

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 20-47
BRUCE NAPPI)	

FINDINGS OF FACT, OPINION, AND ORDER

On August 18, 2020, the Vermont State Employees’ Association (“VSEA”), filed a grievance on behalf of Bruce Nappi (“Grievant”), challenging Grievant’s termination by the State of Vermont (“State”), Department of Corrections (“Employer” or “DOC”) from his position as a Correctional Facility Shift Supervisor I (“CFSS”) at Southern State Correctional Facility (“SSCF”). Grievant has alleged that Employer discharged him in violation of the Collective Bargaining Agreement in effect for the period July 1, 2018, to June 30, 2020, and from July 1, 2020, to June 30, 2022, when: 1) dismissing Grievant without just cause, 2) improperly bypassing the progressive discipline, 3) and failing to discipline with a view toward uniformity and consistency.

The Labor Relations Board conducted video hearings through the Microsoft Teams platform on March 12, 16, and 24, 2021, before Board Members Robert Greemore, Chairperson; David Boulanger, and Karen Saudek. Grievant was present and represented at the hearing by VSEA General Counsel, Timothy L. Belcher, Esq. The Employer was represented by Assistant Attorney General Laura C. Rowntree, Esq. VSEA and the Employer filed post-hearing briefs on April 28, 2021.

FINDINGS OF FACT

1. Article 14 of the 2018–2020 Corrections Bargaining Unit Collective Bargaining Agreement (“Contract”) provides in pertinent part:

1. DISCIPLINARY ACTION

. . . .

3.[T]he appointing authority . . . may dismiss an employee immediately without two (2) weeks' notice or two (2) weeks' pay in lieu of notice for any of the following reasons:

. . . .

(b) gross misconduct.

State Exhibit 1.

2. State Personnel Policy 3.1, Sexual Harassment, provides in pertinent part:

PURPOSE & POLICY STATEMENT

The State of Vermont prohibits sexual harassment. Sexual harassment violates an individual's basic civil rights, undermines the integrity of the workplace, and adversely affects workers and clients whether or not they are direct subjects of harassment. Sexual harassment is a form of discrimination on the basis of sex and/or gender identity and is, therefore, prohibited in the work place; or at any employer-sponsored event or activity during or after business hours, by both state and federal law as well as the collective bargaining agreements between the State of Vermont and the exclusive bargaining entities for State employees. It is also unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment.

All employees, including but not limited to staff, supervisors, managers, and appointing authorities, are expected to comply with this policy and take appropriate measures to ensure that sexual harassment does not occur, and are encouraged to report it when it does. Disciplinary action, up to and including dismissal, will be taken against any employee who engages in sexual harassment or who otherwise violates this policy.

In addition, every manager and supervisor within the State of Vermont is responsible for providing a work place free from sexual harassment. Managers are responsible for ensuring that all new employees receive a copy of this policy; for posting this policy in prominent and accessible locations in the work place; and striving to provide employees with training designed to educate the work force about what sexual harassment is and how to prevent it in the workplace. Any manager or supervisor who fails to treat sexual harassment complaints in a manner consistent with the terms of this policy may be subject to disciplinary action up to and including dismissal.

DEFINITION OF SEXUAL HARASSMENT

The prohibition of sexual harassment is found in the Vermont Statutes at Title 21 § 495h. Sexual harassment is a form of discrimination based on sex (and/or gender identity) and is defined in Title 21 § 495d (13). Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- a) submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
- b) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance of creating an intimidating, hostile, or offensive work environment.

Sexual harassment can be verbal, physical, auditory, and/or visual. It can be either subtle or overt. Sexual harassment refers to behavior that is not only unwelcome, but which can also be personally offensive, fails to respect the rights of others, lowers morale and interferes with work effectiveness, or violates a person's sense of well-being.

. . . .

PROHIBITED CONDUCT

Managers, supervisors, and employees with the appearance of authority shall not threaten or insinuate, either explicitly or implicitly, that an employee's submission to or rejection of sexual harassment will in any way affect the employee's employment, evaluations, wages, advancement, assigned duties, shifts, or any other condition of employment or career development. Sexual harassment by co-workers is unlawful and prohibited, even though the loss to the victim may not involve tangible benefits. Persons found to have engaged in such behaviors may be subject to disciplinary action up to and including dismissal.

Employees should be aware of the growing role of social media as a platform for illegal and offensive behavior, including the compiling or sharing of images or words via computer or cell phone, or posts on Facebook, Twitter and the like.

REPORTING AND RESOLUTION OF COMPLAINTS

The State strives to take quick and effective actions to ensure that sexual harassment does not occur or persist. However, the fulfillment of that

commitment will in large part depend on the willingness of employees to report prohibited behavior. A timely response to sexual harassment is essential to protect victims from further unwelcome behavior and provides the best opportunity to initiate a thorough and effective investigation.

Therefore, all employees are encouraged to report any incidents of sexual harassment they experience, witness, or know of. Employees may identify objectionable actions to those responsible for them and to try to resolve issues informally, but they are not required to do so.

. . . .

TO FILE A COMPLAINT

1. Any employee who believes (s)he has been the subject of sexual harassment shall report the alleged act(s) as soon as possible to any one of the following:
 - an immediate supervisor; or
 - any agency management staff; or
 - any member of the Department of Human Resources.

. . . .

COMPLAINT PROCESSING PROCEDURE

. . . .

4. The Department of Human Resources and appointing authorities shall ensure that, when warranted, an investigation is conducted when any instance of sexual harassment comes to their attention, even in the absence of a complaint.

. . . .

6. Any intimidation, harassment, or interference for filing a complaint or assisting in an investigation, and/or intentionally filing a false complaint of sexual harassment will be subject to appropriate discipline, up to and including dismissal.

State Exhibit 2.

3. State Personnel Policy 5.6, Employee Conduct, provides in pertinent part:

. . . .

REQUIRED CONDUCT

1. It shall be the duty of employees to fulfill to the best of their ability the duties and responsibilities of their position. Employees should pursue the common good in their official activities, and shall uphold the public interest, as opposed to personal or group interests.
2. Employees shall devote their full time, attention, and effort to the duties and responsibilities of their positions during their scheduled work time,”
3. Employees shall conduct themselves in a manner that will not bring discredit or embarrassment to the State of Vermont, whether on or off duty.

....
PROHIBITED CONDUCT

1. Employees shall not use, or attempt to use, their positions to obtain special privileges or exemptions for themselves or others.
2. Employees shall not use, or attempt to use, State personnel, property, or equipment for their private use or for any use not required for the proper discharge of their official duties.

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7. Employees shall not intimidate or harass any employee because of . . . sex . . . , filing a complaint or grievance, or any other factor for which discrimination is prohibited by law.

State Exhibit 2.

4. DOC Employee Work Rules provide in pertinent part:

1.No employee shall violate any provision of the collective bargaining agreement or a State or Department work rule, policy, procedure, directive, local work rule or post order.

....

6.No employee shall, while on duty or engaged in an activity associated with the Department of Corrections, engage in verbal or physical behavior towards employees, volunteers or members of the public, which is malicious, demeaning, harassing or insulting. Such behaviors include, but are not limited to: profane, indecent or vulgar language or gestures, actions or inactions which are rude (such as ignoring a visitor who attempts to gain entrance into the building) or treating inmates in a demeaning manner with no legitimate rehabilitative justification. No employee shall exhibit behaviors which are physically or mentally abusive towards offenders.

....

9. No employee, whether on or off duty, shall comport himself or herself in a manner that reflects discredit upon the Department.

....

13. . . . Employees, while on duty or engaged in activity associated with the Department of Corrections shall conduct themselves in a professional manner in their interactions with co-workers.

State Exhibit 3.

5. Grievant was employed by DOC at its Southern State Correctional Facility from July of 2011 until his termination.
6. At the time of his hire, Grievant received copies of the State's policies concerning sexual harassment and discrimination and was afforded an opportunity to ask questions. Grievant was also provided with the DOC Employee Work Rules. Grievant received training on the State's Sexual Harassment Policy again on November 20, 2011.
7. Grievant was initially hired by the Department as a temporary Correctional Officer ("CO") Level 1 ("CO I") at SSCF in July 2011, and he was made permanent in October 2011. Grievant was promoted to a CO Level II ("CO II") in February 2014. Grievant was promoted to Correctional Facility Shift Supervisor ("CFSS"), in December 2015.
8. Beginning in December 2015, Grievant was one of two second shift supervisors. In November 2017, Grievant's position was subject to a reduction in force after the DOC facility in Windsor, Vermont closed, and he elected to exercise vertical displacement rights and was placed into a CO II position. In January 2019, Grievant was temporarily assigned to the position of CFSS, which became permanent in April 2019.
9. After Grievant was moved down to a CO II, he continued to have duties related to hiring and training. Grievant's hiring duties included communicating with potential applicants, participating on two-person interview panels, performing fingerprint and background checks, confirming references, and compiling applicant materials for management to review and make hiring decisions. Grievant made hiring recommendations but did not have the authority to make hiring decisions.

10. Grievant's training duties included monitoring the training calendar to ensure that correctional officers were up to date on core competencies. He scheduled trainings for staff and provided instructors with information needed for their trainings.
11. The DOC has a chain of command among security staff at correctional facilities, with the position of CO I at the bottom of the chain of command, followed by CO IIs at the next level, and the position of CFSS at the next level, all reporting to the Chief of Security who is also known as the Supervisor of Security or "SOS."
12. Above the SOS, there are two Assistant Superintendents and then the Superintendent who oversees the facility. At SSCF, there are about 80 to 90 CO I positions, about 9 CO II positions, and 7 CFSS positions.

