

STATE OF WISCONSIN

PERSONNEL COMMISSION

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W. JEAN GARNER,
 Appellant,

v.

Secretary, DEPARTMENT OF
 CORRECTIONS,
 Respondent.

Case No. 94-0013-PC

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INTERIM
 DECISION
 AND
 ORDER

The Commission considered the objections raised by appellant and consulted with the hearing examiner. The Commission adopts the Proposed Decision and Order as its interim decision with the following amendments.

1. Amend the parenthetical clause in the second line of paragraph 15 of the FINDINGS OF FACT, to change the reference from "par. 12" to "par. 13".
2. Amend paragraph 23 of the FINDINGS OF FACT, to add the following as three new, final sentences.

 "Officer Hilpert was on duty at the gate house. Officer Eick was at the Racine Correctional Institution (RCI) to pick up her paycheck and was not on duty. Officer Eick had been with the training program only for about 30 days as of November 11, 1993."

The main objections filed by complainant are discussed briefly below.

Appellant first argued she should not have been suspended for failure to provide medical information. Her reasoning is based on her doctor's failure to reply to respondent's written request for information. (See Finding of Fact, par. 16). She contends it was beyond her control that her physicians failed to respond to respondent or to her own request for medical documentation. The Commission rejected this argument. As note in paragraph 20 of the Findings of Fact, appellant's efforts to obtain information from her doctors were very limited. The Commission cannot conclude from the record that her doctors

would not have responded if she had made reasonable efforts to obtain the information, which she did not.

Appellant's second argument concerned Officer Eick's actions on November 11, 1993. (See par. 23 of the Findings of Fact, as amended above.) It is true that Officer Eick did not tender appellant's keys to the shift commander. Officer Eick, however, was off duty. She tendered the keys to the gate-house officer, Officer Hilpert, who in turn tendered the keys to the shift commander. Further, Officer Eick had been in the training program only about one month and had no prior offenses shown by the hearing record. In short, the circumstances of Officer Eick's key-handling were different from the circumstances of appellant's key-handling to such degree that comparison is not useful.

As her third main argument, appellant contends: "at no time during the disciplinary process relative to my actions or inactions, were categories A, B & C defined." The Commission is persuaded that appellant knew or should have known the definitions even if respondent did not repeat them during her disciplinary process. The definitions are found in respondent's guidelines for disciplinary action (R's. Exh. 2, pp. 2-7), which was admitted into the record without objection from appellant. Also, respondent's notices to appellant regarding pre-disciplinary hearings referenced the applicable violation category. (See, for eg., R's Exh. 4A, p.1 and R's Exh. 4B, p. 1.)

The final main argument raised by appellant involved the keys lost by the maintenance worker, as described in paragraph 36 of the FINDINGS OF FACT. Appellant continues to feel her suspension was excessive when compared to the risk and discipline involved with the maintenance worker's actions. The Commission disagrees for the reasons already stated in the proposed decision. (See par. 36 of the FINDINGS OF FACT, and the discussion of risk imposed by appellant's action which appears on p. 13-14 of the proposed decision.)

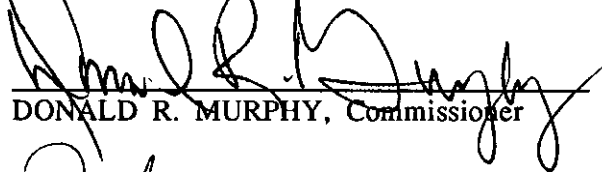
ORDER

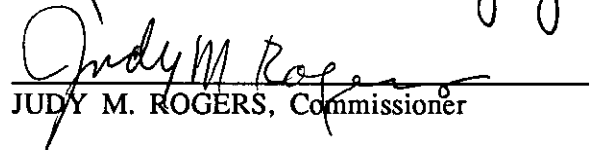
That the Proposed Decision and Order as amended above be adopted as the Commission's interim decision.

