



DISCIPLINARY HEARING APPEAL
State Form 39587 (R5 / 8-14)
DEPARTMENT OF CORRECTION

Wabash Valley Corr. Fac.

NOV 02 2018

Appeals

Case number
WVE 18-10-0023

INSTRUCTIONS: Type or print clearly.

Name of offender BRANDON SERVA	DOC number of offender 136353	Facility WVLF	Housing unit G 313
Date of hearing (month, day, year) 10-15-18	Offense Emplying in Unauthorized Fin Trans	Code number B220	Date of first appeal (month, day, year) 10-1-18

INSTRUCTIONS:

Appeal must first be made to the facility head within fifteen (15) working days of the hearing. The individual making the appeal will do so in Section 1 and forward to the facility head, who will make his response in Section 2. The facility head is the final reviewing authority for appeals not involving grievous loss sanctions. (If the response is unfavorable and involves grievous loss sanctions, the offender may then forward the appeal, within fifteen (15) working days of the date the response is received from the facility head, to the appropriate Final Reviewing Authority).

SECTION 1

Appeal to Facility Head (Be specific in stating reason(s) for appeal.)

See Attached

Signature of offender

Brandon Serva

Date (month, day, year)

10-1-18

SECTION 2

Response of Facility Head to appeal

You were given the evidence in question in an appropriate manner. The Conduct Report is clear and does support the charge.

Signature of Facility Head

David Brown

Date (month, day, year)

11-7-18

NOTE: Offender is responsible for sending copy to Central Office if final review and decision is required.

DISTRIBUTION: Original - Offender; Copy - Central Office; Copy - Offender packet

Exhibit D

Serna, Brandon #136353

1.

Attachment to CAB Appeal

WVE 18-10-0023

Serna hereby appeals the CAB's findings that he is guilty of Engaging in Unauthorized Financial Transaction.

ISSUE ONE: The evidence is insufficient to support the CAB's findings that Serna engaged in Unauthorized financial transaction.

ISSUE TWO: Finding Serna guilty of a violation and not providing him with the evidence to defend against after he requested is a clear violation of Due Process.

ISSUE THREE: Failure to review the evidence and then prepare a detailed summary of the evidence after Serna requested violated his Due Process rights.

ISSUE FOUR: Failure to write the conduct report within a timely manner resulted in Serna's Due Process rights being violated.

ISSUE FIVE: Given the nature and circumstances of the instant case, Serna's sanctions he received were excessive, and should be adjusted accordingly.

Statement of Facts Supporting Issues:

While monitoring the GYL recorded offender telephone calls of

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Serna on 10-4-18, Analyst S. Zimmerman came across a conversation between a female callee and Serna made on 4-1-18. Zimmerman called the conversation an unauthorized financial transaction with an offender and wrote a conduct report on Serna for Engaging in Unauthorized Financial Transaction, code B3220, and cited the name James Bohannon Doc# 141293 in conduct report. During the screening process held on 10-5-18, and the disciplinary hearing held on 10-15-18, Serna requested a copy of the phone conversation in question. Though the screening officer afforded Serna the opportunity to hear the written phone call once as she read it, the hearing officer did not. Nor did she read the conduct report at the hearing. Thus, Serna was denied the evidence by both officers. Serna then asked the screening officer to document that he requested the evidence and that it was denied on the Notice of Disciplinary Hearing Form. Serna further asked the screening officer why was he being denied the evidence, when in the past year several offenders who received the same conduct report were all given the evidence. The screening officer's response was, "because I.A. said so." At the hearing Serna informed the hearing officer that there was no way he could remember a phone call that occurred so long ago, but still was certain that the conversation in question was not about an offender, and that he doesn't know or have had any association with the name and Doc# in the conduct report. Serna also informed the hearing officer that when the screening officer read the phone call to him at screening, there was no mention of any words that may be commonly used during discussions of financial transactions, and that during the conversation in question there was nothing said or read over the phone that would indicate the female callee and Serna were talking about someone who's an offender (see exhibit 7). Serna also informed the hearing officer that Zimmerman failed to write the conduct report the date she became aware of

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the call, and that he had evidence to support his claim, but that the original form titled, "Restricted Movement Housing Administrative Admittance Form" had been confiscated by caseworker Muplin because he said, "offenders are not supposed to see/have this. Somebody made a mistake and gave this to you." However, Serna told the hearing officer he made an exact written copy of the form but it was being copied at the Law Library. (see exhibit A). The hearing officer said there was nothing she could do about that.

