BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PAMELA PARKER, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	)	Case No. DISM 96-0055 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, HOWARD N. JORGENSON, Vice Chair, and ROGER F. SANFORD, Member. The hearing was held at the Airport Ramada Inn, Spokane, Washington, on April 8 and 9, 1998. JUDITH MERCHANT, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Pamela Parker was present and was represented by Mark S. Lyon, General Counsel for the Washington Public Employees Association. Respondent Department of Corrections was represented by Elizabeth Delay Brown, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant had a close personal relationship with an inmate.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994)

II. MOTIONS

2.1 At the outset of the hearing, Appellant made numerous motions to strike and exclude hearsay testimony regarding the statements of inmates as described in the disciplinary letter. Appellant argued that it was inappropriate to allow second and third hand hearsay testimony about statements allegedly made by inmates. Appellant argued that none of the inmates were available for pretrial discovery or to testify before the Board and, therefore, the Board was not in a position to judge the credibility of the inmates. Appellant also argued that the charge in the disciplinary letter regarding allegations that Appellant was releasing confidential and personal information to inmates should be dismissed as vague because the disciplinary letter failed to provide dates, times and locations.

2.2 At the close of Respondent's case, Appellant again renewed her motion to strike portions of the disciplinary letter because evidence and testimony presented by Respondent was vague and because Respondent failed to present sufficient evidence to substantiate the allegations that Appellant disclosed confidential information about an investigation and personal information about the lives of coworkers.

2.3 Respondent argued that hearsay testimony is admissible and that testimony from witnesses' would elicit and describe what inmates told them. Respondent further argued that the inmates' statements were made directly to the witnesses, therefore, were not second and third hand hearsay. Respondent further argued that the disciplinary letter was sufficiently specific that Appellant could, without the aid of discovery, provide a defense to the charges. Respondent further asserted that page two of the disciplinary letter stated that a copy of the Employee Conduct Report describing the incidents in more detail was "incorporated by this reference."

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.4 The Board granted Appellant's motion that page four, paragraph four of the March 14, 1996 ECR Investigation report be stricken because neither the inmate nor the officer to whom the alleged statement was made were available to testify. The Board denied Appellant's remaining motions, stating that hearsay is admissible and is given appropriate weight and consideration.

III. FINDINGS OF FACT

3.1 Appellant Pamela Parker was a Correctional Officer and permanent employee for Respondent Department of Corrections (DOC) in the Airway Heights Corrections Center (AHCC). 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 with the Personnel Appeals Board on June 27, 1996.

3.2 Appellant became a state employee in 1989. She began her employment with the Department of Corrections in April 1995.

3.3 By letter dated June 10, 1996, Appellant was dismissed from her position as a Correctional Officer, effective June 27, 1996, for neglect of duty and willful violation of published employing agency or Department of Personnel rules or regulations. The letter of dismissal, states in part:

> Specifically, you neglected your duty and violated agency policy when in January and February of 1996, the following took place:
>
> 1. You were witnessed several times, having very lengthy conversations with I/M Mitchell . . . lasting approximately 30 to 40 minutes each. These conversations apparently contained information about your personal life and information about fellow Officers personal lives. You released confidential information to this inmate regarding an investigation. These conversations were typically held in isolated areas, such as the bleachers in the gym. Supervisors reported that you had worked in areas other than your assigned post, but that you had normally initiated the assignment. These other duties for which you volunteered typically would be in the same area where I/M Mitchell was assigned. On two (2) occasions a fellow Officer could not contact you via radio and

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

> sought you out within the camp. On both occasions he found you in conversation with I/M Mitchell and not in your assigned work area.
>
> 2. Several staff came to Management and expressed concerns about your interactions with inmates, specifically I/M Mitchell. Inmates were also reporting that you were having sexual and/or physical contact with this inmate. When interviewed, I/M Mitchell admitted that the two of you were involved in a close personal relationship and that touching, holding hands, and kissing were a part of this relationship. You had been observed by several staff on numerous occasions alone with I/M Mitchell in low traffic areas. You would also arrange to have Mitchell working or volunteering in your work area. You were observed, while with I/M Mitchell, having a closer than normal space barrier and relaxed body language.