Grievant's Conduct

13. In 2015, when he was a CO II, Grievant began a sexual relationship with CO I Laurie Whaley, when he was a CO II. The relationship began when Grievant was married and Whaley was involved with, or engaged to, another person. At first the two were just friends then the relationship developed into a sexual relationship.
14. After Grievant was promoted to a CFSS, in December 2015, he continued his relationship with Whaley. He worked as a supervisor on the same shift as Whaley and continued to engage in sexualized flirtatious activity with her at work.
15. In the Spring of 2016, the then Superintendent at SSCF Potanas questioned Grievant about Grievant's relationship with CO I Whaley. The Superintendent asked Grievant about the nature of the relationship. Grievant responded, "we were friends" and "we'd hang out outside of work."

16. Grievant did not disclose to Superintendent Potanas that he was in a sexual relationship with Whaley or that he had been involved with her since 2015. Instead, Grievant stated that he was not in a committed relationship with Whaley, nor could he be, because he was currently married to another woman.
17. According to Grievant, the Superintendent reported that as long as Grievant was not living with Whaley, which is the rumor he had heard, it was not a violation of the nepotism policy.
18. The Superintendent advised that Grievant should be careful about how staff viewed the relationship and favoritism “even though you guys are close friends and it's not against the rules to be friends with someone.”
19. On or about December 20, 2016, Grievant received formal discipline in the form of a written reprimand because of three instances of misconduct: (1) conviction of a DUI in April 2016; (2) in approximately July 2016, telling mental health staff “*you have to break them [inmates];*” and (3) in May or June 2016, expressing to mental health staff disappointment that he could not use force on an inmate who had been calmed down. State Exhibit 8 (emphasis in original). That reprimand advised Grievant:

Going forward the expectation is for you to engage in professional communications with the staff that you work with. You have a tremendous amount of power to impact your subordinates for the positive. I encourage you to use that power to do so. Further incidents of work rules violations, to include criminal convictions or unprofessional communications regarding the care of inmates will be subject to progressive discipline, up to and including termination.

Id.

20. In April of 2017, Grievant and Whaley discussed their desire to pursue their relationship, and Whaley resigned. Grievant believed his relationship with Ms. Whaley played some part in her decision to leave her position.

21. On or about November 1, 2017, CO I Megan Dole transferred from Windsor to SSCF. At that time, Grievant was bumped down to a CO II, but was still involved in recruitment and training at SSCF.
22. Ms. Dole reported an incident to Investigator Canales that occurred shortly after she was transferred to SSCF. Grievant, accompanied by Ms. Whaley, and other SSCF officers were at a bar after work hours. According to Ms. Dole, Ms. Whaley initiated or invited Ms. Dole into a sexual encounter. Ms. Dole declined. When Ms. Dole saw Grievant, she reported to him that “hey, your girlfriend is trying to take me home.” Grievant responded “I know.” She then said it would not happen and made fun of his height. The transcript of Mr. Canales’ interview with Ms. Dole was admitted as Exhibit 17.
23. Ms. Dole stated that Mr. Nappi never engaged in any advances or flirtation with her thereafter.
24. Grievant recalls a similar incident, but claims it occurred months later at a pizza parlor after a funeral of a co-worker, perhaps in March of 2018. Grievant recalls that Ms. Dole wanted to see Ms. Whaley’s tattoos, and that they went together to the women’s rest room. When they emerged, Ms. Dole told Grievant Mr. Nappi that Ms. Whaley had propositioned her. He recalls her saying that it wouldn’t happen, and that she joked about his height.
25. In describing Grievant’s interactions towards other women correctional officers, Ms. Dole reported to Investigator Canales the following:
- Q. Okay. What about towards others? Are you aware of anything else?
- A. He does have a reputation in the facility. Every new girl that starts, he tries to have a romantic relationship, and he now, he has had a few, and things have not

ended well. He kind of looks for the next best thing. I honestly have no respect for the man.

State Exhibit 17.

26. In the Summer of 2018, Grievant began dating CO I Skyler Baker. CO I Skyler Baker had been working at the facility for about seven months when the two began their relationship. Grievant was sometimes on her shift when he was working overtime.
27. Grievant admitted he communicated with Baker electronically during work hours and that sometimes the communications were improper. During his investigation interview with Peter Canales, Grievant offered the reasoning for these communications, because “[t]here was an attraction between us, and I wanted to pursue a relationship. That’s how we communicated after.”
28. Around September 2018, Baker resigned from SSCF and DOC, for a number of reasons, including that the two had started seeing each other exclusively and wanted to have a relationship, and she was pregnant.
29. In the Summer of 2019, Grievant and Baker ended their relationship. The breakup did not go well. After she moved out, Baker broke into and vandalized Grievant’s home. Grievant found Baker at the home and called the police who arrested Baker. Grievant obtained a No Trespass Order against Baker prohibiting her from coming to Grievant’s residence.
30. Crystalanne Nolte began her employment with DOC in August 2018 as a CO I at SSCF. During her recruitment and application process, Nolte’s initial point of contact at SSCF was Grievant. After she filed her application, Grievant called her to inquire about her

interest in the position, he was one of two officers on her interview panel, and he called her to extend a job offer.

31. Grievant coordinated Nolte's assignments during her "shadow" week and monitored her training during and after the academy as well as set her initial assignments.

32. After DOC correctional officers are hired, but before they enter the Training Academy, they participate in a "shadow week" during which new recruits follow a correctional officer ("CO") for a shift to learn about the job.

33. Grievant assigned Nolte to shadow Skyler Baker. During the time she shadowed Baker, Baker asked Nolte questions about her sexual preferences, whether she preferred men or women, and whether she was interested in sexual relationships with men and women together.

34. Nolte told Baker that she was uncomfortable with the conversation and Baker apologized for making Nolte feel uncomfortable. The two then went to the cafeteria for ice cream where Baker repeated her questioning of Nolte about her sexual preferences. At the beginning of the conversation, there were no other correctional officers around. Baker then asked Nolte if she would be interested in a relationship with her and Grievant. It was at that point that Grievant came in close proximity to the two women. Grievant did not say anything.

35. Grievant denied ever asking or directing Baker to proposition or ask Nolte to engage in a sexual relationship with him and Baker. Although he could not recall assigning Nolte to shadow Baker, he admits he probably did, because Baker was a very good officer, "and for a female she did a great job at holding inmates accountable in her unit." Grievant believed that Baker could serve as an example for female staff on how to establish her

presence as a female officer in a male-dominated field. By shadowing Baker, Nolte could “learn the correct way to be an officer.”

36. Early in her employment, Grievant commented on Nolte’s appearance, saying that she was beautiful and asking if she wanted to hang out after work.

37. According to Grievant, about two or three months after Nolte started working at SSCF, in the fall of 2018, Nolte and Grievant “ended up talking on Facebook, and [they] talked a lot about life and stuff, and what it was like to work there. Eventually it did get to a point where [they] flirted a little bit and had [their] fair share of playful banter, but nothing ever ensued from it. That actually fell by the wayside.”

38. The two engaged in a series of Facebook messages from May through July 2019, about work, relationships, Grievant’s child, work-life balance, and other personal matters.

VSEA Exhibit 3.

39. Sarah Gibson is a CO I at SSCF. Ms. Gibson first began working for DOC in 2013, at Northeast Correctional Complex in St. Johnsbury, Vermont. She left that facility and the DOC voluntarily in April 2018 and relocated out of state. Thereafter, Ms. Gibson returned to Vermont and applied for at least four different CO I positions at different facilities within DOC. She was hired at SSCF and started in September 2018.

40. Grievant played a role in hiring Ms. Gibson. Gibson was grateful that Grievant took a chance on hiring her because she had applied to several other DOC facilities, and none had extended her an offer.

41. Grievant set Gibson’s schedule as a leave replacement officer when she first started working at SSCF. Gibson and Grievant would speak occasionally about various matters

including Grievant's home projects. Grievant also commented to Gibson that she was beautiful, had a great body, and asked her to hang out a couple of times.

42. Gibson initially did not consider Grievant's comments to be sexual advances, but then heard from other employees that Grievant had past relationships with other female staff, including Laurie Whaley and Skyler Baker. Gibson's coworkers told her to steer clear of Grievant.

43. Grievant admitted that that he and Gibson flirted on social media and engaged in playful banter back and forth."

44. Grievant could not recall whether he had ever propositioned Gibson:

Q. All right. Did you have any interactions with her that might constitute hitting on her, coming onto her, propositioning her?

A. I don't recall any. There may have been a time where I may have. It was almost like three years ago, so I don't – I don't recall.

Exhibit 19, Loudermill Hearing.

45. Grievant claims the flirtation "never went anywhere, and then now we're just friends after that. That's how it was when I was supervisor."

