

January 6, 2021

Walden Security  
Vice President  
Name

Re: CSO Name (10000857) Discipline Grievance

Mr./Mrs. Name,

I want to take this time to thank you for reading and reviewing this correspondence as the Formal Second Step enumerated under section 5.3 (d) "Grievance for Discipline" in the Collective Bargaining Agreement ratified in the month of August of 2020 with Walden Security on behalf of CSO Name, a member of the Professional Association of Court Security Officers.

I observed you were cc'd on the denial of the Grievance on Step One from Contract Manager, Name, so I will attempt to keep this correspondence from being duplicative. I would only ask you to reference that document and any attachments during your considerations if applicable.

CSO Name and CSO Name were found in violation of Performance Standards, enumerated in Section C.14 Compliance with CSO Performance Standards.

The specific performance violation standards violations were listed as follows;

- C.14.2.24 Not violate official site security procedures, instructions, post orders or regulations.
- C.14.2.25 Comply with all prescribed safety regulations, safe working procedures, and practices.

The discipline outlined the following;

- The investigation has concluded.
- CSO Name had violated Performance measures associated with his position as a CSO.
- Specifically, CSO Name failed to follow the Court-issued order requiring the wearing of a face mask or covering.
- As a result CSO Name's employment with Walden Security is suspended for three (3) scheduled work days.

As I read and reviewed the Step One denial from Mr. Matthews I took note of the last paragraphs written by Mr. Matthews which begin near the bottom of page one.

They are written as follows;

*"The fact that JSI Name insisted upon determining the identity of the CSOs who allowed the visitor to enter without a mask, as opposed to issuing a reminder about the mask requirement, demonstrates the importance that is attached to the requirement by the USMS and the significance of the breach. **A 3-day suspension is the penalty the Company imposes for violations of security procedures including the failure to enforce mask requirements.** Accordingly, the grievance is denied." ( Emphasis added)*

As you are aware both Walden Security and the Professional Association of Court Security Officers has a Collective Bargaining Agreement which states both parties agree to progressive discipline.

Progressive Discipline is the most widely used discipline in the United States of America and is a successful tool to help guide employees to be productive in their capacities in the work force.

It is designed intentionally not to be punitive, but to help remediate an employee's future actions.

There are four steps incorporated into progressive discipline;

- Counseling and Verbal Warning
- Written warning
- Suspension and final written warning
- Recommendation for termination of employment. (See attached)

For any company that has agreed to Progressive Discipline these steps are not ignored or skipped by management unless an employee has violated an egregious rule, procedure or law. Management then applies its discretion to skip to an appropriate step so an appropriate punishment for the egregious behavior is addressed.

Both the Statement of Work and the Collective Bargaining Agreement work hand in glove to help both Walden Security Management and its employees understand the rules promulgated and the appropriate remedies applied when a violation of Performance Standards has been committed.

In the Statement of Work, Section 14 the list begins with the most egregious violations, Criminal Activity and continues down in less severity as follows;

- Fraud
- Misconduct
- Insubordination
- Security Procedures
- Dereliction of Duty

In the Collective Bargaining Agreement, section 6.1(b) it is specified which kinds of Performance Violations would merit the skipping of Progressive Discipline Steps.

The Company may discipline Employees when necessary and discharge those who fail to uphold U.S. Government or Company Standards. **It is recognized by parties to this Agreement that progressive discipline shall be applied in dealing with Employees.**

**However, it is also recognized that offenses may occur for which progressive discipline is not applicable (e.g. Fraud, gross misconduct, theft, etc.).**

**Disciplinary measures vary depending on the seriousness of the matter and the past record of the employee.** (Emphasis added)

When considering Mr. Names statement of: *“The fact that JSI Name insisted upon determining the identity of the CSOs who allowed the visitor to enter without a mask, as opposed to issuing a reminder about the mask requirement, demonstrates the importance that is attached to the requirement by the USMS and the significance of the breach.”*

It is important for CSO’s to follow Court issued orders and not violate Performance Standards, but it is not indicative of the significance of the breach when JSI Name asked for the names of the CSO’s, but is JSI Name simply following the United States Marshal’s procedure to report to his superiors of a Performance Violation that he has been made aware of. Basic investigatory information such as the names of the CSO’s who committed the violation is needed for his report.

Again, considering Mr. Names statement as it continues: **“A 3-day suspension is the penalty the Company imposes for violations of security procedures including the failure to enforce mask requirements.”**

From my reading of the sentence, **“A 3-day suspension is the penalty”** is stating that any Performance Violations minimum penalty is a three day suspension.

