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## Discipline Investigation Report and Recommendations

### December 2021

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#### **REPORT SUMMARY**

Complainant states he was assaulted by another incarcerated individual and did not fight back during the incident but was charged with fighting and disorderly conduct. The complainant did sign a waiver to a hearing.

The Office of the Ombuds for Corrections (OBFC) will not typically investigate complaints about discipline when a hearing waiver has been signed by the incarcerated individual. However, occasionally the OBFC may investigate cases where a waiver occurred as a form of “quality control” because there is no DOC process for appealing discipline after a waived hearing.

In this case, the complainant was adamant about his innocence and claimed he was coerced into signing the hearing waiver. Additionally, he hasn’t had any formal discipline in the past 7 years.

The OBFC reviewed video footage of the incident which shows the complainant was assaulted but the video did not indicate the complainant was fighting, only defending himself.

The Ombuds made the following recommendation and considerations:

- **Recommendation:**
  - **Removal of Discipline:** The OBFC recommends the DOC remove discipline for fighting and disorderly conduct from complainant's record and allow him to return to minimum housing based on resulting reduction in custody points.

*The DOC disagreed with this recommendation.*

- **Considerations:**
  - **Requirement to Review Evidence:** Requirement to review and document available evidence such as video footage when there are formal sanctions should be considered. Lack of review could become a possible basis for appeal.
  - **Defined Waiver Consequences:** Additional measures should be considered to clearly define consequences of waiver.

*The DOC did not respond to the considerations, and a response to considerations is not expected.*

## **Summary Description of Incident**

Complainant states he was assaulted by another incarcerated individual, his roommate at the time when this incident took place. Complainant stated he did not fight back during this incident but was charged with fighting. The complainant explained, he didn't think it was right that he got in trouble for being assaulted by another individual. The complainant did sign a waiver to a hearing. Complainant asked that the Office of the Ombuds for Corrections (OBFC) review video footage of the incident to prove his innocence. The complainant was adamant about his innocence and claimed he was coerced into signing the hearing waiver. Notably, complainant hasn't had any formal discipline in the past 7 years.

According to the complainant, prior to this incident taking place he did admit that he was arguing with his roommate about cleaning their cell. But says even though they were arguing, he did not put his hands on him. He says they left the room calmly walking side by side, which he claims would not make any sense if he had assaulted his roommate as the roommate claims.

Complainant stated he was walking out of his cell with his roommate and his roommate went into a bathroom for a few seconds then came out and started punching him. Complainant reported he was carrying coffee, dropped it to defend himself, but did not throw any punches. He states he was trying to protect himself and move backwards through the hallway where staff could see he was being assaulted.

Complainant stated that he heard staff call an ICS and he immediately dropped to the ground when officers gave the directive. Complainant was then taken to holding. After being in holding for a period, complainant states one of the due process officers came to visit him and offered him 10 days in segregation, but only if he waived his right to a hearing. Complainant asked if he could speak with his case manager before deciding but says the officer who was interviewing him denied the request. Complainant claimed that the officer said something to the effect of, "if you don't sign the waiver, you will get 45 days in segregation." The Notice of Violation (NOV) that complainant received said two officers said they saw both individuals throwing punches and even though complainant knew it wasn't accurate, he felt that nobody would believe him over the two officers who made the report. Complainant stated he doesn't do well under pressure and was afraid to spend 45 days in segregation, so he signed the waiver.

The complainant was given 10 days in segregation for fighting and was given an additional charge of disorderly conduct which ran concurrently. He was moved out of minimum custody and his custody points were increased significantly, which he was not aware would happen when he signed the hearing waiver.

## **OBFC Investigative Actions**

An Assistant Ombuds (A.O.) interviewed the complainant and reviewed the incident Notice of Violation (NOV) report, incident reports, photos taken of both incarcerated individuals, and interviewed the Due Process Lieutenant. The A.O. also reviewed video footage of the incident from cameras outside the restroom where the incident began and, in the hallway, where the incident proceeded.

## OBFC Findings

### **Fighting– Unable to Substantiate**

Available evidence did not support statements by staff who responded to the incident that this was a fight between two incarcerated people (IP) who were both throwing punches at each other. There were no officers near the IPs when the incident began, and it is unclear if staff reviewed the video footage afterwards as no notes were found of video having been reviewed. Video footage of short video clips from three different views of the hallway where the incident took place did not indicate complainant was fighting. Video showed that complainant was assaulted by his roommate, and he was defending himself by holding up his arms which corroborates the complainant's account. The only evidence of the roommate's statement that complainant had hit him while in their cell prior to the incident was roommate's statement of it, and his bruised eye area, which could have occurred some other way. This is insufficient evidence to substantiate the roommate's claim.