(Exh. R-1).

3.4 Gerald Shumaker, Corrections Investigator (CI) 2, testified that he was approached by Sergeant Robin Kiser, in approximately mid- to late January 1996 regarding Appellant's inappropriate behavior with an inmate. Sgt. Kiser approached Shumaker because she had received information from Sgt. Philip Mendigorin that there was involvement between Appellant and Inmate Mitchell. Concerns expressed included Appellant spending an inordinate amount of time with Inmate Mitchell and Appellant going out of her way to meet and talk to Inmate Mitchell. CI Shumaker testified that it was Sgt. Kiser's understanding that Sgt. Mendigorin, as well as Appellant's peers, had attempted "intervention" but that Appellant's inappropriate behavior continued. CI Shumaker testified that he was subsequently approached by Correctional Officers Jeff O'Blenness and Trudy Jarchow voicing similar concerns about Appellant's interactions with Inmate Mitchell.

3.5 An Employee Conduct Report (ECR) was initiated against Appellant on February 23, 1996 by Robert Herzog, Correctional Captain, which states:

> In response to numerous reports from staff and inmates regarding concerns about your behavior, I interviewed I/M [inmate] G. Mitchell . . . on 2/15/96. During this interview he admitted to me that you and he were involved in a close, personal relationship of a romantic nature. While he stated to me that this relationship had been ongoing and involved physical contact, he denied that there were phone calls or correspondence between the two of you.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

It is alleged that:

- You have been seen having personal conversations with this inmate on a daily basis, conversations beyond what would be necessary to appropriately discharge your duties as a Correctional Officer.
- You were observed away from your assigned duty station of the units, with this inmate.
- You frequently arrived to work early in order to exercise in the gym at the camp. On more than one occasion you and this inmate were observed alone in the gym, during a time that this inmate would not have been allowed access to this area. It is alleged that you admitted him to the gym and were alone with him in this area while you were not yet on duty.
- On 1/27/96 several staff talked to you as you were coming on shift. When these staff members talked to you later in your shift you had a hickey on your neck that you were attempting to conceal with a scarf. These staff did not observe this hickey as you came on shift.

(Exh. A-2).

3.6 Appellant had been administratively assigned to her home February 15, 1996. (Exh. A-6). On February 28, 1996 Appellant responded to the ECR and denied the allegations.

3.7 CI Shumaker conducted a fact finding investigation, which included interviews with numerous witnesses, including Inmate Mitchell and Appellant. CI Shumaker testified that the inmate initially reported that he and Appellant had a personal relationship which included a close friendship, hugging, and kissing. Following this revelation, the inmate refused to substantiate the allegations and denied any wrongdoing. The inmate was eventually issued an infraction for making false accusations against a staff member, and the allegation that he and Appellant had a physical relationship was found unsubstantiated. The fact finding investigation also failed to establish that Appellant received the hickey during work hours or that Appellant frequently arrived to work early in an attempt to be alone with Inmate Mitchel in the gym.

3.8 CI Shumaker did conclude that Appellant and Inmate Mitchell had engaged in lengthy conversations which would stop whenever other correctional officers approached them; that Appellant's

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

body language with Inmate Mitchell was relaxed during these conversations; and that confidential information and personal information was being provided to Inmate Mitchell by Appellant. CI Shumaker further concluded that the existence of a close personal relationship between Appellant and Inmate Mitchell coincided with a dramatic change in Appellant's appearance, which included Appellant applying heavier makeup, not wearing her glasses and a change of her hair style.