The Hearing Officer found Serna guilty of the Code B220 engaging in unauthorized financial transaction. Sanctions included a written reprimand "Don't engage in unauthorized financial transaction," deprivation of thirty (30) days phone loss, and deprivation of ninety (90) days earned credit time. This appeal now follows.

Argument In Support of Issue One:

The evidence in this particular case simply does not support the CARB's determination that Serna was guilty of engaging in unauthorized financial transaction. Due to the fact that the screening officer failed to give Serna a copy of the Recorded Daily Offender Telephone Log dated 4-1-18, which is the evidence being used against him, Serna argues this is off what was read to him, and deemed confidential from a phone call he made. From what Serna can recall, the screening officer read nothing stating the facts that not only was there any discussion or words such as: money, cash, dollars, funds, dinero etc used or other words that may be considered commonly used in transactions mentioned, there was more importantly no Doc #, phone #, address etc., or anything else discussed during the

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phone call in question to support the CRO's determination that the callee or Serna, were engaging in an unauthorized financial transaction with an offender who's incarcerated, or offender's friends/family.

The sole reason the phone call in question is being considered is given the alleged fact that, as the conduct report states, "James Bohannon, SO" is said by the callee to Serna over the phone. The conduct report also states " (James Bohannon Doc # 141293) see attached " to try to support this claim as well. However, no where in the conduct report does Analyst Zimmerman show that the person mentioned on the phone is the exact same person referenced to in the conduct report. This is merely speculation. Furthermore, Zimmerman cites "Policy 04-01-104 IX. prohibits offenders from making unauthorized financial transactions with other offenders or their friends/family members," but what she fails to show is that the person in the conduct report is incarcerated, by the facility and unit he's housed in. And Policy 02-04-101 I.I.I., AA, says an offender is "an adult person committed to a department of correction and housed or supervised in a facility operated by the department of correction." No where in the conduct report does it show that the name referenced to in the conduct report is housed in the I.D.C., or on parole, probation or community transition program, which would make him by the policies definition an offender.

Moreover, for a phone call to be considered and used as an unauthorized financial transaction, there must be some proof that the person on the phone call is the same person in the conduct report, and that illegal activity, specifically engaging in unauthorized financial transaction has occurred with this person who's an offender that's incarcerated. There is absolutely no evidence that the callee or Serna engaged in an unauthorized transaction with the person Zimmerman claims.

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As a matter of fact, the name in question is never spelled out on the phone call, it's said. So there's no way to tell if the two are spelled the same or sound the same. Had the callee, or Serna, mentioned the name in question, and a DOC #, or an address, or phone #, or family member/friend that's associated with him and a dollar amount, then there would be without question some evidence to support the charge. There is none though. Merely saying a name James Bohannan, so as the conduct report states, not the phone call because it's never spelled does not prove that he's an offender, and that any illegal transaction occurred.

Therefore, because Zimmerman failed to show that the person in the conduct report is an offender who's housed in the I.D.C., by where he's housed and unit he lives in, and that simply saying a name that "may" be similar to an offender, is insufficient to convict a person of actually engaging in an unauthorized financial transaction without evidence proving he's an offender, the two are the same individual and an illegal transaction occurred. This requires dismissing the conduct report.

Argument in Support of Issue Two:

Serna's Due Process rights were violated when he was denied a copy of his Recorded Daily Offender Telephone Log dated 4-1-18. This phone call is the sole piece of evidence printed on a piece of paper being used by the CTS to support the charged offense and finding of guilt of Serna. When he requested a copy of the evidence at screening, which is from a phone call he made on his account, it should have been provided to him so he could read the contents of the call, understand the context of the conversation, and then defend.

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against the charge. To expect him to remember a phone conversation that transpired over six (6) months prior to the date the conduct report was written, would be unfair, and highly unreasonable. There is nothing on the phone call in question that deems it "confidential" as O.I.I. determined before the screening and CAB hearing, because the call is between a female colleague and Serna.