46. After he was repromoted to a Shift Supervisor in 2019, Grievant stopped engaging in flirtatious communications with female staff like Gibson or Nolte. The reason he discontinued this behavior was, "[b]ecause I had already had the prior knowledge of being in a relationship with Laurie Whaley and how things were looked at by management,"

47. Grievant sent Gibson a picture of himself exposing his bare chest, to show off his tattoos. Grievant does not have tattoos on his chest but does have tattoos on his arms. Although

Grievant could not recall whether he had sent Gibson a photo of himself exposing his bare chest, he added that sending photographs of tattoos is prevalent, “[t]here’s people doing it at Southern State with just the overall wave of technology with online dating”

48. On September 12, 2019, and the early morning hours of September 13, 2019, several calls were placed to the SSCF staff from a woman asking to speak with a supervisor. During the initial call, the woman did not identify herself or the purpose of the call. During a subsequent call she stated she wanted to talk to the supervisor about staff misconduct. The caller was screaming and verbally abusive and kept hanging up and calling back again. During a subsequent call, the caller identified herself as Skyler Baker and indicated she wanted to file a complaint of staff misconduct. She wanted to know how many female officers had resigned due to a male staff member. The call was transferred to CFSS Doyle, but the caller hung up before Doyle came on the line.
49. On September 25, 2019, the SSCF received an anonymous complaint that alleged that Grievant was “seriously disrupting the workplace by his actions.” The complaint alleged that Grievant was in a supervisory position and engaged in sexual relationships with numerous female staff under his authority. The complaint alleged that Grievant was in the position of hiring Officers Baker and Officer Burleson and that Burleson had recently resigned “due to a previous relationship that created a conflict at Southern state.” The complaint alleged that “[o]ver the last # of years Mr. Nappi has been in 3 known relationships along with various other female staff under his supervision. It is appalling that these young staff have had to quit their careers due to his predatory behavior.” State Exhibit 10, page 43.

50. On October 5, 2019, Grievant's ex-girlfriend Skyler Baker confronted CO I Nolte at a New Hampshire bar. Nolte was there with other SSCF officers, including CO I Jesse Fleshman, and Megan Dole. Baker approached Nolte and asked Nolte whether Grievant had tried to force himself or have sexual relations with Nolte.
51. Later, in the early morning hours of October 6, 2019, Skyler Baker woke Grievant up banging on his door claiming that she had just been at the bar along with Nolte, Fleshman, and Dole. Baker reported that Nolte was pressing rape charges against Grievant, and that Nolte was going to get Grievant fired.
52. Although not initially believing Skyler Baker, Grievant took it upon himself to verify the allegations. The next morning, he saw that CO I Fleishman was on duty and decided he "might as well ask him [Fleshman] if there's any truth behind this."
53. Grievant was in the supervisor's office when he questioned CO I Fleshman about the allegation. Grievant "thought that he [Fleshman] was someone that I could ask in confidence about this...." Grievant told Fleshman, "look, I'm not interrogating you as a supervisor. I'm just asking as a friend, because this is a pretty serious allegation."
54. CO I Fleshman told Grievant that Nolte had made no rape allegations to Baker.
55. After being told by Fleshman that Nolte had not made any rape allegations to Baker, Grievant, still at work, contacted Nolte through Facebook messenger. The following represents the message exchange:

GRIEVANT: I don't believe rumors. Hence why I'm talking to you. I have get a drunk Skyler banging on my door at 3 in the morning telling me your filing rape charges against me?

NOLTE: I've already been told what's been happening. And how you're pulling people in the office and asking them. So is doing that part of your job? Bc honestly I'm so sick of all this shit between you and baker and southern state in general. I have no clue why I am always dragged into your bullshit with her. But honestly stop bringing it to work. **Stop involving and questioning people about**

me. Supervisor or not it's not ok to be pulling people aside and asking them about me about your crazy baby mama. So now that I have finally said that and do not even care how much trouble ya wanna get me in for it. I DID NOT SAY ANYTHING OF THE SORT TO BAKER. SHE ASKED IF I SLEPT WITH YOU, I SAID NO. SHE CRIED ABOUT YOU MAKING HER GET AN ABORTION. I TOLD HER SOUNDS LIKE YOU'RE BETTER OFF W/O HIM THEN. AND WALKED THE FUCK AWAY. and of course ya already know the people who were by my side all night bc you've already spoken with them. have a good day.

P.s.

Thanks to all of this non stop drama you wish to drag me into. I will not be showing up to work tonight. Don't worry I will call and let them exactly know why I do not want to be anywhere near southern state.

GRIEVANT: I was asking because that's a crazy accusation. And FYI I asked one person. I didn't question anyone. I have no problems with you that's why I was like wtf And for the record I'm not trying to drag you into anything. I was merely asking you for the truth that's all

NOLTE: Then I guess you could have asked me first. But you didn't and that's my problem. I can't stand all this shit at SSCF. Don't you get it. I just want to be left alone and out of all of it. I want to go to work do my fucking job and go home and live my own home life. You brought someone else into things who didn't need to be. W/o asking me first. At work no less. Which just caused so much more headache for me. Somewhat for sleeping to go into work. Oh wait I can't do that bc people wanna reach out to me about baker your baby mama. And now I get to call and deal with whatever supervisor on shift that wants to get mad at me for calling out. Who has no idea the shit I'm going through bc of you.

GRIEVANT: you don't have to call out. I just messaged you and asked you. I have no problems with you. I dk [don't know] what happened between you and Baker last night thats why I was asking you. but we broke up and I don't want anything to do with her. Just like you I want to come to work, do my job, and have everyone else leave me alone.

NOLTE: I just want all of this to stop. I just want to be left out of everything. I haven't slept bc I've been dealing with the mess you created by bringing someone at work into the office asking about something like that. **You have no idea what you just started and did to me. So yea I do have to call out.**

GRIEVANT: I just want everything to stop too. I hardly talk to you. I dk why this keeps getting brought up

NOLTE: Well you did nothing but continue it by asking someone else at work. If you wanted it to [s]top you would have just asked me. **But now people keep asking me if you raped me and You have no fucking clue what's that's like. I have never in my life been made [to] feel so shitty than the staff at SSCF. I haven't done shit to anyone. Yet some how you all want to drag the one person who wants nothing to do with anything or anyone, in the middle of it all. So yeah, there's no way in hell I can show my face there after all this today.** So now I have to call out and get bitched at and attitude from the staff as

well as the supervisor on shift. When they have no fucking clue what I'm going through bc of all of this.

GRIEVANT: [I] get where you're coming from. **how do you think I feel? [Ha]ving someone telling me I am getting accused of that? and I may have asked one person but I didn't talk to anyone else other than you so you can blame that person if you are getting calls/texts.**

NOLTE: **You shouldn't have asked anyone no less at work. Like wtf were you thinking. Bc Baker made it all up so until you decided to ask people the only people that had anything to do with this lie was the one who created it (Baker) and you, the one she told it to. But bc you chose to pull someone aside in an office at work and ask them if I said at all last night about you raping me is what just made shit completely blow up. So yeah before you pulled someone aside. There was never a issue. Now bc of that I pay the price. Not you.**

GRIEVANT: I am not going to argue with you. You will do what you need to do. But no one is against you. They are all against Baker.

NOLTE: Doesn't matter who they're against. Your actions in the end are what just made my day a nightmare.

GRIEVANT: Blame me if you want. But it wasn't my actions that started this

NOLTE: **Your actions are the reason my shit is getting blown up and the reason I'm getting asked such an invasive uncomfortable question.** Who's the supervisor on shift atm [at the moment]?

GRIEVANT: Cornwall well then I guess I can say whatever you said to Skyler last night at the bar really started it all. But im not trying to place blame

NOLTE: Like you already know by the person you pulled into the office at work. I didn't say anything. You made the mistake of bringing it to work.

GRIEVANT: who do you think I talked to??

NOLTE: I'll call Cornwall soon and if he asks why I can't make it to work. I'll just tell him he can ask you.

GRIEVANT: you can try to blame me. but that's not an appropriate reason to call out

NOLTE: Then you can explain to him what's going on and how you pulled someone from work during work to ask them about these things. And then leave it up to him if he wants to mark it as an appropriate reason to call out.

GRIEVANT: who do you think I talked to at work?

NOLTE: I know who, obviously they messaged me. Would you like me to screenshot and send you the conversation?

GRIEVANT: just wanted to make sure we were talking about the same person. I don't want to be blamed for him telling other ppl [people]

NOLTE: Is it up to him to not tell anyone? Or was it up to you when and where ya thought it was a good idea to pull someone aside and ask them about such fucked up shit? Was just between you and baker until you made it something else.

GRIEVANT: ok im done arguing with you

NOLTE: More than welcome to stop messaging me

VSEA Exhibit 3 (emphasis in bold added).

56. Nolte felt uncomfortable, targeted, and disgusted that people at the worksite were talking about her and the rape allegation. Nolte felt that Grievant's questioning of her was inappropriate and put her in an awkward position. Nolte was so upset and uncomfortable that she called out sick to work.
57. On October 10, 2019, Grievant arranged to meet his ex-girlfriend Skyler Baker at 4 pm at SSCF to exchange custody paperwork related to their child.
58. Baker did not arrive at SSCF at 4 pm, and Grievant proceeded to his overtime assignment in the post truck.
59. SSCF is surrounded by barbed wire, which in turn is surrounded by a perimeter road. A Corrections Officer patrols that perimeter in the "post truck" at all times. The road itself is restricted from the public, but connects to a parking lot, open to the public, at either end. The main entrance to the facility is slightly to the left of the parking lot. There is an area near the entrance where employees congregate on breaks or when they are off duty, where some smoke cigarettes.
60. Grievant observed Baker arriving at the facility around 9:15 pm, five hours after the scheduled time. Baker parked behind the BGS building which is away from the staff and public parking lot.
61. Grievant observed Baker in the parking area near SSCF staff. Grievant then observed Baker walk away from the area where she had been speaking with other SSCF staff and walk toward the restricted area on the perimeter road where Grievant was sitting in the post truck. Baker was about halfway across the staff parking lot when Grievant "turned the vehicle around to go and tour around the facilities, since it was time for [him] to tour anyway." When he turned around and drove away from Baker, Grievant did not know

whether she would turn around and walk back into the parking lot or whether she would follow him into the restricted post road.

