IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CHEYANNE HARRIS, Applicant, v. STATE OF IOWA, Respondent.	CASE NO. PCCE090014 **AMENDED APPLICATION FOR POSTCONVICTION RELIEF**

The Applicant, Cheyanne Harris, appears before this Court and for her Amended Application for Postconviction Relief states as follows:

INTRODUCTION

1. This action, with others before this Court,[1] highlight numerous systemic problems in the disciplinary process at Iowa prisons.

2. The Iowa Correctional Institution for Women ("ICIW") has engaged in mass urinalysis ("UA") testing on incarcerated individuals absent any suspicion of illicit drug use, which, undertaken with inadequate procedures and coupled with an unconstitutional burden of proof before the disciplinary body, has resulted in the erroneous imposition of major disciplinary sanctions on Applicant and others despite their innocence.

JURISDICTION

3. At all times relevant to this matter, Applicant has been incarcerated at ICIW.

4. ICIW is located in Mitchellville, Polk County, Iowa.

[1] Postconviction relief actions arising out of substantially the same facts and legal grounds are currently pending before this Court in *Wright v. Iowa*, PCCE090035, and *Fagan v. Iowa*, No. PCCE090131.

5. This action is thus proper before the District Court for Polk County pursuant to Iowa Code section 822.7.

6. Pursuant to Iowa Code section 822.2(1)(*f*), Applicant has duly exhausted the appeal procedure of Iowa Code section 903A.3(2) and now properly brings this action for postconviction relief to challenge the discipline imposed and the consequent unlawful forfeiture of earned time.

7. Applicant further brings this action pursuant to Iowa Code section 822.2(1), subsections (*a*), (*d*), (*e*), and *(g*), to the extent such are implicated within the grounds for relief more fully described below.

BACKGROUND

8. At all times relevant to this matter, Applicant has been incarcerated at ICIW.

9. While at ICIW, Applicant has attended college courses with the goal of attaining an Associate of Arts degree. Applicant has also regularly been employed.

10. As Applicant wrote in her appeal of the disciplinary action to the warden of ICIW, her typical day was to wake up at 4:00 AM to make a 5:00 AM headcount before work, until she goes to sleep around 7:00 PM. In her free time, she draws, reads, or watches TV.

11. Applicant was employed through Iowa Prison Industries, where she worked full days as an Assistant Clerk in shipping and receiving.

12. Applicant takes multiple legitimately prescribed medications, including Prozac (fluoxetine) for depression, and hydroxyzine (an antihistamine).

13. ICIW administers these medications to Applicant.

14. Applicant's urine would reasonably be expected to contain chemicals or chemical derivatives of these medications.

15. In January 2024, ICIW began implementing widespread and suspicionless UA testing on large portions of the prison population. For example, over the course of three days, ICIW conducted UA testing on over 100 individuals using kits provided by Premier Biotech.

16. On information and belief, the testing kits utilized are immunoassay tests, a cheaper, but less accurate, testing method than other alternatives.

17. Such tests are intended for use in preliminary drug screening, and any potential positive result should be followed by a second, confirmatory test undertaken of the sample in a laboratory setting by trained medical review officers.

18. Part of the confirmatory testing of such results includes comparison between them and the test-taker's list of legitimately prescribed medications by an individual with the knowledge and experience to identify which prescription medications may cause false positive drug test results.

19. ICIW does not send samples to a laboratory for confirmatory testing.

20. ICIW does not allow individuals to obtain confirmatory testing from an independent lab, regardless of whether the incarcerated individual offers to cover the costs of such testing.

21. ICIW does not allow individuals to take a voluntary retest.

22. ICIW does not ask for test takers to provide a list of legitimately prescribed medications taken.

23. ICIW does not consistently compare test results to test takers' medications lists to identify potential false positives, even if specifically requested by test takers.

24. Appropriate training of those conducting and reviewing UA tests should be in place and regularly reviewed for compliance to ensure testing procedures minimize risks of inaccurate results.

25. The training, if any, provided to the correctional officers responsible for conducting testing at ICIW is inadequate and/or not being followed.

26. To better ensure the accuracy of test results that may carry disciplinary consequences, UA test samples must be taken under sanitary conditions with regard to the privacy of the individuals from whom the samples are obtained and in a manner reasonably calculated to preclude contamination or substitution of the sample.