Moreover, there are several offenders within the last year prior to Serna that received the same B220 conduct report, yet were all given a copy of the evidence that was used against them. Nothing was deemed "confidential" in those cases. (see McQuay WVE 17-08-0022, Marvel WVE 18-09-0006, Porter WVE 18-08-0185, Fuentes WVD 18-08-0185, Lowe WVE 18-08-0122). However in Serna's case, the screening officer read the phone call in its entirety to him, yet denied him access to it and stated the reason, "because O.I.I. said so." With all that being said, for O.I.I. to determine evidence is "confidential" before the screening and CAB hearing, then for the screening and hearing officers to not investigate why and what is "confidential," is insufficient to deprive Serna his Due Process right to see the evidence.

Furthermore, O.I.I. should not be able to determine when and what evidence is considered confidential or not. Policy should, and policy concerning offender phone calls has not changed in the last twelve (12) months, and if it has it has not been posted to the offender population. Thus, when O.I.I. told the screening and CAB officer's not to give the evidence to Serna, what they did was not only deny him an "opportunity to have the disciplinary case heard before an impartial decision maker" as policy states (see policy 02-04-101 pg 3-"K"), but O.I.I. also tainted the entire CAB process from start to finish by telling

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both officers what to do. Therefore, Serna had no chance whether he had the evidence or not, and the only remedy would be to dismiss the conduct report.

Therefore, given the nature and circumstances of the particular case, and the fact that Serna's Due Process rights were violated when he was denied a copy of the phone call, and O.I.E. tainted the CAB process, it is requested that the CAB's guilty finding be reversed and the conduct report dismissed.

Argument in Support of Issue Three:

When Serna requested the sole evidence being used against him on the Notice of Disciplinary Hearing form (state form #39585), the thing to do per policy 02-04-101-IX, 3. Evidence a-g by the screening officer after denying him the evidence because it deemed "confidential" by O.I.E., was to inform the Hearing Officer in writing to prepare a detailed summary, and then the hearing officer was to then read the phone call and determine what, if anything on the phone call was a threat to the safety and security of the facility or persons involved, and that the offender should not be granted access to it. The hearing officer was to then prepare the summary, sign the summary, and provide Serna a copy at least 24 hours prior to the hearing. (See a, b, c, under Evidence). Further, policy goes on to state the hearing officer shall document on the Report of Disciplinary Hearing form that the evidence was reviewed outside the presence of the offender, and the reason for this action, as well as what was discovered during the review (see section c under Evidence). Not only did the screening officer fail to inform the hearing officer in writing to prepare a summary of the evidence Serna requested, but the hearing officer failed on several occasions to look on the

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Notice of Disciplinary Hearing form, see that Serna requested the physical evidence, that it was denied "confidential," and then read the phone call to determine on her own which portions of the call, if any, should be excluded from Serna and the hearing. The hearing officer also failed to prepare a detailed summary, sign it, give Serna a copy at least 24 hours prior to hearing, and then document on Report of Disciplinary Hearing form that she reviewed the call outside Serna's presence and give a reason for this action, as well as what she discovered during her review. She did none of this. Because "O.I.I. said so" should not be a justifiable reason to deny Serna his Due Process.

Moreover, because the screening and hearing officers relied on a statement O.I.I. gave them, rather than follow policy aforementioned above, thus violating Serna's Due Process rights, it is therefore requested that the conduct report be dismissed.

Argument IN Support OF Issue FOUR:

Serna presents evidence that the officer who wrote the conduct report failed to do so in a timely manner. Before Serna received the conduct report, he filed a Classification Appeal, and the decision was returned to him a few days before the CAB hearing with evidence supporting this issue. However, the caseworker in Serna's unit confiscated the evidence, before he could get copies from the law library. The caseworker said that "offenders were not supposed to see/ have the form." Serna was however able to make an exact written copy of the evidence which he presents with this appeal.