3.9 In his investigative report dated March 14, 1996, CI Shumaker wrote:

> In conclusion, there is no one incident witnessed by AHCC staff that creates a clear picture of Parker's involvement with Mitchell. When viewed singly incidents such as discussing her personal life with Mitchell are inappropriate but not devastating to her credibility. However, there is a consistent and long-standing pattern of minor incidents, witnessed by numerous staff. When you scrutinize these numerous, witnessed breaches of professionalism, all of which occurred with a specific inmate, it creates a impression of a staff member who has a close personal relationship with an inmate under their supervision. This impression was held by most of the staff that worked with Parker on a consistent basis and was reported to staff by inmates. My investigation continues to support this perception.

(Exh. A-2).

3.10 Trudy Jarchow, Classification Counselor, was a Correctional Officer who worked with and had an opportunity to observe Appellant's interactions with inmates. Ms. Jarchow testified that on one occasion while she was performing a security check, she observed Appellant sitting on the institution's gym bleachers with Inmate Mitchell. When Ms. Jarchow returned to the gym 30 minutes later, Appellant and the Inmate were in the same spot. In a separate incident, Ms. Jarchow observed Appellant and Inmate Mitchell in a dark staff break room painting a wooden airplane. Ms. Jarchow testified that there were no other staff in the area.

3.11 In another incident, Ms. Jarchow was approached by Appellant who stated that an inmate named Jones had told her that she, Appellant, was being investigated. Ms. Jarchow testified that Appellant asked her to be present when she to talked the inmate about his comment. Ms. Jarchow stated that she

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

subsequently entered a staff office where Appellant and the inmate were talking and she heard the inmate say to Appellant that she (Appellant) needed to stop her behavior because the inmates were talking about it. Ms. Jarchow observed that the inmate was nervous so she allowed him to leave.

3.12 Ms. Jarchow testified that she does not recall the dates on which these incidents occurred.

3.13 In approximately late January 1996, Ms. Jarchow observed that Appellant and Inmate Mitchell were either going to, or coming from, rooms in the "extended family visit" area. Ms. Jarchow testified that Appellant and Inmate Mitchell would have been cleaning the rooms, but that it was not a duty that was assigned to Inmate Mitchell. Ms. Jarchow testified that she checked to see if Inmate Mitchell had been assigned extra duty on that day, and she recalls that he had not.

3.14 Correctional Officer Lance Semenza worked with Appellant in the visiting room. CO Semenza testified that Appellant frequently sat with inmates and their families during visiting hours. Officer Semenza overheard Appellant call her home and discuss her personal life in a voice loud enough to also be heard by others. Officer Semenza cannot say if inmates overheard Appellant's conversations. Officer Semenza testified that on two separate occasions he radioed Appellant and Appellant did not respond. Pursuant to the department's standard operating procedure, Officer Semenza went looking for Appellant and both times discovered Appellant alone with Inmate Mitchell engaged in conversation. Officer Semenza did not testify when these incidents occurred. Officer Semenza further testified that he and Appellant did not have a good working relationship and that while he believed Appellant's interactions with inmates were inappropriate, he did not feel he could approach her with his observations.

3.15 Correctional Officer Jeff O'Bleness became concerned with Appellant's behavior after he observed her interactions with Inmate Mitchell. He testified that whenever he approached them while

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

they were engaged in a conversation, the talking would stop and they would disperse. Officer O'Bleness spoke with Appellant and shared his concerns about her interactions with inmates, especially her interactions with Inmate Mitchell. Officer O'Bleness advised Appellant to have another officer present whenever talking to inmates. Officer O'Blenness believed that Appellant made a concerted effort to work the hall where Inmate Mitchell was housed. Officer O'Bleness further testified that he was approached by an inmate who had stated that Appellant was sharing information with another inmate about an investigation being conducted on that inmate.