## OBFC Recommendations

### **Recommendation**

**Removal of Discipline:** Remove discipline for fighting and disorderly conduct from complainant's record and allow him to return to minimum housing based on resulting reduction in custody points. This recommendation is based on the inconsistencies between the video footage and what was written in the Notice of Violation.

### **Considerations**

The fact that Ombuds review of video footage of this incident led to a completely different conclusion than that of DOC staff, and that complainant waived his right to a hearing, raise several issues for consideration.

**Requirement to Review Evidence:** There is no indication in records of this case that video footage was reviewed. If there is readily available evidence such as video footage when someone is given formal sanctions, perhaps there should be a requirement that it is reviewed and the review documented, including who reviewed it. Lack of review of available video evidence could be made to qualify as a basis for later appeal.

**Defined Waiver Consequences:** Additionally, complainant's waiver in this situation seems to have been at least in part due to a lack of understanding of the full consequences. Additional measures to ensure incarcerated persons fully understand all the consequences of their waiver may help to make the discipline process more fair.

A response to these considerations is not expected. The Ombuds is aware that the Department is reviewing discipline policies, and only asks that these issues be considered in that process.

The OBFC will continue to monitor these issues and may make recommendations regarding them in the future.

## DOC Response

The following letter is the Department of Corrections response provided in accordance with Minnesota Statutes section 341.93 subd. 6.



**DEPARTMENT  
OF CORRECTIONS**

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November 24, 2021

Mr. Mark Haase, Ombuds  
Office of the Ombuds for Corrections  
540 Fairview Ave. N.  
Suite 202  
St. Paul, MN 55104

Re: [REDACTED] Discipline Recommendation

Dear Mr. Haase:

I reviewed your report, findings, and the corresponding recommendation that the discipline record, placement location, and custody points be adjusted for Mr. [REDACTED]. Upon receipt, I initiated a review of the incident and subsequent determination and settlement. Based on my review of the totality of the circumstances, I find that the discipline was fairly imposed and in accordance with agency policy. For the reasons detailed below, I decline implementation of the recommendation.

**Background and Rationale**

Mr. [REDACTED] was charged with 320 Disorderly Conduct and 321 Fighting. The investigation of the incident was completed by Due Process Sgt. [REDACTED]. Mr. [REDACTED] charges were based on Policy 303.010 *Offender Discipline* preponderance standard, defined as, "Evidence satisfying the hearing officer that a fact is more reasonable, more probable, and more credible than not." Sgt. [REDACTED] reviewed the video. The video is only part of the investigative process. There is also the testimony from the other individual who stated Mr. [REDACTED] "sucker punched" him in their cell prior to the ICS activation. Nursing notes reflect the individual has a swollen, red, and bruising eye. Photos were also taken. That individual is observed on video exiting the restroom holding his eye. That individual testified he initiated a fight with Mr. [REDACTED] because he has previously been assaulted by him. Based on video evidence, testimony, notes, and photos Sgt. [REDACTED] determined that preponderance standards were met and Mr. [REDACTED] was charged with disorderly conduct and fighting.

It should be noted Mr. [REDACTED] was issued the Offender Discipline Rules upon transferring to MCF-Faribault. The rules state what he could be charged with if he is involved in a fight. Following this incident Mr. [REDACTED] was given the Notice of Violation and the List of Offender Rights. He was informed when a hearing would tentatively take place should he opt to go this route. Due Process personnel gave him time to consider his choices, waiting until the following day to see if he would waive his rights to a hearing or if he would take it to a hearing. Mr. [REDACTED] chose to waive his right to a hearing admitting to the violation and waiving all procedural rights including an appeal.

## Conclusion

Thank you for the opportunity to address the concerns you raise. I recognize the value of outside review of incidents concerning to those we serve. I readily acknowledge that errors can occur in the investigative and disciplinary process, but in this case, I believe the matter was properly and appropriately addressed.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in dark ink, appearing to be "Tracy Beltz", with several horizontal lines drawn through it.

Tracy Beltz, Warden  
MCF-Faribault  
Minnesota Department of Corrections

CC: Michelle Smith, Deputy Commissioner  
Paul Schnell, Commissioner