BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROBERT STAMEY, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. RULE-01-0024 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, and LEANA D. LAMB, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on November 29, 2001. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Robert Stamey appeared *pro se*. Art Haro, Human Resource Manager, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal of alleged violations of WAC 356-15-090. Appellant alleges that Respondent 1) failed to pay him overtime for time he worked, at the direction of a supervisor, after he was off duty and 2) failed to pay him overtime after assigning him to sleep in unusual and uncustomary facilities while on voluntary fire fighting duty.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 356-15-090.

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II. FINDINGS OF FACT

2.1 Appellant Robert Stamey is a Correctional Officer and permanent employee for Respondent Department of Corrections (DOC) at the Cedar Creek Corrections Center (CCCC). 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 October 8, 2001.

2.2 In August 2001, Appellant volunteered to work on a fire suppression team in Yakima, Washington. Appellant was assigned to work both the graveyard and day shifts. He was off duty from 1:30 p.m. to 9:30 p.m. Appellant was on an extended duty assignment.

2.3 DOC Policy No. 780-300 outlines how fire camp volunteers are to be compensated. The policy defines an extended duty assignment as "the continuous duty time from which employees are assigned to a fire, including travel time to the fire, until they are released from duty including travel time for return to their non-fire duty station." Fire camp volunteers are provided eight hours off duty time per 24 hours period. Employees are considered off duty at the completion of their assigned work schedule. If an employee is directed by the DOC Camp Liaison to perform duties beyond his/her shift, he/she will be compensated. If an employee is directed to return to duty by the DOC Liaison without having five continuous hours off duty, the employee is compensated for all off duty hours in addition to the number of hours worked at the overtime rate until relieved from duty for five consecutive hours. The policy also defines adequate sleeping facilities as "accommodations which are usual and customary for forest fire camps." Cedar Creek Corrections Center provides volunteers with sleeping accommodations, including two trailers.

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2.4 Cedar Creek Corrections Center has a total of four fire suppression staff teams. Due to a high number of forest fires, all four teams were called on to fight fires. As a result, a number of volunteers, including Appellant, were required to sleep in tents rather than in the trailers. The tent Appellant was assigned to sleep in was adjacent to a heliport, where helicopters were taking off and landing on an intermittent basis.

2.5 An employee off duty is neither working a regular shift nor an overtime shift and has no responsibility to the work site. On August 18, 2001, Appellant went off duty at 1:30 p.m. During this time, Appellant went shopping and decided to check his blood pressure. Appellant discovered his blood pressure level was significantly high and he felt his medical condition required attention. Appellant returned to the fire camp at approximately 2:30 p.m. and notified the supervisor on duty, Sergeant Roland Lanoue, of his condition. Sergeant Lanoue accompanied Appellant to the camp's Emergency Medical Team tent. After medical personnel conducted an examination of Appellant's condition, Sergeant Lanoue and Appellant agreed that Appellant would discontinue working at the fire camp. Appellant subsequently returned to Cedar Creek Corrections Center, where he arrived at approximately 8 p.m. Respondent provided Appellant with compensation for his travel time from the campsite to CCCC.

2.6 On September 2, 2001, Appellant submitted the following overtime request forms for shift differential compensation:

- August 14, 2001 - 15 hours. Under the reason for overtime, Appellant wrote, "staff accommodations sited within 100 yrd (sic) of fire suppression heliport. Not adequate sleeping facility due to frequent landing and takeoffs . . . per WAC 356-15-090(6)(a)(iii) no time to be deducted."
- August 15, 2001 - 8 hours. Under the reason for overtime, Appellant wrote, "per Sgt. Lanoue - 2nd shift O.T. fire duty. Off duty 3rd shift but assigned a tent for sleeping facility - per WAC 356-15-090(6)(a)(iii) - no time deduction."

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- August 18, 2001 - 6.7 hours. Under the reason for overtime, Appellant wrote, "per Sgt. Lanoue - 3rd shift off duty shift but due to emergent medical need I had to be evaluated and relieved of duty and return to CCCC on 3rd shift."

2.7 Respondent denied Appellant's requests for overtime compensation. On October 8, 2001, Appellant filed an appeal alleging that Respondent's overtime request denial violated WAC 356-15-090(5)(b) and WAC 356-15-090(6)(a)(ii) and (iii). Appellant asserted that he was entitled to overtime compensation because he was not provided with adequate sleeping facilities on August 14 and 15 and because he did not get his requisite off-duty time on August 18, 2001.