A suspension is listed as the third step of Progressive Discipline, not step one in which Performance Violations are a part of, with the exception of egregious ones.

Clearly, to inadvertently allow a civilian to enter the Bob Casey Federal Courthouse without a mask is in the Grievant and the Professional Association of Court Security Officers opinions does not rise to the level of egregious and therefore a three day suspension without pay, or a loss of \$000.00 gross income is punitive instead of remedial.

The violation has to be taken in context of the totality of the circumstances.

Since the court order of the mandatory use of masks or face coverings in the Bob Casey Federal Courthouse, I have personally escorted Knight Restoration Services a minimum of five times, probably more, for remediation efforts. I have attached three times I was given a memorandum and to escort the employees of Knight Restoration Services since October 1, 2020 to this correspondence. (See attached)

These restoration efforts were due to employees of the Bob Casey Federal Courthouse or Assistant United States Attorneys who have unknowingly entered the courthouse while infected with Covid-19.

The Bob Casey Federal Courthouse was not closed, nor did its function lapse during any of the infections or remediations.

As written under the definition of Progressive Discipline; **“The stage chosen for a particular infraction will depend on a variety of factors that include the severity of the infraction, the previous work history of the employee and how the choice will affect others in the organization.”** (See attached)

To emphasis and bolster the Grievant and the Professional Association of Court Security Officers position we cite the following;

On August 20, 2020 Arbitrator Name conducted an arbitration hearing that you, I and Name attended via a Zoom meeting. The hearing was for CSO Name’s termination from Walden Security as a CSO at the Bob Casey Federal Courthouse located in Houston Texas.

The Grievant, CSO Name was given a “Final Warning” in June of 2018 for an egregious lapse (Para 27). CSO Name’s employment with Walden Security was terminated in August of 2019 for violation of “The use of an electronic device while on duty.”

In the award for Grievant Mr. Name states the following;

This “final warning” does not require discharge. And reliance on the “final warning” subtracts “just cause” from the CBA (Para. 67)

Moreover, Grievant moved from no prior written record of discipline to a “final warning” in June 2018 to a discharge in August 2019. Yet, CBA 6.1(b) required progressive discipline. (Para. 68)

As shown in Progressive Discipline definition;

“Also inherent in progressive discipline is regression to previous stages once enough time passes.”

After CSO Name had already been disciplined for an egregious violation one year prior, the Arbitrator concluded CSO Name should receive regressive Progressive Discipline and receive a three day suspension en lieu of termination.

Neither CSO Name nor CSO Name had any past violations and should have received the beginning step one of Progressive Discipline, counseling and a verbal warning.

Arbitrator Name continues;

Generally, just cause requires the employer to reasonably, fairly and objectively investigate and then to consider the circumstances, such as nature of offense, the employee’s conduct, the employee’s knowledge of the rules, the conduct covered by the rules, the reasonableness of the rule, prior warnings, the investigation, any mitigating facts, and managements acts or omissions and their impact. (Para 86)

When reviewing the employers exercise of discipline discretion, the arbitrator may review the applicable factors in light of the CBA’s language and consider whether management exercised its discretion reasonably or whether, given the circumstances, managements discipline was unjust, arbitrary, capricious or in bad faith. (Para 87)

The court ordered use of a mask or face covering has been in effect since April of 2020. CSO Name and CSO Name have been posted in the lobby numerous times

since the inception of the order and have not allowed any person through the security procedures except the female civilian to enter the Bob Casey Federal Courthouse before or after the incident on October 1, 2020 who was not wearing a mask or face covering.

It is the Grievant and the Professional Association of Court Security Officer's opinion that a three day suspension for this incident is unjust and punitive and as such, should be reduced to a verbal warning.

CSO Name and the Professional Association of Court Security Officer's ask that as the grievant, CSO Name's Discipline be reduced to verbal counseling.

If the Discipline is not reduced as requested by the Grievant CSO Name and the Professional Association of Court Security Officer's, it is Grievant intention to continue to appeal the Discipline through the Grievance Procedure outlined in 5.3(d) "Arbitration Procedure" not later than ten (10) working days from the denial by the Executive Vice President or designee.

In the event CSO Name's discipline is reduced as requested, it is at the discretion of the Company if they would leave two disparate Disciplines for the same offense which occurred on the same incident in which both CSO Name and CSO Name were a party to.

Thank you for your time and consideration,

John M. Lynch  
P.A.C.S.O.  
Secretary/Treasurer  
Union Steward-Houston  
720-470-3965

CSO Name \_\_\_\_\_