62. CO I Nolte, arriving for her shift, was concerned when she saw Baker at the SSCF parking lot on October 10, 2019. Days earlier, Baker had made a rape allegation involving Nolte, about which Grievant later confronted Nolte and SSCF staff. Baker was in the parking lot intoxicated and approached Nolte asking where Grievant was. Baker was slurring her words, weaving back and forth, and smelled of alcohol. Nolte wanted to remove herself from Baker and Baker kept blocking her. Another Correction Officer got between Nolte and Baker and escorted Nolte into the facility. Nolte told Baker that Grievant was in the post truck. Baker proceeded to walk to the post truck.
63. At about 9:50 pm, Grievant met Baker on the public portion of perimeter road which staff and visitors cross to get between the parking lot and the facility's main building. Grievant told Baker he had ten minutes remaining on his shift and that she should wait in her car. During this exchange, Grievant noticed that Baker was intoxicated and suicidal, which Grievant described as "a comment that, you know, I'll kill myself."
64. After Grievant's shift ended at 10:00 pm, he observed Baker's keys in the car and moved Baker's car from the BGS parking lot to the main parking lot, where Baker approached him. Baker talked about her interest in getting back together, but Grievant rejected her plea. An argument ensued and Baker again stated she would kill herself. At some point, Grievant returned Baker's car keys to her. Baker then got into her car and started driving away and Grievant called 911.

65. At no time did Grievant contact the SSCF Shift Supervisor Doyle that Baker was on the premises, that Baker was intoxicated, that she had approached Grievant in the post truck, or that she had threatened to kill herself, or that Grievant had called 911.
66. While Grievant was in his car on the phone with 911, Baker drove back to the parking area proceeded to bang on Grievant's door, tried to enter the vehicle, and yelled at Grievant. Soon after, the Springfield police arrived, administered Baker a field sobriety test, spoke with Grievant, and arrested Baker.
67. About thirty minutes into the third shift, the main control operator, CO I Wielosinski, called Shift Supervisor Doyle to inquire whether Doyle knew that the Springfield Police Department were in the SSCF parking lot, which he did not. Doyle then went to the parking lot and saw two Springfield Police Department officers speaking with Grievant. Doyle spoke with the officers and discovered from them what had occurred between Baker and Grievant.
68. Doyle "wasn't overly thrilled" to find out from his main control operator what was happening, and that the incident was basically over by the time he was notified.
69. Grievant reported to Doyle what had occurred, Doyle checked on Grievant's safety and then Grievant left the facility to go file a police report and because he "wanted to make sure [his] house wasn't destroyed, because she'[d] done that once already."
70. Doyle told Grievant he would contact Superintendent Lyon. Almost immediately after Grievant left, Doyle notified Superintendent Lyon that an incident had occurred on the post road leading to Ms. Baker being arrested for DUI and the Springfield Police entering the facility grounds.

71. As Shift Supervisor, Doyle's main concern with the incident was that he was responsible for the operation of the facility during third shift and was charged with reporting all that occurs during the shift to the Superintendent. Grievant should have reported Baker's presence and actions to Doyle as they were occurring.
72. Observing an intoxicated person walking around the facility grounds or seeing a person approaching the perimeter post road where the road was restricted would have caused Shift Supervisor Doyle concern, as would seeing a person on facility grounds who had had a confrontation with a staff member a few days before or who had a no trespass order at the home of a staff member.
73. According to Superintendent Lyon, Grievant should have reported that Baker was intoxicated and making self-harming statements rather than directing Baker to go back to her car.
74. In connection with the post truck incident and the rape allegation, on October 10, 2019, Ms. Nolte wrote to COS James Studebaker. The email included the following:

Ex COI Baker showed up at the Imperial as well as many other CO's. Baker whom is CFSS Nappi's child's mother approached me and specifically asked me if I had done anything sexual with CFSS Nappi. To which I responded (With COI Fleshman, COI Chaffe & Lyndsey right there next to me) "No, I have never done anything sexual with CFSS Nappi. Anytime he has tried or commented to anything sexual I have turned him down." That was the end of the conversation between Baker and I. I left shortly after and went home to sleep.

The next day I am messaged on Facebook By [sic] COI Fleshman asking me if I was raped by CFSS Nappi. As I'm sure you can imagine how caught of [sic] guard I was by this question, not to mention made very uncomfortable by this question. I politely answered COI Fle[s]hman with a "What? No, Why would you ask me something like this." To which he explained to me how in the middle of his shift CFSS Nappi pulled Fleshman into his office and asked Fle[s]hman if I was telling people Saturday that he (Nappi) had raped me. As well as told COI Fleshman he had no choice but to tell CFSS Nappi the truth due to CFSS Nappi can and would start/open an investigation about this issue at work and COI Fleshman would be involved. . . . So COI Fleshman agreed to talk and told CFSS

Nappi exactly what I listed above that he was with me while Baker approached me asking about CFSS Nappi and with what I responded.

I was already upset with the fact that now this type of invasive rumor would begin to spread around the work place and the word "Rape" alone makes me very uncomfortable due to personal reasons. So I tried very hard to let things go after COI Fleshman brought all of this to my attention. But then while CFSS Nappi was at work on shift he messaged me on Facebook asking me if I was filing "Rape" Charges against him. Shortened version I explained how his actions and behaviors at work regarding such a vile and inappropriate topic was not acceptable. And tried to get him to see and understand how doing this made me feel very uncomfortable. . . . Then I ended the conversation with you can stop messaging me now.

So after being in tears of such awful allegations being wide spread before work, I called CFSS Cornwall to let him know I wouldn't be able to make it into work because of CFSS Nappi's inappropriate behaviors.

State Exhibit 10, pages 97-98.

75. On September 8, 2019, Kiarra Burleson emailed SOS James Studebaker resigning her position as CO I at SSCF effective September 19, 2019. The reasons given for her resignation, included that staff members were acting in an unprofessional manner, spreading gossip and rumors about her alleged sexual activity with staff members including supervisors, and that she felt targeted.

76. About a week before submitting her resignation letter to SOS Studebaker, CO I Burleson consulted with Grievant regarding her concerns about the comments and harassment. Because she trusted Grievant, she asked him for his advice on what she should do. Grievant told her to tell SOS Studebaker about her concerns.

77. Ms. Burleson moved in with Grievant sometime at the end of September or beginning of October 2019.

Investigation

78. On September 12, 2019, in response to the resignation letter and allegations made by Kiarra Burleson, Superintendent Michael Lyon made a referral to the Department of Human Resources Investigations Unit. Investigator Canales was assigned to the matter.
79. Because she was mentioned by Burleson in her resignation letter, Investigator Canales contacted Nolte as part of his investigation.
80. On October 7, 2019, Superintendent Lyon made a second referral to the Department of Human Resources Investigations Unit. The allegations prompting the referral included Grievant's inappropriate relationships with female staff members, the rape allegation and Grievant's response, and the September 25, 2019, anonymous complaint about Grievant. Investigator Canales was assigned to the investigation.
81. On October 11, 2019, Superintendent Lyon requested that Grievant be placed on relief from duty. The request listed the allegation of inappropriate relationships between Grievant and Burleson prior to her resignation, and the allegations outlined in the October 7, 2019. Request of Investigation. The letter also listed Grievant's conduct surrounding the October 10, 2010, incident at SSCF involving Skyler Baker and Grievant's failure to report the incident while on duty in the post truck.
82. On October 11, 2019, Superintendent Lyon notified Grievant that he was temporarily relieved from duty with pay, "to permit the State to conduct and complete an investigation into allegations of misconduct, including, but not limited to, violations of DOC Work Rules, 1, 6, 9, and 13 concerning allegations of boundary issues, inappropriate behavior, and willful disregard of duty." State Exhibit 14, page 68.

83. On October 21, 2019, Investigator Canales notified Grievant that he was the subject of an investigation into allegations that he had “engaged in misconduct, including but not limited to, violations of DOC Work Rules, Vermont DHR Policies by inappropriate interactions with subordinate staff, sexual harassment, abuse of authority and willful disregard of duty.” State Exhibit 14, page 72.
84. On October 31, 2019, Grievant participated in an investigative interview with Peter Canales at which VSEA representative Gretchen Naylor also attended.
85. Investigator Canales testified at the hearing before the Board and reported on his interview with Nappi. Grievant told Canales that romantic relationships were not appropriate.
86. At his interview, Grievant told Investigator Canales that he engaged in flirtatious behavior with Nolte and that it was mutual. He said he stopped engaging in this communication because she (Nolte) was dating a friend of his.
87. Grievant told Canales that it was not appropriate to have a romantic relationship with subordinate staff because it may appear to others that you treat them differently or not equally and may play favorites.
88. Grievant recognized that it was inappropriate and improper to engage in flirtatious behavior with Nolte, even though he was a CO2, because he still had rank.
89. Grievant agreed that he has an obligation to treat staff in a “professional manner,” meaning “equally” and “with respect.”
90. Grievant admitted that he engaged in flirtatious behavior with CO I Sarah Gibson. He stated that he may have commented on her appearance that she looked good today or looked nice today. He admitted he may have sexually propositioned her one time a year

ago. Grievant admitted that the proposition was inappropriate, but he did it, because “[s]he was attractive. We were talking a lot. I guess, human instinct.”