27. The mass UA testing at ICIW of hundreds of incarcerated individuals creates a situation where correctional officers are rushed and disorganized, exacerbating existing failures in protocol and leading to mistakes.

28. UA testing at ICIW is not performed under appropriate sanitary conditions. For example, the testing area is not sanitized, nor is the collection receptacle (the "hats" that are placed within the toilet bowl). Correctional officers handling the samples do not consistently change their gloves in between samples.

29. UA testing at ICIW is not performed with regard to the privacy of the individuals from whom the samples were obtained.

30. UA testing at ICIW is not conducted in a manner reasonably calculated to preclude contamination or substitution of the sample. For example, in addition to the lack of proper sanitization procedures noted above, samples are not consistently kept in view of the incarcerated individuals during processing and multiple correctional officers may handle a single test.

31. Applicant was first tested on December 20, 2023. This test allegedly showed a positive result for benzodiazepine. Applicant was placed in segregation for seven days while Officials at ICIW prepared a disciplinary report.

32. At the time of the December 20, 2023 test, Applicant was taking legitimately prescribed fluoxetine and hydroxyzine.

33. Approximately a month later, over the course of three days of testing (January 28, 30, and 31), ICIW conducted another round of random testing.

34. On information and belief, between 20 and 30 incarcerated individuals were alleged to show positive results for benzodiazepines from the 100-something tested over three days in January. Of these, between 16 and 20 were released from administrative segregation and their disciplinary reports dropped after ICIW officials concluded legitimately prescribed medications had resulted in numerous false positives. In other words, ICIW itself determined approximately two-thirds of the "positive" tests were false positives.

35. Applicant was among those tested again on January 31.

36. This January 31 test again allegedly showed a positive result for benzodiazepine. Initially, Applicant was again placed in administrative segregation and officials at ICIW prepared a disciplinary report.

37. Since that prior test, Applicant had continued taking fluoxetine and hydroxyzine.

38. Shortly thereafter, ICIW released Applicant from administrative segregation after determining Applicant's and others' positive test results were due to legitimately prescribed medication.

39. Despite the fact that Applicant was taking the same medications at the time of both the December 20 and January 31 test, and despite ICIW's voluntary dismissal of discipline with

respect to that later test, ICIW did *not* drop the disciplinary report from the December 20, 2023 false positive and continued to pursue disciplinary sanctions.

40. The restroom in which Applicant gave the samples was not appropriately sanitized.

41. Applicant was made to strip naked and correctional officers searched her clothing while she was giving the samples.

42. While giving the samples, Applicant observed the correctional officer conducting the tests fail to change gloves in between handling hers and other individuals' samples.

43. Applicant did not consume any benzodiazepines. Indeed, Applicant has maintained her sobriety while at ICIW, a fact for which she is immensely proud due to the tragic impact drugs had on her life. Emphatically, Applicant denied and continues to deny a relapse.

44. Applicant did not exhibit any signs of intoxication from benzodiazepines.

45. The strip search of Applicant did not reveal any benzodiazepines.

46. No search of Applicant's property revealed any benzodiazepines.

47. No other incarcerated individual or informant accused Applicant of consuming or possessing benzodiazepines.

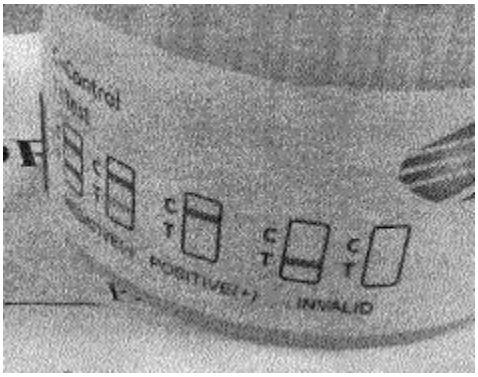
48. Applicant has spent the majority of her time at ICIW discipline free, with a single exception early in her incarceration due to a matter completely unrelated to controlled substances.

49. Fluoxetine, as with other selective serotonin reuptake inhibitors (SSRIs) such as Zoloft (sertraline), are well known to cause false positive results for benzodiazepines.