Dated July 27, 1994.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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W. JEAN GARNER,
 Appellant,

v.

Secretary, DEPARTMENT OF
 CORRECTIONS,
 Respondent.

Case No. 94-0013-PC

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PROPOSED
 DECISION
 AND
 ORDER

A hearing was held in the above-noted case on May 19, 1994. The parties made closing arguments at hearing and did not request an opportunity to submit written arguments.

The hearing issues were agreed-upon at a prehearing conference held on February 25, 1994, as follows:

Regarding Medical Verification Allegations: Was there just cause for appellant's 1-day suspension dated December 27, 1993? If so, was the degree of discipline imposed excessive?

Regarding "Lost" Key Allegations: Was there just cause for appellant's 3-day suspension dated December 27, 1993? If so, was the degree of discipline imposed excessive?

FINDINGS OF FACT

1. The Department of Corrections hired Ms. Garner in January 1992, as an Inmate Complaint Investigator (ICI) at the Racine Correctional Institution (RCI), classified as an Administrative Assistant 3 - Confidential. Warden Oscar Shade supervised the ICIs until 6/3/93, when Mr. Shade left his employment and Deputy Warden Dan Buchler took on the assignment of Acting Warden. During the time Mr. Buchler was the Acting Warden, his permanent position of Deputy Warden remained vacant so he was expected to do many tasks of each job. He

delegated ICI supervision to Mr. Cina to ease the Acting Warden's workload.

2. ICIs investigate inmate complaints; a function valued by management as a tool for measuring inmate climate, staff assessments and property process evaluations. DOC's administrative code requires investigations to be completed within 23 days of receiving the complaint. Management views the timely completion of the investigations as important. Inmates could feel they are not being heard if complaints were processed late, which could lead to inmate unrest and the filing of more complaints.
3. Ms. Garner has problems with her back which causes periods of neck, back and headache pain for which she has received medical treatment. The problems started in 1988, and may have been affected by an automobile accident on December 28, 1992. The problems also may have been affected by her prior employment with the Public Defender's office where she filed a worker's compensation (WC) claim. Ms. Garner indicates she was diagnosed as suffering from radiculopathy. Her doctors are Lubsey (primary care physician), Dotson (neurologist) and Meyer (neurosurgeon).
4. Ms. Garner requested and was granted a medical leave of absence (LOA) starting in April 1993, due to neck, back and headache pains. She remained absent into August 1993, at which time she complied with RCI's request to undergo an independent medical exam (IME).
5. RCI arranged for Dr. Novom to act as the IME. About a year prior to RCI's request, Dr. Novom had evaluated Ms. Garner's condition in connection with her worker's compensation (WC) claim with the Public Defender's Office.
6. Dr. Novom's IME report was received by RCI on or about August 11, 1993. He felt Ms. Garner's condition had improved to the point where she could return to work without restrictions.
7. Based on the second IME report, RCI ordered Ms. Garner to return to work on August 25, 1993. She complied with the order.

8. On September 14, 1993, Ms. Garner received a written reprimand for a category B violation of work rule # 7.¹ The underlying incident involved her attendance at a professional seminar in Tennessee prior to August 25, 1993, during the time she claimed total inability to work. The reprimand was imposed for perceived untruthfulness on Ms. Garner's part when RCI questioned her about the trip.

Medical Verification:

9. Upon Ms. Garner's return to work on August 25, 1993, she requested permission to leave early every day for 2 weeks to attend physical therapy sessions. RCI granted the request upon the condition that she provide medical verification of her appointments and attendance at the same. She agreed to provide the requested information.
10. Ms. Garner provided RCI with an updated medical report on August 25, 1993, completed for the purpose of continuing disability insurance benefits past May 29, 1993. The report was signed by Dr. Dotson on July 1, 1993, and noted the doctor's understanding (which was incorrect at least as early as August 1, 1993) that Ms. Garner was "House Confined". Dr. Dotson noted a 10# lifting, pushing, pulling and carrying limitation; as well as a bending limit of 0-2 times per hour. Based on this information, Dr. Dotson concluded Ms. Garner was unable to work from May 29, 1993 through July 12, 1993. Contrary to Ms. Garner's contentions, there is no reason why RCI should have assumed that Dr. Dotson's observations on this form were valid on or after July 12, 1993, the end-date specified in the form by Dr. Dotson.
11. On August 25, 1993, Ms. Garner also gave RCI a medical excuse for operation of "moving equipment". She indicated the restriction meant she could not drive a car. (See Exh. R14, p. 1.)