3.16 Officer Dan McBride observed what he believed to be an unusual occurrence with Appellant and Inmate Mitchell on February 12, 1996. Officer McBride stated that during a routine security check he observed Appellant and the inmate engaged in a conversation in a hall, and when they noticed him, the inmate went "running off" and that Appellant started walking toward him (McBride), bumped into him, and failed to say a word.

3.17 None of the conversations between Appellant and Inmate Mitchell were overheard by any of the officers. (Testimony of Trudy Jarchow, Lance Semenza and Jeff O'Bleness).

3.18 No dispute exists that Appellant's interactions with inmates, in particular with Inmate Mitchel, were viewed by many of Appellant's coworkers as over familiar, unprofessional, and inappropriate. Appellant's fellow correctional officers believed that Appellant had alienated herself from them and believed that she spent an inordinate amount of time socializing with the inmates and that she found reasons to be near Inmate Mitchell. (Testimony of Trudy Jarchow; Lance Semenza, Jeff O'Bleness, and Dan McBride). Staff were concerned with Appellant's relaxed body language when dealing with inmates. Appellant also appeared to be wearing heavy makeup and curling her hair during the time frame in which she was interacting with Inmate Mitchell. Many staff believed that these behaviors were

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

"red flags" or indicators that Appellant could be the potential victim of manipulation by inmates. (Testimony of Trudy Jarchow, Lance Semenza and Jeff O'Bleness).

3.19 No dispute exists that officers lost their trust in Appellant and felt that their safety was being compromised because of Appellant's interactions with inmates, especially her interactions with Inmate Mitchell. Appellant was not viewed as a reliable correctional officer nor as a part of the "team." The officers believed that Appellant presented a possible security risk through manipulation and they feared that Appellant was sharing personal information to Inmate Mitchell about their personal lives. (Testimony of Trudy Jarchow, Lance Semenza and Jeff O'Bleness).

3.20 Appellant was a Visiting Officer responsible for supervising inmates and their visitors during visiting hours. Because visiting hours did not occur on a daily basis, Appellant often had a lot of free time during which she worked in other areas of the institution. Appellant testified that the only two areas where her assistance was needed were the recreational area and "H" hall. Because Inmate Mitchell was a recreational porter and was housed in "H" hall, Appellant believes that her working in these areas created a false appearance that she was intentionally putting herself in areas were she could be near Inmate Mitchell. Appellant denies that this was her intent.

3.21 Appellant testified that she first became aware that there were concerns about her interactions with inmates when she was approached by Officer O'Bleness who told her that a female sergeant had expressed concerns to him about Appellant's interactions with inmates. Officer O'Bleness would not reveal the name of the sergeant, so Appellant approached Sgt. Kiser, the only female sergeant she worked with, and asked her if she knew of any such concern. Appellant states that Sgt. Kiser told her that she hadn't heard anything and that she personally had not observed that Appellant was doing anything wrong.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

3.22 Following this incident, Appellant was approached by Inmate Jones who told her that other correctional officers were talking about Appellant and that he would tell her more about it later. Appellant testified that she wanted another officer to be present when she spoke to this inmate, so she asked Officer Trudy Jarchow to be present. Appellant states that she had just began talking to the inmate in a library office when Trudy Jarchow joined them. Appellant testified that the only comment Inmate Jones made was that he had overheard the conversations of other officers. At that point, Officer Jarchow interrupted and ended the conversation between Appellant and Inmate Jones. Appellant denies that the inmate made the comment that she "needed to stop."

3.23 Appellant testified that she does not recall ever bumping into Officer McBride.

3.24 Appellant described her style of dealing with inmates as nurturing. Appellant states that she would attempt to determine an inmate's baseline behavior by listening to what the inmate has to say. Appellant acknowledges that she shared some of her life's experiences with inmates, but only in the context of "yea, I've been there" and "I know where you're coming from." Appellant does admit that she shared with Inmate Mitchell personal information about her past when she was involved in an abusive relationship, but only in response to Inmate Mitchell's concerns that his sister was involved an abusive relationship.

