BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GAYLE JOE LUCKETT, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	)	Case No. RED-99-0009 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 November 7, 2000, at the Washington Corrections Center for Women in Gig Harbor, Washington.

1.2 **Appearances.** Appellant Gayle Joe Luckett was present and was presented by Rick Engelhart, Business Agent for the Teamsters Local 313. Respondent Department of Corrections was represented by Lawrence W. Paulson, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of a reduction in salary for neglect of duty, gross misconduct and willful violation of department policy. Respondent alleges that Appellant described the most effective way to cut the arteries of the arms and neck to an inmate who had recently attempted to commit suicide by cutting herself.

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).

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II. FINDINGS OF FACT

2.1 Appellant Gayle Joe Luckett is a Correctional Officer 2 and permanent employee of Respondent Department of Corrections (DOC) at the Washington Corrections Center for Women (WCCW). 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 March 29, 2000.

2.2 By letter dated February 16, 2000, Belinda D. Stewart, Superintendent of WCCW, notified Appellant that effective March 3, 2000, his salary was being reduced by five-percent for three months. Ms. Stewart alleged that Appellant neglected his duty, committed gross misconduct and willfully violated department policy when he told an inmate who had recently attempted to committed suicide by cutting her arms that she needed to cut herself lengthwise, not crosswise, and to cut arteries, not veins because arteries gush and veins only dribble. Ms. Stewart further alleged that Appellant told the inmate that the best artery to cut was in her neck, because it would gush and she would not be able to stop the bleeding.

2.3 The incident occurred in the Treatment and Evaluations Center (TEC) on November 27, 1999. Appellant was working in the unit as the booth officer. The inmate was in the TEC unit following her attempted suicide.

2.4 Appellant left the control booth and he and the inmate engaged in a conversation at the wing door that led into the unit. Appellant asked the inmate why she was in the TEC unit and she showed him her wrists.

2.5 Appellant told the inmate that she was lucky she did not cut her wrists deeper or in a lengthwise direction and that she did not cut an artery. Appellant proceeded to describe the difference between arteries and veins.

2.6 The inmate was upset by the conversation. She thought that Appellant was telling her how to kill herself. Appellant did not believe that the inmate was upset by the conversation. He thought that he was telling her how fortunate she was that she did not kill herself.

2.7 Correctional Officer James Ake credibly testified that he overheard the entire conversation between Appellant and the inmate and that he told Appellant the conversation was inappropriate. CO Ake reported the incident to Sergeant Robert Coberly. Subsequently, the incident was reported to Correctional Unit Supervisor Gerald Isham who initiated an Employee Conduct Report (ECR).

2.8 The ECR was investigated by Jane Robinson, Health Care Manager. She submitted her investigative report to the Superintendent on December 28, 1999.

2.9 Belinda Stewart became the WCCW Superintendent on January 3, 2000. Prior to determining the level of discipline, Ms. Stewart conducted an administrative hearing on the ECR, reviewed the ECR investigative report and considered Appellant's responses. Ms. Stewart also reviewed Appellant's personnel history and found that he had received a letter of reprimand in January 1999 for an incident in which he exercised poor judgment. Ms. Stewart reviewed Appellant's training record, found that he was aware of department policies and was trained in suicide prevention, and determined that he should have known better than to make inappropriate comments to inmates. Ms. Stewart further determined that Appellant engaged in misconduct, that his conversation with the inmate was unprofessional, and showed a lapse of good judgment and compassion. Ms. Stewart concluded that Appellant failed to conduct himself in a professional manner, that he failed to treat the inmate with dignity and respect, that the insensitive nature of his behavior demonstrated a lack of concern for the inmate's welfare, and that a reduction in salary was the appropriate level of discipline.

2.10 WCCW has published policies that address the department's expectations for its employees. Appellant was aware of the policies including the policies requiring employees to treat offenders with understanding, dignity and respect and to maintain professional relationships with offenders.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent acknowledges that this appeal involves a difference in interpretation of the conversation. Respondent contends that regardless of Appellant's intent, the inmate was upset by the conversation. Respondent further contends that intent is an issue only in regard to the level of discipline. Respondent argues that Appellant failed to exercise common sense and professional judgment during the conversation and asserts that regardless of whether Appellant acted willfully or maliciously, his actions were careless, caused harm to the inmate, and created a potential liability for the institution. Respondent asserts that in light of Appellant's training and experience, a three-month reduction in salary is appropriate.

3.2 Appellant admits engaging in a conversation with the inmate regarding her attempted suicide. However, he asserts that he meant no harm to her. Appellant contends that the conversation was misconstrued and blown out of proportion. Appellant argues that the training he received at WCCW was insufficient but acknowledges that he received suicide prevention training which included identifying problems and referring situations to a counselor. Appellant also acknowledges that the inmate could have misinterpreted the conversation but asserts that he did not know what was going on in her mind. Appellant questions why, if the conversation was so inappropriate, CO Ake did not intervene. Appellant further asserts that the inmate was not upset by the conversation, that she was not credible and that CO Ake misinterpreted the conversation.

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 proven by a preponderance of the credible evidence that Appellant exercised poor judgment and he engaged in a grossly inappropriate conversation with the inmate. Appellant's actions showed a lack of compassion for the inmate and were inconsistent with the policies of the agency. Regardless of Appellant's intent, his actions adversely impacted the inmate and rose to the level of gross misconduct.

4.7 Under the proven facts and circumstances of this case, Respondent met it burden of proof that a five-percent, three month reduction in salary is warranted. The appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Gayle Joe Luckett is denied.

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Leana D. Lamb, Member

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