¹ Exhibit R1 contains the work rules (WR). WR#7 is shown below.

WR#7: Failure to provide accurate and complete information when required by management or improperly disclosing confidential information.

12. Ms. Garner frequently was absent after she returned to RCI on August 25, 1993. She received no pay for these absences because she was out of sick leave. She provided documentation only for the following: 1) Prescription form from Dr. Lubsey to excuse Ms. Garner for one day off work (date unknown) for swelling in her neck and resulting pain. 2) Prescription form from Dr. Lubsey to excuse Ms. Garner for a day off work (date unknown) to attend a work hardening program. 3) Appointment cards for two of her physical therapy visits (dates unknown).
13. Ms. Garner knew the IME report which said she could work, conflicted with her physician's prior report which said she could not work. The conflict did not trouble her, but it did trouble RCI because she was gone from work often which contributed to the backlog of inmate complaints awaiting investigation. RCI, therefore, asked Ms. Garner for medical verification of an ongoing medical cause for her absences.
14. Ms. Garner resented the request for medical verification. She felt she provided sufficient documentation prior to August 25, 1993, to establish that she was suffering from back and related problems. Even up to the date of hearing, she had difficulty understanding the difference between providing documentation of a medical problem and documentation that such problem required specific absences.
15. Ms. Garner failed to show that RCI's request for additional medical verification (as noted in par. 12 above) was made as harassment to get her to quit or to be fired. The IME report which RCI received in August reasonably raised questions about the contrary opinions of Ms. Garner's treating physicians. It was reasonable under these circumstances for RCI to request medical clarification for her continued absences.
16. The initial request for medical verification made on August 25, 1993, was followed by oral requests from her supervisor, Mr. Cina, for clarification from her physicians regarding the apparent conflict in opinions shown by the IME report. (See for example, Exhs. R11 & R13). When the requested information was not provided by Ms. Garner, RCI attempted to obtain the requested medical information direct from Ms.

- Garner's physician, Dr. Dotson; by letter dated October 12, 1993². (Exh. R12.) The physician did not respond. On October 28, 1993, RCI sent Ms. Garner a letter listing the medical information sought and establishing November 12, 1993, as a compliance deadline. A warning that disciplinary action could occur for failure to comply was included in the letter (Exh. R3). Ms. Garner failed to provide any further medical clarification even through the end of the 1993 calendar year.
17. By 10/28/93, RCI had a backlog of about 200 inmate complaints. One RCI employe was temporarily reassigned to ICI duties to help reduce the backlog. Also, two employes of other institutions were temporarily transferred to RCI to perform ICI duties to help with the backlog.
 18. On October 29, 1993, Mr. Cina observed Ms. Garner getting into and driving a car alone. This contradicted her interpretation of the medical excuse for operation of machinery, which she gave RCI on August 25, 1993. (Exh. R14, pp. 3-4).
 19. Mr. Cina recommended disciplinary action for Ms. Garner's failure to comply with the request for medical verification as Category B violations of work rules 1 and 7.³ A pre-disciplinary hearing was held on December 17, 1993 (Exh. R4A). RCI thereafter concluded that just cause existed to impose discipline and that a 1-day suspension was appropriate. Formal notice of the discipline was mailed to Ms. Garner on December 27, 1993 (Exh. R7A).
 20. Ms. Garner's attempts to obtain the requested information from her physicians were limited. She contacted Dr. Dotson directly in September 1993, but failed to follow-up with Dr. Dotson when she knew the information was not provided to RCI. No other attempts were made by Ms. Garner to obtain the requested information from her physicians. The only other attempt she planned to make was to discuss the need for

² RCI had a medical release form on file at Dr. Dotson's office, to enable RCI to obtain updated information without having to seek another release from Ms. Garner.

