations with an offender. In particular, Maagard asserted that Boegeman had discussions with Offender Kelly about whether a correctional officer had been fired (*i.e.*, CO Anderson) and also about Offender Robinson’s move to another residential facility. Kelly and Robinson were roommates prior to Robinson’s move.

Third, Magaard reported that Boegeman had given Investigator Matt Dodge his middle finger while Dodge was conducting a training class for new staff members. Both Dodge and Boegeman confirmed this allegation in testimony during the arbitration hearing.

Finally, the investigation included a search of staff lockers in the squad room. Magaard’s report alleges that 45 offender homemade rings were found in Boegeman’s locker. Such property is deemed to be contraband and Employer policy requires the proper disposal of such items.

After Magaard issued her Investigation Report on March 7, 2019, she met with Department leadership including Tracy Beltz, Warden of the Shakopee facility. Beltz concluded that the report adequately established the four allegations of misconduct. She testified at the arbitration hearing that she found the allegation of the planned assault credible because the stories of the two offenders matched so closely. She also testified that she found Boegeman’s

misconduct to be among the most severe in her memory. Warden Beltz issued a notice of termination letter to Boegeman on April 26, 2019.

Sergeant Boegeman's testimony at the arbitration hearing disagreed with several of the allegations contained in the Investigation Report. First, Boegeman testified that he was not friends with CO Anderson and was unaware of any rumors alleging a sexual relationship between Anderson and Robinson or of the existence of an investigation concerning such a relationship. Second, Boegeman denied bribing Offender Kelly to assault Offender Robinson. He also denied having discussions with either offender about arranging such an assault or providing a reward for such an assault. Third, Boegeman acknowledged that he gave the finger to Investigator Dodge, but he went on to explain that such was common behavior among employees at the Shakopee facility and that he made the gesture in a friendly, joking manner. Finally, Boegeman testified that the homemade rings were not kept in his locker but were deposited in a common area jar by various squad members. Boegeman testified that he contributed about five to ten of the 45 rings.

Sergeant Boegeman also attempted to establish a factual basis for some potential defensive arguments during the cross-examination of Investigator Magaard. He posed questions designed to point out some alleged timing discrepancies in the Investigation Report, such as the Report's claim that Offenders Robinson and Kelly spoke with Boegeman at the officer or guard shack about the alleged assault shortly after breakfast on January 11, while Boegeman testified that he did not visit the shack that day until the lunch period. Another defensive argument concerns the fact that the Report sustained allegations of misconduct against the other three correctional officers who were under investigation, but that none of those other COs were terminated. The Report found that all three of the other COs failed to treat Offender Robinson

with respect and courtesy and that CO Amanda Buck, who received a one-day suspension, failed to report that her boyfriend, CO Anderson, was sexually involved with Offender Robinson.

## **POSITIONS OF THE PARTIES**

### **Employer**

The Employer contends that it acted reasonably in discharging Sergeant Boegeman for misconduct. The Employer maintains that it conducted a thorough and fair investigation which established that Boegeman committed four separate acts of misconduct, including several policy violations. The Employer argues that the most serious act of misconduct – bribing an offender to assault another offender – is credible because of the similarity in the stories told by the two offenders. According to the Employer, the cumulative weight of these four offenses is more than sufficient to provide the Employer with just cause for termination because the nature of these offenses are incompatible with the safety and security functions entrusted to correctional officers. Finally, the Employer maintains that there are no extenuating circumstances that warrant a reduction in penalty.

### **Veteran**

Sergeant Boegeman argues that the Employer's termination of his employment was unreasonable in that the Employer failed to carry its burden to establish substantial evidence of misconduct. Boegeman contends that the assault allegation is not credible because it is based solely on the assertions of two offenders of dubious veracity and even the Investigation Report concluded that the allegation "is not supported by obtainable evidence." The interference with investigation allegation also is not supported since Boegeman was not aware of the allegations against CO Jeff Anderson at the time of his discussion with Offender Kelly. While Boegeman

does not dispute the occurrence of the two remaining allegations, he maintains that the infractions are minor in nature and mirror conduct that is routine at the Shakopee facility. Finally, Boegeman argues that discharge is too severe of a penalty for an employee with a long and positive record of service and that it would be disproportionate when compared to the Employer's handling of the other three correctional officers who were investigated.

## **DISCUSSION AND OPINION**

As noted above, the Employer bears the initial burden of establishing that it acted reasonably by discharging the veteran for just cause. If that proof is established, the remaining question is whether extenuating circumstances warrant a reduction in penalty.

### **The Alleged Misconduct**

The Employer alleges that its termination decision is reasonable because it conducted a fair and impartial investigation which revealed that Sergeant Boegeman had engaged in four acts of misconduct. Each of the four allegations is discussed below.

#### **A. The Assault Bribe**

The first and most serious allegation is that Boegeman asked Offender Kelly to assault Offender Robinson and offered a reward of food for doing so. This allegation is based on the statements made by the two offenders during Investigator Maggaard's investigation. Warden Beltz testified that she found the allegation credible because the stories provided by the two offenders matched closely.

While it is clear that it would be serious misconduct for a correctional officer to put a "hit" on an offender, I do not believe that the Employer has carried its burden to establish the



factual predicate for a finding of such an offense. Several pieces of circumstantial evidence weigh against such a finding.