91. Grievant stated that it would be inappropriate for a supervisor to have a relationship with a subordinate because of the fear of favoritism or appearance of favoritism.

92. Grievant described to Canales his relationship with former SSCF employee CO-1 Kierra Burleson as follows:

He said his relationship with Burleson was coworker while she was under the employ of the DOC. At some point, they recognized it was more to that relationship. After a discussion between -- what he told me, after a discussion between he and Burleson, Ms. Burleson decided to resign her position with the DOC so that they could further their -- their relationship.

Hearing Testimony of Peter Canales, March 12, 2021.

93. Grievant told Canales he had a relationship with a nurse working at SSCF, who was not employed by the State.

94. On April 30, 2019, the Department of Corrections issued Grievant a Loudermill letter notifying him that DOC was contemplating imposing serious disciplinary action, up to and including dismissal. The letter identified the following relevant provisions of DOC Work Rules, Directives and Orders, Vermont Personnel Policies, and the Corrections Unit Collective Bargaining Agreement Sections:

- a. Corrections CBA Article 14: Disciplinary Action
- b. Vermont Personnel Policy 3.1: Sexual Harassment
- c. Vermont Personnel Policy 5.6: Employee Conduct
- d. DOC Work Rules 1, 6, 9, and 13

95. The April 30, 2019, Loudermill letter to Grievant outlined the following potential violations:

- i. At a time when subordinate female employee CO I Crystalanne Nolte (Nolte) was shadowing CO I Skyler Baker (Baker) as part of Nolte's introduction to SSCF prior to attending the DOC Academy, you used Baker, a subordinate female staff member with whom you were engaged in a sexual and/or romantic relationship, to solicit Nolte to engage in sexual activity with you and Baker.
- ii. You engaged in flirtatious communications with a subordinate, Nolte. You admitted to Investigator Canales that you engaged in such conduct and that the communications were improper because of your rank.
- iii. On or about October 2019, while at work, you asked a subordinate, CO I Jessie Fleshman, if Nolte was telling people that you raped her. You thereafter sent a Facebook communication to Nolte asking her if she was filing rape charges against you. You did not report to DOC management any concern or information you had that Nolte was or may have been telling others that you raped her. You admitted to Investigator Canales to the extent that you contacted Nolte and asked her if she told Baker that you had raped Nolte.
- iv. You engaged in a sexual and/or romantic relationship with a subordinate, Baker. You engaged in sexualized and/or romantic electronic communications with Baker during work hours. Not only did you admit to Investigator Canales that it was improper to have a romantic relationship with subordinate staff because it may appear to others that you treat them differently or not equal or may favor them, you admitted to Investigator Canales to the further extent that you were in a relationship with Baker that lasted approximately one to three months while she was employed at SSCF before her resignation, that you communicated electronically with Baker during work hours because "There was an attraction between us, and I wanted to pursue a relationship," and that not all of your communications with Baker during work hours were appropriate.
- v. During the first week that she was at SSCF, during a staff event sometimes described as a "get to know everybody" social event, you used subordinate female staff member, CO I [Laurie Whaley] to solicit subordinate female staff member CO I Megan Dole (Dole) to engage in sexual activity with you and [Laurie Whaley], and/or you were aware of that solicitation and did not report it to DOC management.
- vi. You made a sexual proposition to CO I Sarah Gibson (Gibson), who was a female staff member subordinate to you, and sent flirtatious electronic

communications to her. You admitted to Investigator Canales that you made a sexual proposition to Gibson because “She was attractive, we were talking a lot. I guess, human instinct,” and that it was inappropriate for you to do so. You further admitted to Investigator Canales that you sent electronic communications to Gibson that were flirtatious and that this was not appropriate.

- vii. You engaged in a sexual relationship with a subordinate staff member, [Laurie Whaley], and engaged in sexualized and flirtatious communications with her. You admitted to Investigator Canales the existence of that relationship and that you engaged in sexualized and flirtatious communications with [Laurie Whaley].
- viii. On or about October 10, 2019 on or after approximately 9:15 pm you violated your perimeter post orders, Post Order: PO21 Perimeter (Perimeter Post Order), when you failed to instruct Baker, who was no longer employed by DOC, to leave a restricted area, or take other appropriate action to have her leave or be removed from the restricted area. In addition, you failed to make the appropriate report to the facility and/or the 3rd shift CFSS regarding Baker’s presence at the facility.

State Exhibit 18.

Loudermill Hearing

96. On June 25, 2020, Grievant participated in the Loudermill hearing, at which Interim Commissioner James Baker, Superintendent Michael Lyon, and Grievant appeared. Also appearing were Gretchen Naylor, director of Field Services for the VSEA, and Tom Hango, field representative for the VSEA. The transcript of the hearing was admitted into evidence as Exhibit 19.
97. During the Loudermill hearing, Grievant admitted he made mistakes including “inappropriate social relationships with some staff” and he would not make that mistake if allowed to return to work.
98. Regarding the allegation that he asked Baker to proposition Nolte, Grievant stated that he “did not ever tell Skyler Baker to solicit Crystalanne Nolte in any manner.”

99. Regarding the second allegation, Grievant admitted to flirting with CO I Nolte, “but it was not sexual.” According to Grievant, “flirtatious” does not mean “sexual.” Grievant admitted that conversations with Nolte may have been inappropriate a few times, while he was a CO II. He said he never made any sexual proposals to Nolte. He did not believe the comments were unwanted as she continuously engaged in conversation with him. When he was repromoted to supervisor in 2019, his communication with Nolte became more limited. Grievant occasionally spoke with her but it was nothing like the communications he had with her before.

100. Regarding the third allegation, Grievant stated that his ex-girlfriend Baker came to his home at about two in the morning claiming that Nolte was asserting rape charges against him. Grievant provided context for this event by stating that Baker had previously vandalized his house, was subject to a No-Trespass Order, and lived over an hour away.

101. Grievant admitted that the next day he asked CO I Jesse Fleshman about the allegations made by Baker, whether they were true, and whether Nolte was talking about this to other people. Fleshman was subordinate to Grievant. Fleshman told Grievant nothing happened.

102. Grievant attempted to minimize this encounter by claiming that he prefaced his comments to Fleshman with “[a]s a friend, these are pretty serious allegations; did they happen.”

103. After hearing from Fleshman that “nothing happened,” Grievant then messaged CO I Nolte, the alleged complainant, on Facebook messenger “and asked her why I had Skyler banging on my door saying this, and it was at this point, that she wanted to say

that she wasn't saying that and that now she can't go to work because I had asked her about it. And once she started bringing more work stuff, I discontinued the conversation." State Exhibit 19.

104. Towards the end of his shift that night, Grievant contacted Mr. Lyons and informed him of the rape allegation incident and that he had contacted Fleshman and Nolte.

105. In responding to allegation four, Grievant admitted that he and Baker had a romantic relationship while she was still employed as a CO I. The two exchanged email communications at times, but he claims he was not her supervisor.

106. He admitted that he stated that "it was improper to have a romantic relation with a subordinate because it [sic] would treat them differently or not equal, or people might think that I'm favoring them."

107. Grievant asserted he never showed favoritism or treated people differently and that is not how he would be as a supervisor.

108. Grievant did not tell management about the relationship, because "[w]e were not sure if we wanted to be in a relationship. And through consistent talking, we decided we wanted to have a relationship and she chose to resign to have more facts [sic] in life and take care of her animals and her horse, and once she resigned, we moved in together and fostered a relationship."

109. In responding to allegation five, Grievant denied using Laura Whaley to solicit Megan Dole for sex. Grievant claimed that the timing and location of the allegation was wrong. The location was at a pizza place after the funeral of a fellow officer in March or April 2018. Grievant claimed that the two women went into the bathroom after Dole

commented on Whaley's tattoos. When they exited the bathroom, Dole said to the group that Laurie Whaley had propositioned her and wanted to take her home. Grievant claimed that he was appalled and embarrassed because the comment was inappropriate. Grievant apologized to Dole for Whaley propositioning her.

110. Regarding allegation six, the sexual proposition to Sarah Gibson, Grievant did not directly deny that he propositioned Gibson. Instead, he stated that he told the investigator that he did proposition Gibson because he could not remember whether he did or not, and he did not want to lie. He also referenced Gibson's statements to Investigator Canales where she states that Grievant did not proposition her.

111. Grievant conceded that if he did proposition CO I Gibson, it would be improper because he would have been a supervisor.

112. Regarding allegation seven, Grievant admitted he engaged in a sexual relationship with Laurie Whaley, that started when he was a CO II, and she was a CO I. Grievant did not report the relationship because he was married and Whaley was in another relationship, and "[w]e did not want anybody to know." The relationship continued after he became a supervisor. After Grievant divorced, the couple continued the relationship. Whaley "didn't want to work for the Department anymore and she resigned." The couple thereafter moved into an apartment together.

113. In response to allegation eight, Grievant did not believe he violated perimeter post orders, because Skyler Baker never entered a restricted area. Skyler Baker arrived at 9:15 and was talking to other staff members. Skyler Baker began to approach him while he was in the restricted area, but he turned the truck away from her and drove away. Grievant spoke with Baker at approximately 9:50 pm in the front of the main entrance of

the building by the staff entrance, which he claimed is not a restricted area. At that time, he detected that she was intoxicated. Grievant told Baker to return to her car and he would talk with her in ten minutes when his shift was over. He reported the incident to Shift supervisor Doyle after he called the police and after Baker made suicide threats.

