BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JEFF GOODE, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	)	Case No. DISM-99-0065 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held on February 13, 14, and March 19, 2001, in the Superintendent's Conference Room at Clallam Bay Corrections Center in Clallam Bay, Washington, and on March 29, 2001 in the Personnel Appeals Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Jeff Goode was present and was represented by Rick Englehart, Business Agent for Teamsters Local No. 313. Respondent Department of Corrections was represented by Robert W. Kosin, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of published rules and regulations. Respondent alleged that Appellant was involved with inmates in introducing and conspiring to introduce contraband into the institution.

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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Jeff Goode was a Cook AC and permanent employee of Respondent Department of Corrections (DOC) at the Clallam Bay Corrections Center (CBCC). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal on December 10, 1999.

2.2 Appellant had been employed at CBCC since 1994. On March 14, 1994, he signed a CBCC Acknowledgment Form indicating that he agreed to review, become familiar with, and follow DOC policies and procedures. DOC has policies requiring employees to maintain professional relationships with inmates and to report inmate misconduct, policies requiring employees to obey laws while on and off duty and to model legal and appropriate behavior for inmates, and policies prohibiting trafficking of contraband, making personal deals with inmates, accepting funds from inmates and transmitting unauthorized messages for inmates.

2.3 Appellant was well liked by his co-workers and had a good work record at CBCC. However, his co-workers viewed him as gullible and vulnerable.

2.4 By letter dated November 2, 1999, Richard Morgan, Superintendent of CBCC, informed Appellant of his dismissal for neglect of duty, gross misconduct and willful violation of published employing agency or Department of Personnel rules or regulations. Mr. Morgan alleged that Appellant had been inappropriately and illegally involved with inmates in introducing and

conspiring to introduce contraband into CBCC. The allegations arose from three incidents in which Appellant allegedly: 1) conspired with an inmate to have contraband mailed to Appellant's post office box, 2) brought tattoo ink into the institution for an inmate, and 3) failed to report an attempt by an inmate to persuade him to bring a pair of sunglasses into the institution for the inmate.

2.5 In early June 1999, Respondent's intelligence office received information from an inmate informant alleging that a staff member would be bringing heroin into the institution. On June 9, 1999, Sergeant James Reno of the intelligence office learned that the drugs would be delivered to Post Office Box 104 in Sekiu, Washington. Sgt. Reno reviewed the staff roster and discovered that the address belonged to Appellant.

2.6 Sgt. Reno contacted Sekiu Postmaster Carmella Richardson and asked her to help with the investigation. She agreed to call him if and when Appellant received a package by certified mail. On June 25, 1999, she called Sgt. Reno and told him that Appellant had received a certified package.

2.7 The intelligence staff set up a surveillance of the post office parking lot. On June 25, Correctional Investigator Ronny Matsen was watching the post office parking lot when Appellant arrived and retrieved the package. Appellant entered the post office and returned to his vehicle carrying the package.

2.8 After Appellant got into his vehicle, he opened the package. He found that it contained a $300 money order made out to Post Office Box 104 and some newspaper. Appellant did not remove the newspaper from the package. Appellant placed the money order back in the package and drove out of the post office parking lot. The package was from an address in Richmond, California.

2.9 Two days prior, Appellant ordered a Digital Video Device (DVD) decoder card from E-Bay. On June 23, 1999, he purchased a money order for $75 and mailed it to an address in Natick, Maine, for payment of the DVD. He was expecting that package to be delivered to him at his Sekiu Post Office box.

2.10 After Appellant left the post office on June 25, Huan Luong, Correctional Investigator, intercepted him at a stop sign. He and Appellant spoke briefly and then drove to an area along Highway 112 that the local residents call "the rock." While Appellant and Officer Luong were talking, Sgt. Reno arrived at the rock.

2.11 Sgt. Reno asked Appellant if he had received a package. Appellant acknowledged that he had and commented, "I'm in trouble, ain't I." Appellant handed the package to Sgt. Reno. Appellant said that he was going to take the package to Sgt. Reno. The package contained the $300 money order and an unknown substance shaped in a ball and wrapped in tape.

2.12 With Appellant's concurrence, Sgt. Reno, Officer Luong and Appellant went to Appellant's house to continue their discussion in private. Officer Matsen joined them at Appellant's home. During the discussion, Appellant indicated that the package was for inmate "Scrub," and that about four months earlier, Scrub had asked him to bring in a pair of sunglasses. Appellant said that he thought the package contained the sunglasses. Scrub worked in the kitchen with Appellant and was known to be associated with drug trafficking in the institution.

2.13 Sgt. Reno also asked Appellant about a prior incident when Appellant allegedly brought ink into the institution at the request of an inmate. Appellant acknowledged that he had given ink to an inmate, that his father, a DOC employee at Correctional Industries located at CBCC, had counseled

him about the incident, and had warned him not to bring contraband into the institution. Following the ink incident, Inmate Willie Mak asked Appellant's father if he could speak to Appellant. Appellant's father asked Appellant to come to Correctional Industries where Inmate Mak told Appellant that inmates thought Appellant might bring contraband into the institution and counseled Appellant to be careful about what he said to inmates.