50. However, according to the disciplinary notice, an unnamed nursing supervisor allegedly, and, if so, erroneously, stated Applicant's medications should not cause a false positive for benzodiazepines. This is despite the fact that Applicant's false positive test a month later was dropped specifically because fluoxetine is known to result in false positives for benzodiazepines.

51. While in administrative segregation following the December 20 test, Applicant overheard one correctional officer tell another that they had "got a bad batch of tests."

52. According to the picture taken by correctional officers of the labeling on the Premier Biotech cup used, a negative result is indicated by the presence of a shaded-in "control" line, and a shaded-in "test" line. A faintly shaded "test" line still indicates a negative result, while a positive result is only indicated by the total absence of shading on the "test" line and a fully shaded "control" line.



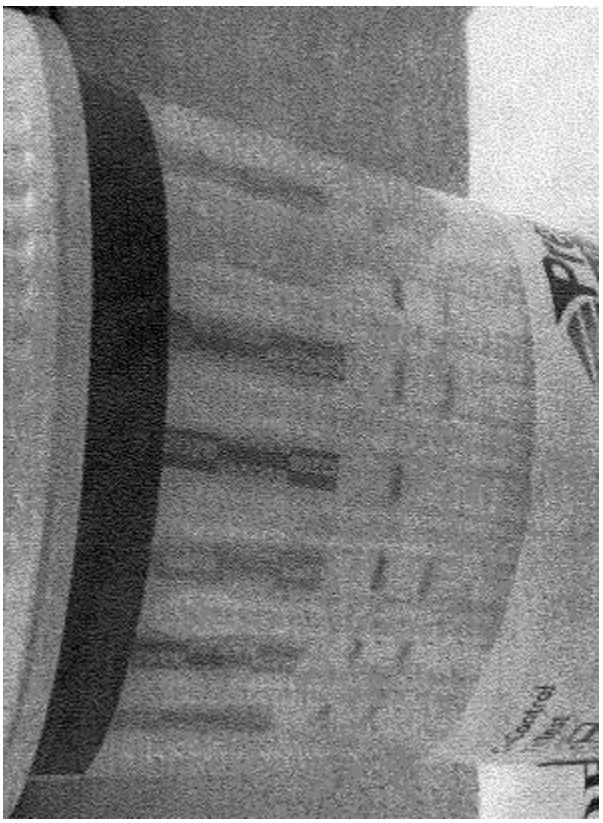
53. On information and belief, correctional officers at ICIW have complained of the difficulty in identifying the presence of faintly shaded lines.

54. On information and belief, correctional officers struggling to read the tests will not administer a second test but instead will pass the test around to other officers for their opinion. Often, correctional officers disagree.

55. After her release from administrative segregation, a correctional officer spoke with Applicant and confirmed that staff are struggling with reading the tests and that staff were aware the tests are giving false positives.

56. The pictures of the test provided to the administrative law judge are not of sufficient resolution or quality to review ICIW officer's interpretation of the results. For example, faintly

shaded lines may appear on each of the test strips submitted to the administrative law judge, who would find it difficult to discern either way:



57. Applicant requested the test be sent to a lab for confirmation testing.

58. Applicant was told Iowa DOC policy prohibits confirmation testing—even at the incarcerated individual's cost.

59. Applicant's test was never sent to a lab for confirmation testing.

60. Applicant was accused of violating disciplinary rules 20 and 29: "possession/manufacture of drugs, intoxicants," and "being intoxicated or under the influence," respectively.

61. The hearing took place before the administrative law judge on January 2, 2024.

62. According to the State of Iowa Department of Corrections Policy Number IO-RD-03, *Major Discipline Report Procedures*, an incarcerated individual violates the rule of

possession/manufacture of drugs, intoxicants in the incarcerated individual "make, hides, consumes, inhales, or possesses . . . [a]ny quantity of unauthorized dangerous drugs or alcohol." The rule goes on to state "a positive urinalysis, blood test, or breath test shall be presumed to be in possession of the drug or intoxicant for which tested"; provided, however, that "[a]ll testing done for drugs or intoxicants must conform to the requirements of IDOC Policy IO-SC-21, *Incarcerated Individual Substance Abuse Testing*."

63. Except on the basis of the alleged test result, no evidence exists or was presented to the administrative law judge that would indicate Applicant possessed or consumed any unauthorized substances.

64. No evidence was presented to the administrative law judge to establish the test taken complied with IDOC Policy IO-SC-21.