114. In concluding statements, Grievant stressed that he takes great pride in being a part of the Vermont Department of Corrections and being a shift supervisor. He admitted that he has “done some things that were inappropriate, and the important thing is that I have learned from these and I am not one to repeat mistakes and continue to make the same mistakes. It’s just not who I am.”

115. In responding to questions from Interim Commissioner Baker on why Grievant believed that engaging in flirtatious or sexual encounters or relationships with other officers was okay, Grievant responded, “I’m not going to give any reason that makes it that it’s okay.” Grievant said that he was at a low point in his life after his divorce, and that he was working sometimes sixteen hours a day. He admits that he fostered some relations that he admits were inappropriate.

116. Interim Commissioner Baker asked Grievant to clarify the relationships he had with women correctional officers. Grievant admitted that he was romantically involved with Skyler Baker and Laurie Whaley. Grievant also admitted that he was romantically involved with a nurse at the facility. Grievant admitted that flirting in the workplace was improper. He also agreed that it was a bad reflection on the DOC when the police must be called as a result of his relationship with someone from the workplace.

117. Grievant finished the hearing with representing that he would not engage in any more romantic relationships with anyone at work. Grievant wanted a second chance to prove his worth and that his hard work and experience be considered.

Commissioner's Decision

118. On July 28, 2020, Interim Commissioner Baker sent Grievant a letter notifying him of his dismissal. The letter provided in part,

I am terminating your employment because I find that you committed misconduct as described in the April 30, 2020 [Loudermill] letter, which is incorporated herein. Specifically, you engaged in multiple acts of serious misconduct involving multiple subordinate female staff. You abused your position and violated your supervisory authority over subordinate female staff, failed to maintain proper boundaries between yourself and female staff, and failed to protect the security of the facility. Further, you disregarded DOC departmental directives, procedures and work rules.

The Department of Corrections has lost confidence in your ability to perform your job duties safely, professionally, and satisfactorily. The State of Vermont and DOC must maintain the public trust in carrying out its mission, and your actions lack professional integrity, and undermine directives and policies that are in place to keep staff and the public safe. Therefore, I find that no lesser penalty than dismissal is sufficient to address your misconduct.

State's Exhibit 21.

119. In deciding to dismiss Grievant, Interim Commissioner Baker found that Grievant had engaged in the eight allegations of misconduct outlined in the Loudermill letter. He found the totality of the circumstances to be troubling, especially given Grievant's role as a shift supervisor. Commissioner Baker found that Grievant's contact with CO I Fleshman and Nolte demonstrated bad judgment and interference with a potential sexual harassment investigation in violation of Policy 3.1, which prohibits "intimidation, harassment, or interference for filing a complaint or assisting in an investigation." This interference violated State Personnel Policy 5.6. Commissioner Baker found Grievant's

conduct, in the aggregate, amounted to violations of DOC Work Rules 6, 9, and 13, because he engaged in activities associated with his job that were insulting or harassing and reflect poorly on DOC.

OPINION

Grievant alleges the Employer dismissed him without just cause, improperly bypassed progressive discipline, and failed to discipline him with a view towards consistency and uniformity. Just cause for dismissal is some substantial shortcoming detrimental to the employer's interests which the law and sound public opinion recognize as a good cause for dismissal. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). The ultimate criterion of just cause is whether an employer acted reasonably in discharging an employee for misconduct. Id. There are two requisite elements which establish just cause for dismissal: 1) it is reasonable to discharge an employee because of certain conduct, and 2) the employee had fair notice, express or fairly implied, that such conduct would be grounds for discharge. Id.

In carrying out our function to hear and make a final determination on whether just cause exists, the Labor Relations Board determines *de novo* and finally the facts of a particular dispute, and whether the penalty imposed on the basis of those facts is within the law and the contract. Grievance of Colleran and Britt, 6 VLRB 235, 265 (1983). The burden of proof on all issues of fact required to establish just cause is on the employer, and that burden must be met by a preponderance of the evidence. Id. Once the underlying facts have been proven, we must determine whether the discipline imposed by the employer is reasonable given the proven facts. Id. at 266.

The Employer charges Grievant with the following misconduct: 1) using his girlfriend, CO I Skyler Baker ("Baker") to proposition CO I Crystalanne Nolte ("Nolte") for sex with her

and Grievant, 2) engaging in flirtatious communications with a subordinate (CO I Nolte), 3) confronting a subordinate about a sexual assault allegation made against Grievant and confronting the victim of the sexual assault allegation, 4) engaging in a sexual or romantic relationship with a subordinate CO I Baker and sending sexualized or romantic electronic communications to her during work hours, 5) using his girlfriend, former CO I Whaley, to solicit CO I Megan Dole (“Dole”) to engage in sexual activity with Grievant and Whaley, 6) propositioning a female subordinate, CO I Sarah Gibson (“Gibson”) and sending flirtatious electronic communications to her, 7) engaging in a sexual relationship with a subordinate staff member, CO I Whaley, and engaging in sexualized and flirtatious communications with her, and 8) on October 10, 2019, violating perimeter post orders and failing to make the appropriate report to the facility or third shift CFSS regarding the presence of his ex-girlfriend and former employee on site, and failing to instruct her to leave or take other appropriate action.

Regarding the first allegation in the Loudermill letter, the Employer has failed to prove by a preponderance of the evidence that Grievant asked CO I Baker, his then girlfriend, to solicit another woman CO I Nolte to engage in sex with them. The only evidence presented is that Baker asked Nolte about her sexual preferences, whether she was interested in sex with men and women together, and finally whether she would be interested in sex with here and Grievant. Grievant denied that he asked Baker to solicit Nolte for sex and Baker did not testify. There is no evidence that Grievant asked Baker to ask or solicit Nolte for sex and the Employer has failed to sustain its burden on this charge.

Similarly, the Employer has failed to prove that Grievant asked a different girlfriend, former CO I Whaley, to solicit another subordinate CO I Dole for sex. The only evidence the Employer has presented is that Grievant’s girlfriend asked or expressed an interest in “taking

home” CO I Dole. Although this might suggest the girlfriend’s intentions regarding Dole, there is nothing demonstrating that Grievant asked his girlfriend to ask or demand that Dole come home with them for sex. That Grievant said “I know,” does not support a finding that he directed Whaley or that he acquiesced to Whaley’s conduct.

The Employer, however, has proven the remaining claims in the Loudermill letter by a preponderance of the evidence. Grievant admitted that he commented on Nolte’s appearance, saying that she was beautiful and asking if she wanted to hang out after work. (Allegation ii). Grievant admitted that this behavior was inappropriate because he had rank over Nolte.

Grievant admitted to the investigator that he sent flirtations electronic communications to another female CO I, Gibson. (Allegation vi). Grievant was a SSCF at the time. Grievant also sent Gibson a picture of himself topless exposing his bare chest. Grievant also told the investigator that he may have propositioned Gibson. At his Loudermill hearing, Grievant did not deny that he propositioned Gibson, instead he claimed he could not remember whether he did. At the hearing before the Board, Grievant could not recall whether he had propositioned Gibson, reasoning, it “was like three years ago.” That Grievant cannot remember whether he sexually propositioned Gibson means that the behavior was not sufficiently abhorrent or remarkable to register in his memory. Gibson testified that when she told women co-workers about her exchanges with Grievant, she was warned to stay away from Grievant because of his experiences with other women correctional officers.

The Employer has proven by a preponderance of the evidence that Grievant used his position as a supervisor to circumvent the Sexual Harassment Policy and question a subordinate about a rape allegation against Grievant. (Allegation iii). Grievant also contacted the alleged victim to determine whether she made the allegation and harassed her about the impact the

allegation has had on him. Contrary to the purpose and protections of State Policy 3.1 on Sexual Harassment, to protect against intimidation, harassment, or interference in the filing or investigation of claims, Grievant continued debating with his subordinate Nolte about the appropriateness of his actions and his victimhood. Grievant engaged in this exchange through Facebook messenger using DOC property.

Grievant's conduct violated the State Sexual Harassment Policy, State Personnel Policy 3.1 policy prohibiting "intimidation, harassment, or interference for filing a complaint or assisting in an investigation." Grievant's conduct also violated Personnel Policy 5.6, by placing his personal interests above the common good and public interest, using his position to coerce Fleshman to reveal information to him about the allegation (Prohibited Conduct # 1), using state property and equipment for his private use (Prohibited Conduct # 2), and harassing and intimidating Nolte because of her sex (Prohibited Conduct #7). By his conduct and actions, Grievant also violated DOC Work Rules 1, 6, and 9, and 13.

Grievant admitted to engaging in sexual relationships with two women correctional officers. He outranked both women, who were CO Is. (Allegations iv and vii). The first relationship with Whaley began when he was a CO II and continued after he was promoted to CFSS, and he continued to work on the same shift with Whaley. In 2017, Whaley resigned from SSCF to continue her relationship with Grievant. Grievant and Whaley's relationship ended sometime in the summer of 2018. Grievant soon commenced a relationship with Baker. The two began communicating through sexual and flirtatious banter and using DOC computers during worktime to transmit these exchanges. Baker resigned in September 2018, in part to pursue her relationship with Grievant and because she was pregnant with their child.

Grievant violated State personnel policies and DOC Work Rules prohibiting discrimination and sexual harassment by creating a sexually hostile work environment. “A hostile work environment exists when an employee’s conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.” Grievance of Ryan, 36 VLRB 24, 51 (2021) (citing Grievance of Butler, 17 VLRB 247, 314 (1994), aff’d 166 Vt. 423 (1997) (citations omitted)). State Personnel Policy 3.1 describes sexual harassing behavior as that which is “personally offensive, fails to respect the rights of others, lowers morale and interferes with work effectiveness, and violates a person’s sense of well-being.” Personnel Policy 3.1.