On this form, titled "Restrictive Movement Housing Administrative Admittance

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Form" (R.M.H.A.A.), it clearly shows that O.I.I., the office where Analyst Zimmerman is employed, was aware of the phone call in question a month before Serna received the conduct report. Specifically, "Recent intelligence gained from various sources, both in person and using available technology..." (see exhibit A). This "available technology" that O.I.I. cites is the Recorded Daily Offender Telephone Log. Further, this form is also the reason Serna was "recommended" by O.I.I. for R.M.H.A.A. status, though Serna was recommended and moved to the restricted unit the same day (Sept 6, 2018) the R.M.H.A.A. form was filled out by O.I.I.; he had not been appeared by Warden Brown until eleven (11) days later. Yet, he was still moved, with no conduct report. However, it wasn't until Serna filed a second informal grievance on O.I.I., specifically McDonald, on 10-2-18 challenging his placement and that the administration wasn't giving him a justifiable reason for placing him in the restricted unit, that Zimmerman then retaliated against Serna two days later on 10-4-18, and wrote him a conduct report for an incident over six (6) months prior to the date of the report (see exhibit A).

With that being said, there was only one way that Zimmerman could satisfy the time limit requirements needed to write Serna up, and that was to do so within 24 hours of O.I.I. filling out the R.M.H.A.A. form. This did not happen though. Further, if O.I.I./Zimmerman were to try to justify the actions of waiting to write Serna up because he was under investigation, then state Form 39588 should've been filled out by O.I.I., approved by the shift Supervisor or higher authority, and a copy given to Serna within 24 hours of him being admitted to the restricted unit. (See policy 02-04-101 VI. PRE-HEARING RESTRICTIVE STATUS HOUSING pg 16-17). To date, this has not happened.

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therefore, it is because Zimmerman failed to write Serna up within 24 hours of being aware of the incident, that the conduct report must be dismissed.

Argument In Support of Issue Five:

The hearing officer sanctioned Serna with: a written reprimand "Don't engage in unauthorized financial transaction," deprivation of thirty (30) days phone loss, and deprivation of ninety (90) days earned credit time. Serna mention the fact to the hearing officer that it had been almost ten (10) years since his last conduct report, and that his conduct history consisted of a total of seven (7) infractions in almost 16 years of incarceration with the highest being two (2) Class B's. Yet when he asked the hearing officer why she took the maximum earned credit time allowable, and his phone privileges when he's had minimal conduct history, her response was, "I was told to." This further demonstrates that Serna did not receive an impartial hearing at CAB, and the only relief to rectify this would be to dismiss the conduct report, to which Serna respectfully requests.

Restricted Movement Housing
Administrative Admittance Form

Offender Name	Doc #	Date of Request	Doc EPRD Date
Serna, Brandon	136353	9-6-18	11-20-29

Reason for Requested Admittance to Restricted Movement Housing: Recent intelligence gained from various sources, both in person and using available technology, have indicated this offender is quite possibly involved in using one or more avenues of gaining access to contraband which jeopardizes safety and security of the institution and everyone within.

Recommending Staff/Title	Date	Recommended
F. McDonald / O.I.I	Sept 6, 2018	Recommended
Steve Carpenter / S.T.G	Sept 7, 2018	Recommended
Kevin Hunter / unit Team	Sept 14, 2018	Recommended
F. Littlejohn / Asst. Superintendent	Sept. 14, 2018	Recommended
Richard Brown / Superintendent	Sept 17, 2018	Approved

(Exhibit A)

Offender Statement

WVE K8-10-0023

At the time of screening of conduct report WVE 18-10-0023, I was charged with APP B220 Engaging in Unauthorized Financial Transaction. The screening officer read what she said was the recorded phone call (Recorded Daily Offender Telephone Log), which is the evidence the conduct report is based off. I then requested a copy of the phone call, and was denied by her citing reason, "confidential". In still, I am certain that I do not know or have had any association with the name and DOC # being referenced to in the ~~conduct~~ conduct report, nor has my family, specifically James Bohannon DOC # 141293 as the conduct report states, or is the DOC # 141293 ever mentioned in the phone call or the words money, dollars or cash mentioned. Therefore, the conduct report citing the substance of my telephone conversation, does not support a guilty finding warranting the charge supporting an unauthorized Financial Transaction. Also, the officer who wrote the conduct report failed to follow policy when she became aware of the incident date. Therefore, the conduct report should be dismissed.

(exhibit B)