65. According to Policy IO-RD-03, an incarcerated individual commits the offense of being intoxicated or under the influence "when the incarcerated individual uses or is found to be intoxicated or under the influence of drugs, dangerous drugs, and intoxicants."

66. Except on the basis of the alleged test result, no evidence exists or was presented to the administrative law judge that would indicate Applicant used or was found to be intoxicated or under the influence of any drugs, dangerous drugs, or intoxicants.

67. The administrative law judge made findings of fact and applied "the 'some evidence' standard of proof pursuant to case law."

68. The administrative law judge relied on the disciplinary notice, a confidential investigation of violations report, the aforementioned photos of the test results, and the correctional officer's "test results record." Essentially, the administrative law judge relied solely on the test results as read by the correctional officer.

69. The administrative law judge relied on no other inculpatory evidence, as such evidence does not exist.

70. The administrative law judge received Applicant's exculpatory evidence, including, without limitation, Applicant's denial of committing the alleged rule violations, Applicant's assertion that she does not have the time, ability, or funds to have committed the alleged rule violations, and Applicant's assertion that the test result must have been a false positive due to legitimately prescribed medications.

71. By decision dated January 8, 2024, the administrative law judge nevertheless held Applicant violated both rules charged.

72. The administrative law judge sanctioned Applicant with 7 days of disciplinary detention, giving her credit for the 7 days spent in administrative segregation, and ordered the forfeiture of 14 days of Applicant's earned time.

73. Because of the finding of discipline, Applicant was automatically prohibited from attending college courses for at least six months and from working for a year at Iowa Prison Industries.

74. Applicant duly appealed the hearing decision to the warden, reiterating the bases for her denial of the charges.

75. Applicant requested the warden consult with correctional officers familiar with Applicant, who would support her denial of the charges and confirm her sobriety, and she requested further that the warden into the statements made by staff regarding their awareness of tests giving false positives.

76. Applicant also offered to submit to further testing to prove her innocence.

77. On January 11, 2024, Warden Michelle Waddle affirmed the hearing decision, asserting simply, "I find there is evidence to support the ALJ's decision."

78. Then, on January 31, 2024, Applicant was selected to take another UA test.

79. As described above, Applicant allegedly again showed a positive result for benzodiazepines.

80. But this time, within 24 hours of taking the January 31, 2024 test, ICIW concluded Applicant's (and others') test results were false positives due to legitimately prescribed medications and declined to pursue any discipline against them.

81. ICIW gave no explanation for the apparent change in ICIW's decisionmaking and it did not reverse Applicant's prior disciplinary report from the December UA test.

82. Applicant timely filed this Petition for Postconviction Relief.

GROUNDS UPON WHICH APPLICATION IS BASED

VIOLATION OF DUE PROCESS

83. All allegations contained within previous paragraphs are incorporated herein by this reference.

84. The Fourteenth Amendment to the U.S. Constitution provides that no person shall be "deprived of life, liberty or property without due process of law."

85. Article I, section 9 of the Iowa Constitution similarly provides that "no person shall be deprived of life, liberty, or property, without due process of law."

86. The administrative law judge in this matter held Applicant guilty based merely on "some evidence" of the accused rule violations.

87. The administrative law judge did not find it "more likely than not" Applicant violated the rules.

88. The administrative law judge did not find there was a "preponderance of the evidence" Applicant violated the rules.

89. The administrative law judge did not weigh the inculpatory evidence against the exculpatory evidence in any manner; rather, the presence of "some"—*any*—evidence, however unreliable, rebutted, or illogical, required a finding of guilt.

90. Accordingly, Applicant was found guilty solely on the basis of a single unclear, disputed, and inaccurate drug test, which was taken under circumstances likely to lead to contamination and was never subjected to confirmation testing, and which allegedly showed a positive result that is potentially attributable to Applicant's legitimately prescribed medication, as in fact Respondent admitted a later test was, and despite any and all evidence Applicant was able to muster in defense.

91. The constitutional requirements of due process apply to prison disciplinary hearings and appeals from the same.

92. The "some evidence" rule was developed by the U.S. Supreme Court as a standard of *review* in judicial review—*not* as a standard of *proof* before the disciplinary body.