³ WR#7 is shown in a prior footnote. WR#1 is shown below:
WR#1: Disobedience, insubordination, inattentiveness, negligence, or refusal to carry out written or verbal assignments, directions, or instructions.

documentation with Dr. Lubsey, at her next scheduled appointment on November 11, 1993 (one day before the compliance deadline). The appointment, however, was cancelled because the doctor had a court appearance.

"Lost" Key

21. Ms. Garner reported absences for late October and/or November 1993, on her time sheet under the "worker's compensation" (WC) code (rather than leave without pay). Mr. Cina deleted the code because he was unaware Ms. Garner felt or claimed that any current medical problems were related to the WC claim associated with her employment at the Public Defender's office. The changed time sheet was for the 2-week period for which she would receive pay on November 11, 1993.
22. Ms. Garner reported for work on November 11, 1993, and received her pay check. She became emotionally upset because the check amount was only \$56. She discussed the matter with Mr. Buchler, the Acting Warden, during which time she was so upset that he gave her permission to leave for the day.
23. Ms. Garner waited alone for her ride home at a picnic table located outside RCI's fenced-in area (the "secured perimeter"), near a bus stop. Soon after Ms. Garner left, Officer Mary Eick, a cadet on training status, saw a keyring on the (now unoccupied) picnic table. She gave the keyring to Officer Kelly Hilpert, who reported the matter to her shift commander, Captain Hinze, who also was her supervisor. Officer Hilpert completed an Incident Report and forwarded the report and keyring to her shift commander.
24. The keyring had one lock-box key on it, an identifying token (meaning a round, metal disk) which indicated the key was assigned to an inmate complaint investigator (ICI), and a second identifying token. RCI had 3 ICIs. Mr. Cina telephoned the two ICIs who remained at work after Ms. Garner left work. Both of the remaining ICIs had control of their own lock-box key and verified for Mr. Cina that their keys were not lost or misplaced. Mr. Cina reasonably and correctly concluded that it was Ms. Garner's keyring found at the picnic table.

25. Lock-box keys are issued for high-security areas, including the ICI office. The actual ICI office keys are kept in a locked box at RCI's Control Center, and are given only to the assigned employe upon presentation of the lock-box key. The lock-box key is then used to unlock the office keys, which are given to the assigned employe in exchange for the lock-box key. The reverse procedure is followed when the assigned employe leaves work.
26. Ms. Garner reported to work on November 12, 1993 (the following day). Her lock-box key was required to be presented in exchange for her office keys. She realized for the first time that she did not have her lock-box key when she tried to obtain her office keys. She immediately telephoned Mr. Cina who made arrangements for her entry.
27. Mr. Cina recommended disciplinary action for the lost key incident as category B violations of work rules #1 and 4.⁴ A pre-disciplinary hearing was held on December 17, 1993 (Exh. R4B.) RCI determined just cause existed for the discipline and that a 3-day suspension was appropriate. Formal notice of the discipline was mailed to Ms. Garner by letter dated December 27, 1993 (Exh. R7B).
28. RCI has a written key control policy dated April 2, 1991. Some portions of the underlying procedures have changed since it was written. However, Ms. Garner knew key control was important for ICI security. She knew she was expected to retain control of keys assigned to her, including the lock-box key. She also knew discipline could occur for failure to meet these expectations.
29. Inadvertent removal of assigned keys at the end of shift may be detected by the employe or by the Control Center which inventories keys at the end of shifts. (R8, p. 4, item "F.3.") If the Control Center detects a missing key, a center staff person will call the employe at home. No discipline occurs if the employe has the keys at home and returns them immediately. Discipline would occur if the employe does not have the

⁴ Work rule (WR) #1 is shown in a prior footnote. WR #4 is shown below.
WR#4: Unauthorized lending, borrowing, or duplication of keys; careless or improper use of keys; or failure to report promptly the loss of keys.

keys at home and does not know where they are. No discipline occurs if the employe him/herself discovers and remedies the inadvertent taking of keys at the end of the shift.