The Employer has proven that Grievant created a hostile work environment at SSCF. Grievant has repeatedly engaged in sexual exchanges and banter with female Correctional Officers at the facility. Women officers at the prison have been warned to stay away from Grievant. Grievant has shared a shirtless photograph of himself with a subordinate woman officer, propositioned a subordinate, and used his supervisory authority and position of power to force subordinates to acquiesce to his demands for information about a rape allegation involving himself, and harass and intimidate the alleged victim. Grievant engaged in sexual relationships with two women correctional officers, both of whom resigned to pursue a relationship with him and one in part because she was pregnant with his child.

The Employer has established that Grievant failed to alert the SSCF CFSS that his drunk ex-girlfriend was on the premises approaching him on the post road and threatening suicide. (Allegation viii). Grievant engaged with his ex-girlfriend while he was on post truck duty and did not request that she leave or remove herself from the post road. After Grievant observed his drunk suicidal ex-girlfriend drive off in her car, he did not report the incident to the CFSS.

It strains credulity that Grievant did not perceive Baker's arrival and approach of him and the facility perimeter as a threat. He was sufficiently wary of her to obtain a No Trespass Order against her to protect his property and home. Just four days earlier, Baker banged on Grievant's door in the pre-dawn hours with a false rape allegation that prompted him to engage in an unsanctioned investigation. Baker also arrived five hours late for their rendezvous. Grievant did not alert the shift supervisor of her arrival nor take any other steps to secure the safety of the facility, himself, staff, or inmates. Instead, as Baker approached him and the post road, he drove away.

Grievant's reasoning that Baker was at the facility at that late hour to socialize with former colleagues at 9:30 at night, rather than confront him and interfere with his duties, is flawed and further evidence of his poor judgment. Baker lived more than an hour away and arrived 45 minutes in advance of the shift change at 10 pm. Grievant was aware that Baker was hostile towards him and had initiated a malicious and false allegation involving him and a subordinate correctional officer days before. Grievant's training as a correctional officer and common sense demanded that he treat Baker's drunken, and suicidal presence at the facility as a real threat.

The Employer has established all but two of the charges against Grievant by a preponderance of the evidence. Just cause for termination can be upheld as reasonable even where the Employer fails to establish each of the claims against him. See Grievance of Regan, 8 VLRB 340, 366 (1985) (holding failure of employer to prove by a preponderance of the evidence all the particulars of the discipline letter does not require reversal of discipline). The remaining five proven charges can support the discharge penalty.

In determining whether the proven charges justify the termination decision, the Board applies the factors announced in Grievance of Colleran and Britt, 6 VLRB 268, 269 (1983). The factors include: 1) the nature and seriousness of the proven offenses and their relation to Grievant's duties and position, 2) the Grievant's job level and whether he held a supervisory or fiduciary role, 3) the effect of the offenses upon Grievant's ability to perform at a satisfactory level and their effect on supervisors' confidence in Grievant's ability to perform assigned duties, 4) the Grievant's past work record including length of service, performance on the job, and past disciplinary record, 5) the clarity of notice, 6) the notoriety of the offense or its impact upon the Employer's reputation, 7) the potential for Grievant's rehabilitation, and 8) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future. See Id. at 268-69.

The Colleran factors provide a means of assessing the reasonableness of the employer's decision. The Employer is not required to prove each factor to support the reasonableness of its decision, "only that 'on balance the relevant factors support management's judgment.'" In re Jewett, 2009 VT 67, ¶ 23, 186 Vt. 160, 170 (quoting Colleran, 6 VLRB at 269).

We first consider the nature and seriousness of Grievant's offenses and their relation to his duties and position. The just cause analysis centers upon the nature of the employee's misconduct. Grievance of Merrill, 151 Vt. 270, 273 (1989); In re Morrissey, 149 Vt. 1, 13 (1987). In deciding whether there is just cause for dismissal, the Board determines the substantiality of the detriment to the employer's interests. Merrill, 151 Vt. at 273-74.

The Employer has proven that Grievant violated State Personnel Policy 3.1, the Sexual Harassment Policy. Sexual harassment is a serious offense and Grievant engaged in this behavior repeatedly and violated the policy for investigating this behavior. Grievant was a supervisor and trained other correctional officers on State and DOC policies and procedures.

The other officers looked to him as a model for guidance on these policies. His blatant and repeated abuse of power and sexually harassing behavior helped foster and maintain a hostile work environment at SSCF

Grievant's conduct in soliciting and engaging female employees created an intimidating, hostile, or offensive work environment. Women correctional officers were aware of Grievant's predatory behavior and warned others to avoid him. Grievant engaged in sexual banter and flirtatious conduct with numerous women, engaging in sexual relationships with some, and abandoning other attempts, "when they did not go anywhere." Grievant treated the women correctional officers as potential sexual partners, instead of respected colleagues and subordinates he was charged with training and mentoring.

Grievant's misconduct in failing to follow the Sexual Harassment Policy when investigating the rape allegation is also sufficiently serious to support just cause for termination. Grievant placed his personal interests above the common interest and public good in his quest to ascertain the veracity of the allegation against him. By bypassing the Sexual Harassment Policy, Grievant jeopardized the integrity of the process and institution. Grievant contacted Nolte to intimidate or harass her regarding the rape allegation. His interview of Fleshman and attempt to disarm him by asking they talk as friends also demonstrates his interference with the process to investigate the claim. Grievant did not contact his supervisors regarding the claim until after he had talked with Fleshman and Nolte. His blatant disregard of the policy in pursuit of his personal cause is a serious offense.

His failure to ensure the security of the facility and himself in his interaction with Baker on October 10, 2019, undermines the chief responsibility of a correctional officer. Grievant failed to identify as a threat the late-night arrival of his drunk, suicidal, ex-girlfriend, against

whom he had obtained a No Trespass Order. Grievant failed to alert the shift supervisor, ask Baker to leave, or do anything to deescalate the threat to himself, the facility, and its staff. Indeed, Grievant's failure placed Baker in the path of Nolte, the victim of Baker's malicious allegation days earlier. Baker's drunken presence and approach of Nolte was sufficiently intimidating to cause another correctional officer to escort Nolte into the facility.

The nature of Grievant's employment weighs in favor of just cause for termination. Grievant's gross misconduct is directly related to and impacts his work as a correctional officer, his role as a trained supervisor, and the security and integrity of the facility and its workforce. At the time of his termination, Grievant was one of only seven shift supervisors at SSCF. Because of their responsibility in caring for incarcerated persons, correctional officers must adhere to a high standard of trust and caretaking. For the safety of themselves and their charges, correctional officers must rely on each other. Grievant's predatory behavior towards women undermines the ability of women officers to rely on and trust him. Grievant's flagrant abuse of power in bypassing the Sexual Harassment Policy when confronting Fleshman about the rape allegation also weakens the fabric of trust with non-women officers.

Grievant's position of power as a supervisor/CFSS and CO II supports just cause for termination. Grievant had supervisory duties over Gibson when he flirted with her, sent her a topless photo of himself, and propositioned her. Grievant was promoted to a supervisor while sexually involved with Whaley. Grievant was a supervisor when he violated the Sexual Harassment investigation procedure and confronted his subordinate Fleshman about the allegation in the supervisor room. He abused his role as a supervisor when he initiated a Facebook Messenger exchange with Nolte justifying his rogue investigation and ignoring or minimizing its impact on her.

Grievant was a supervisor when he failed to alert the on-duty shift supervisor of the presence of his drunk suicidal ex-girlfriend on or near the post road. When he was transferred to a CO II position, Grievant maintained a position of authority and power over CO Is. Grievant was involved in the recruitment and training of officers including Nolte. Grievant assigned Nolte to shadow CO I Baker because he believed Baker would model how to be a good officer. Baker taught Nolte that she and Nappi were in a romantic relationship and trying to keep the relationship secret. While tethered to Baker for guidance on how to succeed in the male dominated profession of corrections, Nolte was subjected to sexual harassment and propositioned for sex by Baker.

Grievant's ability to continue to perform his work satisfactorily is compromised by his past actions and his recurring poor judgment. As a result of his behavior, his subordinates cannot trust him, women officers cannot trust him, and his supervisors cannot trust him. Commissioner Baker does not trust Grievant and his pattern of engaging in sexual relationships with subordinates continues. Grievant does not recognize the error of his ways and nothing he presented demonstrates he can resurrect that trust. Where Grievant's supervisor does not believe he can perform his duties, the Board has found the loss of confidence reasonable and supporting just cause. See Grievance of Alexander, 34 VLRB 33, 53 (2017); Grievance of Abel, 31 VLRB 256, 279 (2011).

Grievant's past disciplinary record and past work record does not shift the balance away from just cause. Grievant succeeded in ascending the ranks of DOC. He had gained a position of trust and authority over others. Grievant was disciplined for a DUI conviction as well as making physically threatening remarks about offenders and expressing disappointment with his inability to use force against offenders. Despite his success, Grievant has demonstrated poor

judgment and inability to conform to the Personnel Policies, DOC Work Rules, and the standards expected of him.