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that Respondent is required to provide employees fighting forest fires with adequate sleeping facilities. Appellant asserts that he is entitled to receive overtime compensation for August 14 and 15 because he was required to sleep in a tent located near a heliport. Appellant argues that these accommodations were not usual or comfortable. Appellant asserts that on August 18, 2001, he was entitled to receive overtime compensation because he had not been relieved of duty for at least five hours and was eligible for continuous overtime pay. Appellant agrees he should have been under the care of his physician due to his high blood pressure, however, he asserts it was his supervisor's decision to take him to the emergency medical tent. Appellant argues that he is entitled to compensation for the hour he was off, the time he spent in the medical tent, and for the time it took him to travel back from the camp, for a total of 6.7 hours.

3.2 Respondent asserts that adequate accommodations that were usual and customary for sleeping at a campfire were provided. Respondent asserts that while the department normally provides both trailers and tents, there are no guarantees as to where volunteers will be assigned to sleep. Respondent asserts that the facilities and equipment were taxed due to the high number of fires, but all volunteers were provided with adequate shelter. Respondent further asserts that

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Appellant was off duty when he discovered his medical condition and that no individual with authority, such as a DOC liaison or designee, called him to return to duty during the time he was supposed to be off duty. Respondent argues that Appellant has failed to meet his burden of proof and that the appeal should be denied.

IV. CONCLUSIONS OF LAW

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

4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-170).

4.3 The first issue presented here is whether Respondent violated WAC 356-15-090(6)(a)(iii) by failing to provide Appellant with adequate sleeping facilities while working at a fire camp. WAC 356-15-090(6) reads as follows:

> In the department of corrections, division of prisons, the agency and the employees may agree that employees sent to forest fire camps in charge of inmate fire fighters for a period of twenty four hours or more will be on "extended duty assignment." Employees on extended duty assignment will be considered to be on continuous duty from the time they commence such duty including travel time to the fire until they are released from duty including travel time for return to their non-fire duty station.
> (a) During the extended duty assignment, all time will be paid as work time, except that the employer may deduct up to eight hours of nonwork time each day for sleep, plus up to three hours for meals, provided that:
> ...
> (iii) No sleep time shall be deduced if the employer does not furnish adequate sleeping facilities. Adequate sleeping facilities are those which are usual and customary for forest fire camps.
>
> . . . .

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4.4 Under the facts and circumstances presented, we conclude that the sleeping facilities provided by Respondent were reasonable and adequate, and therefore, Appellant was not entitled to receive overtime compensation. Appellant has failed to prove that Respondent violated WAC 356-15-090(6)(a)(iii).

4.5 The second issue presented here is whether Respondent violated WAC 356-15-090(5)(b) and WAC 356-15-090(6)(a)(ii) by failing to provide Appellant with overtime compensation for time he spent being evaluated by medical personnel at the fire camp site.

4.6 WAC 356-15-090 addresses schedule change and compensation. Subsection (5) reads, in part, as follows:

> Contingency scheduling is allowed for employees having the following responsibilities: . . . controlling forest fires, or performing work in a fire camp in support of fire crews ...
>
> (a) For forest fire control and fire-camp support personnel in scheduled work period positions, the above schedule change notice requirement shall not apply if the agency notifies the affected employees in writing that they are subject to contingency scheduling when they enter the position or not less than 30 days prior to implementation.

4.7 The undisputed evidence establishes that Appellant was not on a contingency schedule, but rather on an extended duty assignment. Under the circumstances, Appellant has failed to prove that Respondent violated WAC 356-15-090(5)(b).

4.8 WAC 356-15-090(6)(a)(ii) provides that "time deducted for sleep includes a period of five continuous hours which are not interrupted by a call to work."

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4.9 Appellant was off duty when he discovered his medical condition and his visit to the medical tent, while being accompanied by Sergeant Lanoue, does not constitute a directive to return to work or a "call to work." Appellant has failed to prove that Respondent violated WAC 356-15-090(6)(a)(ii).

4.9 Appellant has failed to meet his burden of proof, and his appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Robert Stamey is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Leana D. Lamb, Member

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