3.25 Appellant denies that she ever had a physical relationship with Inmate Mitchell and states that he would approach her to talk, that he would provide her with information, and that she generally believed that he was a "good kid." Appellant further denies that she ever went out of her way to be with Inmate Mitchell or that she hugged or kissed him.

3.26 Appellant states that there were times when she worked in the gym, leaned on the bleachers, left the area for a security check, and came back to the same spot on the bleachers. Appellant states that

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

there were inmates present participating in recreational activities or observing a game of basketball. Appellant denies that she sat on the bleachers. Appellant further states that it was not unusual for inmates to sit on the bleachers or approach her and comment on a basketball game. Appellant believes that this might have appeared that she had been there for a long period of time.

3.27 Appellant acknowledges that she received permission from her direct supervisor to have a wooden plane painted and that Inmate Mitchell was the inmate that painted the plane. Appellant testified that she only allowed Inmate Mitchell to paint the plane during visiting hours and that she normally sat at the visiting desk when the inmate was painting. Appellant denies ever painting the plane with Inmate Mitchell in a dark break room.

3.28 Appellant acknowledges that on one occasion she and Inmate Mitchell cleaned the rooms in the extended family visiting area. Appellant testified that she normally did not like to be in that particular area alone with an inmate, but that the officer she had arranged to be with her and the inmate was not available. Appellant states that the clean-up was cursory and took approximately 10 minutes. Appellant further states she had been looking for an inmate to volunteer for the detail work, but that Inmate Mitchell was the only individual willing to volunteer on that day. Appellant testified that nothing inappropriate occurred.

3.29 Appellant testified that her change in appearance during this time was in part due to an accident she was involved in on February 3, 1996, in which her glasses were broken. Appellant stopped wearing her glasses pending the purchase of a new pair. Appellant also had her hair permed and styled differently. Appellant states that she has always worn make-up to work and that if it appeared like she was wearing more make up it was because on Fridays and Saturdays she played in a band and she usually wore heavier makeup on those days because she went directly from work to play in the band.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

3.30 Appellant denies ever having released any confidential information or any information about her coworkers to inmates.

3.31 Appellant testified that on February 12, 1996, Sgt. Mendigorin talked to her and Officer Semenza briefly about the officers limiting their talks with inmate visitors. Appellant further testified that her direct supervisor worked in the main institution and rarely was available to supervise her work or provide her with feedback, therefore, she relied on Sgts. Kiser and Mendigorin to provide her with supervisory guidance. Appellant felt that that she was doing a fine job based on the feedback she was receiving from them.

3.32 Appellant testified that if Officer Semenza was not able to reach her via the radio that meant she was not available to radio him back.

3.33 Appellant's Employee Performance Evaluation, conducted during her trial service review period from April 1, 1995 to August 1, 1995, indicates that she exceeded normal requirements in the dimensions of Accomplishment of Job Requirements, Job Knowledge and Competence, Job Reliability, and Communication Skills. Appellant met normal requirements in the performance dimension of Personal Relations. (Exh. A-3). Appellant had no history of corrective or disciplinary action. (Testimony of Appellant).

3.34 Kay Walter, Superintendent, was Appellant's appointing authority. Ms. Walter testified that she became concerned with the "energy" developing at the institution when, over a one to two week period, she began receiving feedback that there was a high level of concern among staff regarding Appellant's interactions with Inmate Mitchell. Additionally, individuals in the community who had spouses or friends who worked in the institution were questioning why nothing was being done about the situation with Appellant.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

3.35 On March 28, 1996, Ms. Walter conducted an administrative review with Appellant. Ms. Walter was reluctant to take the word of an inmate over the word of a staff member, therefore she wanted to give Appellant every opportunity to tell her side of the story before determining whether misconduct had occurred. During this meeting, Ms. Walter felt that Appellant was providing excuses for spending so much time with the inmate and felt that Appellant was not giving her honest answers. In addition, Appellant acknowledged during the meeting that she had engaged in lengthy conversations with Inmate Mitchell which lasted 30 to 40 minutes. Ms. Walter did not believe that Appellant understood the inappropriateness of her behavior. Based on the information provided in the investigative report of March 4, 1996, and Appellant's comments during their meeting, Ms. Walter concluded that misconduct did occur and that a personal relationship between Appellant and Inmate Mitchell did exist.