30. The security risk posed for RCI by inadvertent removal at the end of a shift to the employe's home poses less of a security risk for RCI than situations where the location of keys is unknown. Lost or misplaced keys present the potential (which RCI must guard against) that an unauthorized person (inmates, RCI staff or members of the public) might find and improperly use the key. This potential risk exists but is less for the type of key lost by Ms. Garner (lock-box key), than would exist if she had lost her office keys (which she did not). Any person finding the lock-box key would need the help (collusion) of a staff person in the Control Center to unlock the appropriate box to obtain Ms. Garner's office keys. Since staff collusion is a remote possibility, the loss of her lock-box key posed only a slightly greater risk of unauthorized entry as compared to inadvertent taking of keys at the end of a work shift.
31. RCI rarely mitigates discipline resulting from loss-of-key issues. Acting Warden Buchler considered and rejected Ms. Garner's emotional state on November 12, 1993, as a potential mitigating circumstance.

RCI's Disciplinary Process

32. The Department of Corrections (DOC) has written guidelines to implement the disciplinary process for all institutions, including RCI. (R's Exh. 2) Work rule violations are characterized either as Category A for absenteeism; Category B for misconduct; or Category C for the most serious offenses, such as abuse of inmates and illegal conduct.
33. The guidelines address the concept of progressive discipline for Category B violations, as shown below.

The following disciplinary action(s) normally will be taken against an employee determined to be in violation of DOC Work Rules as set forth in Category B. Disciplinary actions in Category B are cumulative from the first violation of work rules until an employee has been free of any further violations for a period of twelve (12) months.

Misconduct Work

Corrective

Rule Violations

Disciplinary Action

First Violation
Second Violation
Third Violation
Fourth Violation

Written reprimand
1 day suspension without pay
3 day suspension without pay
From a 5 day suspension without
pay up to and including
discharge (to be determined by
the Appointing Authority).

34. Deviations from the above could occur based on mitigating or aggravating circumstances, as discussed in the "Disciplinary Process" portion of the guidelines. The guidelines provide that mitigating or aggravating circumstances are to be considered in determining whether just cause exists to impose discipline and in determining the appropriate discipline to impose.
35. RCI followed its policy of discipline for all key-control incidents described in the record. Most incidents involved inadvertently taking keys home at the end of the shift with prompt return, for which no discipline was imposed. Another incident involved a probationary employe who was terminated for loss of keys.
36. A maintenance employe once lost his keys on RCI grounds. The keys lost by the maintenance employe posed a greater security threat than the keys lost by Ms. Garner because keys to every lock in the facility were included on the maintenance person's keyring. The keys were found about 3 days later, with the aid of a snowblower. The maintenance employe received a less severe form of discipline (a written reprimand) than Ms. Garner, even though his loss of keys presented a greater security risk for RCI. The difference, however, is explained by RCI's progressive disciplinary process. Specifically, the maintenance person had no prior Category B violations and RCI's policy calls for a written reprimand for the first offense.
37. A three-day suspension without pay was excessive for the lost key incident. A two-day suspension without pay is more appropriate considering the extenuating circumstances of minimal risk to RCI and Ms. Garner's emotional state on November 11, 1993, which Mr. Cina apparently contributed to by failing to inform Ms. Garner previously

that he had changed her timesheet and, as a result, she would receive a reduced paycheck.