2.14 Sgt. Reno told Appellant that the package he received contained $8,000 in heroin. He presented Appellant with two options. The first option was to have the incident turned over to the drug task force which could result in Appellant being prosecuted for drugs and going to jail for 5 to 8 years and in his family being "drug through the mud." The second was to resign. Appellant chose to resign.

2.15 That evening, Appellant discussed the incident with his family. As a result, he withdrew his resignation and on July 8, 1999, an Employee Conduct Report (ECR) was initiated against him.

2.16 The package Appellant received on June 25 did not contain drugs. Sgt. Reno assumed that the package contained a ball of Tootsie Roll candy wrapped in tape to resemble a ball of heroin.

2.17 Kathy Kaatz, Associate Superintendent, conducted the ECR investigation. Ms. Kaatz forwarded the ECR and her investigative report to Mr. Morgan, who met with Appellant and his representatives on July 30, and on August 17, 1999. Mr. Morgan determined that misconduct had occurred. Mr. Morgan held a pre-termination hearing with Appellant and his representatives on September 10, 1999.

2.18 Prior to determining what level of discipline to impose, Mr. Morgan reviewed Appellant's personnel file, the ECR packet and considered Appellant's responses to the charges. Mr. Morgan

determined that Appellant's responses to the charges were implausible. Mr. Morgan put no weight in Appellant's allegation that the investigators were biased against him and found that it was incredible for Appellant to believe that he would receive an E-Bay package from Maine only two days after agreeing to purchase the item. Mr. Morgan found a common thread in the observations of the investigators, Appellant's admitted past behavior, his failure to report past inappropriate contact with inmates, and his questionable interaction with Inmate Mak, that added support to the allegations in the ECR. Mr. Morgan also found that the information provided by the inmate informant was verifiable, that he had a past history of cooperating with the institution, and that he was credible. Mr. Morgan concluded that Appellant demonstrated a pattern of behavior that caused him to be compromised and showed a misalignment of loyalties. Mr. Morgan further concluded that Appellant could not be placed back in the work place and that dismissal was the appropriate sanction.

2.19 Appellant admits that in the past, he engaged in inappropriate contact with inmates and that he failed to report these contacts. Based on Appellant's admitted history, we find it more likely than not that he entered into an agreement with an inmate to have contraband delivered to Appellant's post office box.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant struck a deal with an inmate to bring contraband into the institution and that as a result, Appellant was compromised. Respondent asserts that it does not matter what was actually in the package, only that the deal was struck between Appellant and an inmate. Respondent contends that Appellant's defenses are not reasonable, that it was not reasonable for an inmate to pick Appellant's address at random, and that the return address and name on the package that Appellant received was not even close to the name and address he mailed his money order to for the E-Bay package only two days before. Respondent further contends that

Appellant should have known how to refuse a package, that he never questioned the package, that he had an unreasonable belief that the CBCC investigators were police officers, that there was no logical reason for the investigators to have a vendetta against Appellant, and that Appellant demonstrated a pattern of relying too much on inmates. Respondent asserts that Appellant's failure to report his past inappropriate contacts with inmates, his admitted misbehavior, and his inappropriate counseling by an inmate support that more likely than not, he entered into an agreement to bring contraband into the institution.

3.2 Appellant contends that Respondent offered no proof that he engaged in a conversation with an inmate regarding bringing drugs into the institution. Appellant contends that the inmate chose a post office box number at random that just happened to be Appellant's. Appellant further contends that he knew the package was not for him and he intended to discuss with his father what he should do with it, but the investigators intercepted him before he had a chance to do so. Appellant asserts that Sgt. Reno and the informant concocted the set-up to bolster Sgt. Reno's failing credibility and to protect the inmate. Appellant denies that he conspired with an inmate to bring drugs into the institution and asserts that he could not report an incident that did not happen. Appellant contends that the tattoo ink incident was 1 1/2 to 4 years prior to this incident, and that he was not counseled by Inmate Mak, but was merely given a "heads-up" by him. Appellant further contends that he was scared when he was approached by the investigators because he believed that they were police officers and that the investigators were biased against him because of problems between each of the three investigators and members of Appellant's family. Appellant argues that he was not given his due process rights, that he was never given a chance to explain, and that the only thing he is guilty of is picking up a package at the post office that was not meant for him. Appellant asserts that he was a good worker, that he can continue to do his job and asks that he be returned to work and that he be given a written apology from the institution.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

4.5 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.6 Respondent has met its burden of proving that Appellant neglected his duty, committed gross misconduct and willfully violated agency policies. Appellant admits that he brought ink into

the institution at the request of an inmate, that he talked about the incident with Inmate Mak, and that he did not report his contact with Scrub regarding the sunglasses. Respondent has established that Appellant engaged in a pattern of behavior that compromised his ability to work with inmates.

4.7 Respondent has also proven that more likely than not, Appellant entered into an agreement with an inmate to have contraband delivered to his post office box and to bring that contraband into the institution. Appellant was aware that contraband of any type is prohibited at CBCC. By entering into an agreement with an inmate to bring contraband into the institution, Appellant neglected his duty, committed gross misconduct and willfully violated agency policies.

4.8 Under the totality of the proven facts and circumstances, and in light of Appellant's admitted misconduct, dismissal is not too severe in this case. The appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jeff Goode is denied.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Leana D. Lamb, Member

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