93. The administrative law judge erroneously applied the "some evidence" rule as a standard of proof.

94. The "some evidence" rule, as a standard of proof before the disciplinary body, does not provide the fundamental fairness guaranteed by the due process clauses of the state and federal constitutions.

95. The "some evidence" rule, as a standard of proof before the disciplinary body, does not meet the guarantee of the due process clauses of the state and federal constitutions against the arbitrary or retaliatory deprivation of liberty.

96. The use of the "some evidence" rule as a standard of proof by the administrative law judge violated Applicant's right to due process under the state and federal constitutions.

VIOLATION OF IOWA CODE

97. All allegations contained within previous paragraphs are incorporated herein by this reference.

98. Iowa Code section 903A.3(1) provides that an administrative law judge may order the forfeiture of earned time only "[u]pon finding that an inmate has violated an institutional rule."

99. The necessary "finding" under Iowa Code section 903A.3(1) must be made on a preponderance-of-evidence or more-likely-than-not standard.

100. The administrative law judge in this matter ordered Applicant's earned time forfeited on a finding reached by application of the "some evidence" rule.

101. The forfeiture of Applicant's earned time was thus unlawful as inconsistent with the statutory laws of the State of Iowa.

INSUFFICIENT/UNRELIABLE EVIDENCE

102. All allegations contained within previous paragraphs are incorporated herein by this reference.

103. To sustain a finding of violation of a disciplinary rule, there must be "some evidence" in the record before the administrative law judge to support the holding. This evidence must be credible and reliable.

104. The evidence relied upon by the administrative law judge in this case consisted solely of a single unclear, disputed, and inaccurate drug test, which was taken under circumstances likely to lead to contamination and was never subjected to confirmation testing, and which

allegedly showed a positive result that is potentially attributable to Applicant's legitimately prescribed medication.

105. The evidence was neither credible nor reliable, and the administrative law judge erred by concluding on the basis of such evidence that Applicant violated rules 20 and 29.

106. The evidence was also insufficient to constitute even "some" evidence of guilt of the violations of rules 20 and 29.

107. Rule 20 defines possession/manufacture of drugs. The drug test, standing alone, does not provide sufficient evidence that Applicant possessed or consumed benzodiazepines, and no evidence was submitted to establish the test was conducted consistent with IDOC Rule IO-SC-21.

108. The administrative law judge made no other factual finding and was presented with no other evidence that would indicate Applicant committed a violation of rule 20.

109. Rule 29 defines the violation of being intoxicated or under the influence. The drug test, standing alone, does not show that Applicant was actively "intoxicated or under the influence of drugs, dangerous drugs, and intoxicants," but only implies that Applicant may have, at some point in the past, used the controlled substances tested.

110. The administrative law judge made no other factual finding and was presented with no other evidence that would indicate Applicant committed a violation of rule 29.

111. After the administrative law judge's ruling, new evidence emerged and admissions were made by ICIW that require reversal of the administrative law judge's decision; specifically, Applicant took a subsequent UA test, which ICIW admitted resulted in a false positive. ICIW's admission that the same test, under the same circumstances, on the same person, with the same result was faulty strongly indicates the prior test was faulty as well.

112. The administrative law judge did not identify which violations warranted the sanctions imposed, nor between them what amount of sanction is attributable to which violation.

REQUEST FOR RELIEF

Pursuant to Iowa Code chapter 822, Applicant respectfully requests the Court:

1. Find that the ALJ's application of a merely "some evidence" standard of proof deprived Applicant of due process guaranteed under the state and federal constitutions;

2. Find that the ALJ's application of a merely "some evidence" standard of proof violated Iowa Code;

3. Reverse the ALJ's decision finding Applicant violated rules 20 and 29, restore the earned time deemed forfeited by the ALJ, expunge the discipline from Applicant's prison record, and enter such other and further relief as may be necessary to restore Applicant's privileges at ICIW, including the ability to participate in post-secondary education and employment; or, in the alternative, remand this matter for rehearing by the ALJ to conduct the proceeding using a lawful preponderance of the evidence standard of proof; and

4. Enter all such other and further relief as this Court deems just.

Respectfully submitted,

/s/ Thomas Story_____
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ATTORNEYS FOR APPLICANT

Proof of Service

The undersigned certifies that the foregoing instrument was served upon all parties of record via EDMS on August 26, 2024.

/s/ Thomas Story
Thomas Story