CONCLUSIONS OF LAW

1. This case is properly before the Commission, pursuant to s. 230.44(1)(c), Stats.
2. Respondent had the dual burden to show that just cause existed for imposing discipline and that the discipline imposed was not excessive.
3. Respondent met its dual burden in regard to the **medical verification** allegations.
4. Respondent met its burden to show that just cause existed for imposing discipline in the **lost key** incident.
5. Respondent failed to show that a 3-day suspension was not excessive in regard to the **lost key** incident.

DISCUSSION

Ms. Garner's Arguments

Ms. Garner made several arguments on her own behalf at hearing. Some are addressed in the FINDINGS OF FACT. The major remaining arguments are addressed here.

Ms. Garner acknowledged at hearing that respondent's desire to clear-up the conflicts between her doctor's report and the IME report was reasonable, except for the fact that she contested the validity of the IME exam. She perceived several deficiencies with the IME exam, including that Dr. Novom failed to duplicate certain diagnostic tests (such as an EEG) which were undertaken by her own physicians. Her perception of inadequacies, however, does not excuse her failure to provide the requested medical information. In fact, such request was an opportunity for her, through her physicians, to provide information to dispel the opinions of the IME.

Ms. Garner thought Mr. Cina was "out to get her" and cited the "conclusion" section of Exh. R14, as support of her perception. The Commission considered this argument but felt the overall record contradicted Ms. Garner's perception. Mr. Cina's position about the medical documentation was reasonable. His pursuit of the issue through the disciplinary process after

the information was not forthcoming over a period of almost 3 months, also was reasonable. The Commission determined that the conclusion section of Exh. R14, is more properly characterized as a summary of where Ms. Garner's actions had lead to date and where they were likely to lead if her conduct continued. That Mr. Cina mentioned her continued conduct could warrant termination was accurate and, therefore, is not evidence that he was "out to get" her.

Respondent's argument regarding the backlog of inmate complaints and resulting need for Ms. Garner to be at work, used Ch. DOC 310, Wis. Admin. Code, as reference for the time allocated to investigate complaints. Ms. Garner felt it unfair to allow such reference and not to consider her argument that the code requires the Warden to supervise ICIs, whereas after June 1993, she was supervised by Mr. Cina. The examiner determined that the issue of who should supervise Ms. Garner was irrelevant to the issues presented in her case. Even if it were relevant, there is no provision in Ch. 310, Wis. Admin. Code, which requires the warden to be her supervisor. DOC 310.03(2), authorizes the warden (as superintendent) to appoint ICIs, but does not require the warden to supervise them.

On some undisclosed date after August 25, 1993, Ms. Garner took a stack of bound medical records to Mr. Cina. She emphasized that he refused to take them, saying she should pull out the documents relevant to the requested medical information which she never did. The sinister spin which Ms. Garner attributed to this action is unreasonable. She cannot expect Mr. Cina to be willing to go through the documents when she was unwilling to do so herself. Furthermore, it was not shown that those documents would have addressed Mr. Cina's request for verification of medical visits after August 25, 1993, and for clarification from her physicians regarding the IME report.

In regard to the lost key incident, Ms. Garner argued that discipline should not have been imposed because such action was punitive, rather than corrective. She highlights this distinction because respondent's disciplinary policy says the purpose of discipline is correction, not punishment. At some point, however, discipline becomes appropriate as a means to achieve correction. With the medical records, for example, several informal attempts to obtain the information were unfruitful, leaving discipline as the next method used to attempt to get Ms. Garner to comply with the request.

The lost-key incident is different from the medical records incident in that several informal steps were not taken prior to imposition of discipline. However, such was respondent's consistent approach to lost-key incidents because of the importance of the same to RCI security. Furthermore, although Ms. Garner attempted at hearing to fault RCI for failing to provide her with training on the new key policy after she returned to work on August 25, 1993, the changed portion of the policy did not cause the lost-key violation. Ms. Garner was well aware of the importance of key control at RCI and of her obligation to retain control/possession of her lock-box key when she left work ill on November 11, 1993.