3.36 Prior to determining the appropriate level of discipline, Ms. Walter again met with Appellant during a pre-termination meeting on April 15, 1996. Ms. Walter believed that the statements Appellant made during this meeting were contradictory to the statements she had made during their March 28 meeting. Ms. Walter testified that Appellant admitted that 75 percent of the allegations were true and that she had learned her lesson. Ms. Walter found that Appellant lacked credibility. In deciding the level of discipline, Ms. Walter also considered Appellant's history as a state employee, the training she had received while working for DOC, and Appellant's performance evaluation. Ms. Walter felt that Appellant had crossed the threshold of appropriate behavior for a correctional officer and concluded that it was no longer appropriate for Appellant to remain an employee of DOC in any capacity. Ms. Walter determined that termination was the appropriate sanction.

3.37 The Department of Corrections' policy on Employee Relationships with Department of Corrections Offenders #854.075, state in part:

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

1. Favoritism: Staff must recognize the individuality of offenders without favoritism. Such conduct is inherently unfair to both the favored and unfavored. Professional reaction to offenders must always be objective and not based on personal or subjective issues.

2. Association with DOC offenders is to be avoided in the interest of professional unbiased service. Personal communication and/or relationships between employees and offenders are not appropriate and are prohibited.

(Exh. R-1, Att. 2).

3.38 The Department of Corrections' policy on Ethics, #801.001, states in part:

PURPOSE:

This policy provides direction to Department of Corrections employees to assist them in making appropriate choices, acting in a manner that demonstrates high ethical standards, and complying with provisions of the State Ethics Law . . .

POLICY

. . . .

Employees shall not disclose confidential information to an unauthorized person . . .

(Exh. R-1, Att. 3

3.39 The Department of Corrections' Employee Handbook, states in part:

DEPARTMENT EXPECTATIONS

. . . .

. . . <u>You re not allowed to:</u>

. . . .

Engage in personal relationships with offenders, their family members; or close personal associates;

. . . .

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

(Exh. R-1, Att. 4).

3.40 Appellant acknowledged receipt of Policies # 854.075 and 801.001 and of the DOC Employee Handbook on April 3, 1995. (Exh. R-1, Att. 5 and 8).

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent contends that evidence and testimony presented substantiated that Appellant neglected her duty and violated the department's policy when she participated in lengthy conversations with inmates, when she revealed personal information about herself to Inmate Mitchell, and when she was found by an officer on two occasions in conversations with Inmate Mitchell after the officer had attempted to reach her by radio. Respondent further contends that Appellant's interactions with inmates were unprofessional and that staff became concerned with Appellant's behavior with Inmate Mitchell and the change in Appellant's baseline behavior. Respondent contends that the witnesses were credible and had no motive to fabricate any of the allegations. Respondent argues that all of Appellant's actions, when viewed in their totality, created an impression that Appellant had a close, intimate relationship with the inmate. Respondent further argues that Appellant's relationship with the inmate could have led to a compromise of the institution.

4.2 Appellant argues that she was the victim of rumor and gossip by her coworkers. Appellant argues that no evidence or testimony was produced to establish that she had a special relationship with Inmate Mitchell. Appellant contends that the incidents in question occurred during a very short and narrow period of time and that until mid-January 1996, Appellant was generally considered a good correctional officer. Appellant argues that conclusions were based on subjective issues and extraneous information beyond the time frames for which she was disciplined. Appellant contends her dismissal was management's way of dealing with the negative feedback the institution was receiving from staff

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

and from members of the public who had become aware of the rumors. Appellant contends that dismissal is too punitive.