Grievant had both express and implied notice that his conduct could lead to termination. The standard for implied notice is whether the employee should have known the conduct was prohibited. Grievance of Towle, 164 Vt. 145, 150 (1995); Grievance of Brooks, 135 Vt. 563, 568 (1977). This is an objective standard. Towle, 164 Vt. at 150. “Knowledge that certain behavior is prohibited and subject to discipline is notice of the possibility of dismissal.” Grievance of Hurlburt, 2003 VT 2, ¶ 25, 175 Vt. 40, 50.

Grievant received a copy of and had training on the Sexual Harassment Policy. He was primarily responsible for coordinating trainings for officers at SSCF and monitoring their training schedule between 2017 and 2019. Grievant had express notice that the Sexual Harassment Policy prohibits sexual harassment and alerts employees that such conduct could result in termination. Grievant was on notice that sexual harassment includes unwelcome advances or other verbal or physical conduct that unreasonably interferes with an individual’s work performance. Grievant was aware that sexual harassment includes behavior “which can also be personally offensive, fails to respect the rights of others, lowers morale and interferes with work effectiveness, or violates a person’s sense of well-being.” State Exhibit 3. Grievant was on express notice that he was prohibited from violating any provision of the State Personnel Policies.

In addition to the Sexual Harassment Policy, Grievant had express notice from the DOC Work Rules that he could not “while . . . engaged in an activity associated with the Department of Corrections, engage in verbal . . . behavior towards employees . . . which is malicious, demeaning, harassing or insulting” and that “[s]uch behaviors include, but are not limited to:

profane, indecent or vulgar language or gestures” State Exhibit 3 (DOC Work Rule 6).

Grievant was expressly informed that he was required to “conduct [himself] in a manner that will not bring discredit or embarrassment to the State of Vermont, whether on or off duty.” State Exhibit 2.

Grievant’s own behavior demonstrates that he was on notice of the Sexual Harassment Policy requirements when investigating the rape allegation. Grievant knew his interview with Fleshman was wrong, because he tried to distance himself from his position as supervisor and talk to Fleshman “as a friend.” Grievant was a supervisor and the questioning took place in the supervisor’s room. Although aware his conduct failed to conform to the Sexual Harassment Policy, he persisted in his questioning of CO I Fleshman.

The Board finds unpersuasive Grievant’s claim he was unaware that his actions of remarking on women’s bodies, sending shirtless photographs of himself, or initiating sexual relationships with subordinates violated State Personnel Policies or DOC Work Rules because of his conversation with former Superintendent Potanas. Grievant asserts that former Superintendent Potanas represented that only live-in or committed relationships were prohibited. As an initial matter, Grievant did not disclose to his superintendent that he was engaged in a sexual relationship with CO I Whaley and had been for a year. Grievant lied about his relationship and said that he and Whaley were just friends. Potanas told Grievant that being friends with a female coworker was not inappropriate. After lying to his supervisor, Grievant cannot rely on the limited response provided based upon that misinformation.

Grievant’s reliance argument is also belied by his admission that he had notice from the Potanas meeting that romantic relationships were frowned upon. Grievant testified that he modified his behavior after he became a supervisor, because he “already had the prior knowledge

of being in a relationship with Laurie Whaley and how things were looked at by management.” Despite that prior knowledge, Grievant continued to engage in sexual and flirtatious behavior with women CO Is.

Grievant also appears to conflate the Nepotism Policy with the Sexual Harassment Policy. Although the Nepotism Policy prevents employees from working in the same department as a relative, including a domestic partner, it does not permit or authorize behaviors that would be violative of the Sexual Harassment Policy. State Exhibit 4. Whether the Sexual Harassment Policy applies is not dependent on the relationship status of the employee. Regardless of the applicability of the Nepotism Policy, the Sexual Harassment Policy continues to prohibit a hostile work environment, or personally offensive behavior that “fails to respect the rights of others, lowers morale and interferes with work effectiveness, or violates a person’s sense of well-being.” Personal Policy 3.1. The Nepotism Policy does not usurp the other personnel policies that protect against discrimination, harassment, or intimidation based on the sex of the employee. Similarly, the Nepotism Policy does not eliminate or blunt the DOC Work Rules prohibiting employees from “engag[ing] in verbal or physical behavior towards employees, . . . which is malicious, demeaning, harassing or insulting.” State Exhibit 3 (DOC Work Rule #6).

The notoriety of Grievant’s conduct or its impact on the reputation of the DOC weighs in favor of just cause. From the beginning of his forays into sexual relationships with women correctional officers, Grievant exposed the Department to scrutiny and legal liability. Grievant’s comments about subordinate’s physical appearance, initiating sexual exchanges, and repeated sexual relationships with subordinates exposed the employer to sexual harassment claims. Grievant has left a trail of former girlfriends that have resigned from the DOC that may seek redress from him or their employer for Grievant’s conduct. As a result of his failure to alert the

shift supervisor that his drunk ex-girlfriend was on the premises after 9 pm, the Springfield Police were called to arrest his ex-girlfriend. The public exposure of the arrest and its sordid details impacts the reputation of DOC.

Consistency is not a factor in weighing just cause in this case. The consistency of a penalty is pertinent when other employees have received dissimilar penalties for the same or similar offenses. Grievance of Frank, 35 VLRB 537, 564 (2020); Grievance of Alexander, 34 VLRB 33, 54 (2017); In re Grievance of Jewett, 186 Vt. 160, 172 (2009). Grievant has failed to show that he was treated inconsistently to other supervisors committing similar offenses.

Although Grievant claims that other employees at SSCF engaged in relationships with subordinates, he did not identify any that had repeated affairs with women correctional officers or had circumvented the Sexual Harassment Policy or repeatedly engaged in sexual banter and flirting behaviors or sent unsolicited topless pictures to women officers. Grievant's conduct played a part in the resignation of a number of women correctional officers, caused significant anguish and disturbance to Nolte, and prompted women officers to warn their colleagues to avoid him. There is also nothing in the record indicating other officers failed to alert the shift supervisor of drunk suicidal ex-employees on site or approaching the post road.

Grievant's lack of self-awareness regarding his own behavior and misconduct significantly compromises his ability to learn from and correct his behavior. At his Loudermill hearing in June 2020, Grievant claimed that he learns from his mistakes and would not repeat past errors. Yet, Grievant engaged in a sexual relationship with a subordinate, participated in her decision to resign, then on the heels of that relationship started another relationship with another woman correctional officer. Like the first, the second correctional officer ended her career with DOC, in part because she wanted to pursue a relationship with Grievant and she was expecting a

baby with Grievant. In October 2019, Grievant began yet another romantic relationship with a third woman he met while she was a CO I at SSCF. His current partner also resigned from the DOC. Grievant also had a sexual relationship with a nurse at the facility.

Rather than learn from his mistakes, Grievant has demonstrated that he has and likely will continue to repeat his pattern of poor judgment, misconduct, and blaming others for any fallout. See In re Grievance of Hurlburt, 2003 VT 2, ¶ 26, 175 Vt. 40, 50 (citing Towle, 164 Vt. at 150 (“Repetition of acts that grievant knew to be forbidden justified the State’s judgment that grievant was not a good candidate for . . . rehabilitation . . . and justified his discharge.”)).

Grievant claims that he learned from his experience with Whaley about the prohibition against romantic involvement with staff, yet he repeated the behavior, and engaged in conduct soliciting more. Rather than focus on his duties and obligations, Grievant was motivated by the pursuit of personal gain and satisfaction through sexual or romantic relationships. Grievant cast a wide net of sexual comments and banter trying to see where they would go. When successful, as with Whaley and Baker, he would pursue a romantic relationship. When the solicitations, did not go anywhere, or nothing ensued from them, he moved on. Women correctional officers were warned to avoid Grievant. Women were forced to avoid a shift supervisor because of his pattern and practice of preying upon women correctional officers at SSCF. While at work, Grievant used DOC computer equipment to pursue his “human instinct” of sexual conquest and romantic partners.

Grievant’s poor judgment culminated in October 2019, with his rogue investigation of the rape allegation against him and his decision to meet Baker at SSCF during a shift change to sign documents related to their son. Despite Baker being the source of the rape allegation days before, and the subject of the No Trespass Order, and her living an hour away, Grievant elected

to rendezvous with Baker during a shift change at SSCF, rather than request Baker forward him the documents through email or U.S. Mail. Grievant's poor judgement continued when he failed to alert the shift supervisor of Baker's arrival hours later, or when she engaged him on the post road, or revealed herself to be drunk and suicidal. Grievant's inability to recognize danger and threats renders him a poor candidate for rehabilitation sufficient to return to correctional service.

There are no mitigating circumstances that offset the impact of Grievant's misconduct to undo just cause for termination. There is no alternative sanction which could deter Grievant or others from engaging in the misconduct. Grievant demonstrated predatory behavior towards women, was oblivious to its impact on them and other subordinates, and flouted State policies and Department work rules. To deter similar conduct and to help repair the damage to the morale and trust of women correctional officers, and reputation of the facility and DOC, a discharge is warranted.

Grievant contends that the Employer inappropriately bypassed progressive discipline. We disagree. The Grievant engaged in gross misconduct in his reaction to the rape allegation, failure to properly assess the threat of Baker and communicate with the shift supervisor, and in his repeated and relentless creation of a hostile work environment through his pursuit of sexual or romantic partners at SSCF. The Employer acted reasonably in discharging Grievant.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of Bruce Nappi is dismissed.

Dated this 30th day of July, 2021, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

Robert Greemore, Acting Chairperson

/s/ Karen Saudek

Karen Saudek

/s/ David R. Boulanger

David R. Boulanger