Analytical Framework

The two-step analysis for disciplinary cases was discussed by the Commission in Barden v. UW-System, 82-2237-PC (6/9/83), as follows:

First the Commission must determine whether there was just cause for the imposition of discipline. Second, if it is concluded that there is just cause for the imposition of discipline, the Commission must determine whether under all the circumstances there was just cause for the discipline actually imposed. If it determines that the discipline was excessive, it may enter an order modifying the discipline. (Cites omitted.)

The "just cause" standard was described in Barden, relying on the Wisconsin Supreme Court case of Safransky v. Personnel Board, 62 Wis. 2d 464, 474, 215 N.W. 2d 379 (1974), as follows:

. . . one appropriate question is whether some deficiency has been demonstrated which can reasonably be said to impair his performance of the duties of his position or the efficiency of the group with which he works. (Cites omitted.)

RCI's disciplinary policy requires consideration of mitigating circumstances in determining whether just cause exists for imposing discipline and in determining the appropriate sanction to impose. This aspect of the policy is consistent with the cases cited above.

Suspension - Medical Verification

Just cause existed for imposing discipline for Ms. Garner's failure to provide requested medical documentation. Her level of absences after August 25, 1993, were frequent, contributed to a backlog of inmate complaints awaiting investigation and required temporary reassignment of other staff to address the backlog. These absences occurred despite the lack of medical documentation showing a reason for continued absences. Under these circumstances, RCI has demonstrated a deficiency which can reasonably be said to impair the performance of the ICI duties of Ms. Garner's position, the efficiency of the ICI unit and the efficiency of the other work units from which staff were temporarily transferred to perform ICI duties.

The one-day suspension for failure to comply with the requested medical verification was appropriate. This was Ms. Garner's second category B violation and RCI's disciplinary policy provided for a resulting one-day suspension.

Furthermore, no mitigating circumstances exist in regard to the medical verification issue. Ms. Garner alleged mitigating circumstances in difficulties communicating with Mr. Cina. Even if such mis-communication occurred, Ms. Garner should have known at least by October 28, 1993, what documentation was being requested; which was the date of the written request for information. (See par. 16 of the FINDINGS OF FACT.)

Ms. Garner also alleged as a mitigating circumstance, difficulties obtaining medical documentation from her physicians. However, when she was asked at hearing to detail her efforts to obtain the documentation, it was clear to the Commission that her efforts were very limited. (See par. 20 of the FINDINGS OF FACT.) This was true even after she received the letter dated October 28, 1993, which contained a warning that discipline could occur for failure to comply with the request for medical verification.

Key-Incident Suspension Reduced to 2 Days

The Commission was persuaded that the institution's need for key control as a security measure was sufficiently important to find that just cause existed for discipline, despite the existence of mitigating circumstances discussed below.

The first mitigating circumstances are Ms. Garner's emotional state on November 11, 1994, and the fact that Mr. Cina contributed to the likelihood of upsetting Ms. Garner by failing to advise her in advance that he had changed her time sheet and that her paycheck would be reduced significantly. Another mitigating circumstance relates to the degree of risk posed by Ms. Garner's actions. As detailed in the FINDINGS OF FACT, her loss of the lock-box key posed only slightly more potential risk for unauthorized use as posed by inadvertent taking home of keys at the end of a shift; a violation which is not subject to any discipline.

The Commission feels the mitigating circumstances should result in a reduced suspension of 2 days without pay. A lesser penalty than 2 days was considered inappropriate due to the two prior Class B violations and due to Ms. Garner's knowledge that key control was important and could be the subject of discipline if a violation occurred.

ORDER

That respondent's discipline in regard to the medical verification allegations is affirmed, and that respondent's decision to impose discipline for the lost key incident is affirmed; but that respondent's imposition of a 3-day suspension is rejected and remanded to respondent for action consistent with this decision.

Dated _____, 1993.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

cc: W. Jean Garner
Atty. Thomas Van de Grift