V. CONCLUSIONS OF LAW

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

5.2 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).

5.3 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).

5.4 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. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

5.5 Respondent's policy on Employee Relationships with DOC Offenders indicates that "personal communication . . . between employees and offenders are not appropriate and are prohibited." Appellant admits that she shared personal information about herself with Inmate Mitchell. Respondent has met its burden of proof that Appellant violated DOC policy Number 854.075 when she engaged

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

personal conversations with Inmate Mitchell and that she neglected her duty to abide by the department's policy.

5.6 Respondent presented no credible evidence or testimony to prove that Appellant revealed information about the personal lives of her coworkers or that Appellant released confidential information to an inmate regarding an investigation. Respondent presented no testimony or evidence to establish that Appellant frequently volunteered to work in areas where Inmate Mitchell was assigned. Appellant credibly testified that there were a limited number of areas in which she could work during slow periods of her work day. Respondent has further failed to establish that Appellant neglected her duty or violated departmental policy when Officer Semenza was unable to reach her by radio on two occasions. No evidence or testimony was presented to establish the dates Officer Semenza attempted to reach Appellant or that Appellant was engaged in anything other than legitimate work duties.

5.7 Respondent has failed to meet its burden of proof that Appellant was engaged in a close personal relationship with Inmate Mitchell. We believe that the witnesses were being truthful and forthright in their accounts of what they witnessed and what they *believed* to be happening between Appellant and Inmate Mitchell. Nonetheless, we cannot apply a subjective standard to determine that Appellant committed misconduct based upon the *perception* or *conjecture* of her coworkers that something was happening that could *possibly* lead to a security breach.

5.8 The Board takes seriously the concerns raised by what the officers term "red flags," but no conclusive evidence was presented to support the contention that Appellant's conduct, including her change in appearance, resulted from the alleged relationship with Inmate Mitchell. Appellant provided credible testimony as to why she stopped wearing her glasses and why there were notable changes in her hair and make-up. Furthermore, no one in Appellant's chain of command indicated to Appellant that there were concerns regarding her interactions with the inmates. Appellant, in response to Officer

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

O'Blenness' comments, attempted to verify this information from one of her superiors, Sgt. Kiser. Sgt. Kiser told Appellant that she was not aware any such concern. Yet CI Shumaker testified that Sgt. Kiser approached him in mid- to late January 1996, on behalf of Sgt. Mendigorin who had shared with Sgt. Kiser the concern over Appellant's interactions with Inmate Mitchell. When Sgt. Mendigorin spoke to Appellant on February 12, 1996, three days prior to her administrative reassignment, he failed to address these concerns with Appellant. Sufficient evidence was presented which indicates that supervisory staff had knowledge in mid- to late January 1996 that Appellant's alleged misconduct with Inmate Mitchell was a concern among staff. Despite this knowledge, neither of the supervisors attempted to make Appellant aware of the perceived problem.

5.9 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

5.10 In assessing the level of discipline imposed here, the Board finds that a disciplinary sanction is warranted in light of Appellant's admission that she shared personal information about herself with Inmate Mitchell. Appellant was responsible for knowing and understanding the rules and expectations of the department. Under the circumstances presented here, we conclude that Appellant's dismissal is too severe a level of discipline. Respondent has failed to meet its burden of proof on a substantial number of charges. Additionally, Appellant has a long work history as a state employee and has had no prior corrective action. We find that a six month suspension is sufficient to prevent recurrence, to deter others from similar misconduct and to maintain the integrity of the program. Therefore, the disciplinary sanction should be modified to a six month suspension.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Pamela Parker is modified to a six month suspension.

DATED this _____ day of _____, 1998.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Howard N. Jorgenson, Vice Chair

_____
Roger F. Sanford, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504