First, Boegeman testified, but the two offenders did not. While I found Boegeman credible in denying that he arranged a hit on Robinson, I could not assess the credibility of the two offenders.

Second, Offenders Kelly and Robinson, owing to their respective criminal histories, have a questionable reputation for veracity.

Third, the similar stories told by the two offenders is perhaps not so surprising, since they spent time as roommates and could have crafted their stories in tandem.

Fourth, Boegeman had no apparent motive for arranging such an assault. The hypothesis that he did so in order to retaliate against Robinson for blowing the whistle on CO Anderson lacks plausibility since there is no evidence of any friendship between Boegeman and Anderson.

Fifth, the purported conversation between Boegeman and the two offenders at the guard shack on January 11 could not have occurred at the time the two offenders alleged, since Boegeman was not present at the shack at that time.

Sixth, it is difficult to believe that a long-time corrections guard such as Boegeman would risk his career by attempting to orchestrate a mafioso-style hit on an offender without any basis for personal gain.

Seventh, the record contains no evidence that the contemplated assault ever occurred. Boegeman, Kelly, and Robinson all denied that such an assault ever took place.

Eighth, Investigator Magaard, in her Report, acknowledges that the assault allegation “is not supported by obtainable evidence.”

Taken together, these eight factors cast considerable doubt on the Employer's assault allegation. I conclude that the Employer has failed to carry its burden of establishing the assault allegation by a preponderance of the evidence.

### **B. Breaching Investigation Confidentiality**

As a second allegation, the Employer claims that Boegeman violated Department policy by discussing internal investigations with an offender. More particularly, the Investigative Report alleged that Boegeman had discussions with Offender Kelly about whether a correctional officer had been fired as well as about Offender Robinson being moved to the Monahan residential facility. With respect to the first of these allegations, Boegeman maintains that he could not have violated the policy since he was not aware that BO Anderson was the subject of any investigation. I find Boegeman's objection on this ground to be credible. As to the second allegation, Boegeman admits to speaking with Kelly about Robinson's move, but he claims that he was not aware that Robinson was the subject of an investigation. Since Boegeman voiced objections to Magaard about Robinson's move, I think it is likely that he had knowledge that some type of investigation was in the works. Accordingly, I find that this second allegation has merit.

### **C. Giving the Middle Finger**

The Employer contends that Boegeman also committed misconduct by giving Investigator Dodge the middle finger while Dodge was conducting a training class. Boegeman acknowledged at the hearing that he did engage in this conduct and that the action was disrespectful and demonstrated poor judgment.

#### **D. Contraband Property**

As a final allegation, the Employer claims that 45 rings made by offenders were found in Boegeman's locker. Pursuant to Employer policy, these rings are contraband that should have been properly discarded. Boegeman acknowledged in his testimony that these rings were kept in a jar in the common space of the squad room, and that he contributed five or ten rings to this collection.

Based on the above, I find that the Employer's allegations of misconduct are supported in part, but not in total.

#### **Extenuating Circumstances**

Even if a Veteran has committed misconduct as alleged, a Veteran's hearing panel is required to consider whether extenuating circumstances warrant a modification of the termination penalty. In this instance, only a portion of the alleged misconduct has been established. Significantly, the most serious allegation – the alleged assault bribe – has not been established. That factor alone raises serious doubts about the appropriateness of the termination sanction.

These doubts are multiplied when our attention turns to the remaining acts of misconduct. Each of the three established violations are relatively minor in nature.

Sergeant Boegeman admittedly discussed Offender Robinson's residence transfer with Offender Kelly, but since Kelly was Robinson's roommate, she likely was already aware of the investigation and transfer. Although Boegeman's actions violated Employer policy, it did not seriously prejudice Employer interests.

Sergeant Boegeman also acknowledged that he gave the middle finger to Investigator Dodge and that such act was disrespectful. But, Boegeman also testified that the gesture was

made as a friendly joke and that such gestures are commonplace among the Shakopee staff. Sergeant Kevin Foster corroborated this latter point by testifying that a staff member giving the finger to another staff member in jest is a daily occurrence.

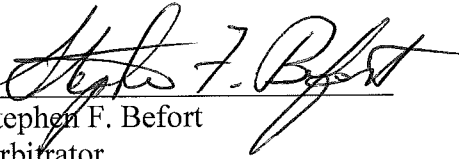
Finally, Sergeant Boegeman also acknowledged that he did contribute five or ten homemade offender rings to a jar in the squad room. But, he also testified that many other staff members had access to the squad room and also contributed rings to the jar. Correctional Officer Kristin Wilfart testified that while such rings were deemed contraband and were supposed to be disposed of through a special procedure, that rule was widely ignored. It also needs to be recognized that the retention of homemade rings is not a security threat on par with the hiding of drugs or weapons.

In the end, we have a serious assault allegation that was not established. We also have three minor violations that involve conduct that is commonly condoned. These violations clearly do not rise to the level of serious misconduct warranting the ultimate penalty of termination.

### **ORDER**

The decision of the Employer to terminate Sergeant Boegeman is vacated and reduced to an unpaid suspension of five days. The Employer is directed to reinstate Sergeant Boegeman and to correct his personnel files to reflect this determination.

Dated: January 13, 2020

  
Stephen F. Befort  
Arbitrator