BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

SAM WOODS, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. RED-98-0007 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 GERALD L. MORGEN, Vice Chair. The hearing was held at the Monroe Correctional Complex in the Special Offender Unit, Monroe, Washington, on October 12, 1999. NATHAN S. FORD Jr., Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Sam Woods was present and was represented by Mark A. Anderson, In-House Counsel for Teamsters Local No. 313. Respondent Department of Corrections was represented by Elizabeth Van Moppes, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a reduction in salary for neglect of duty, gross misconduct and willful violation of published agency rules when Appellant (1) failed to read a log book upon his return to work from a five-day absence, (2) used an improper method to restrain inmates and (3) brought a loaded pistol onto institution grounds.

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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); Aquino v. University of Washington, PAB No. D93-163 (1995).

II. FINDINGS OF FACT

2.1 Appellant Sam Woods is a Correctional Officer 2 and permanent employee for Respondent Department of Corrections (DOC) at the Twin Rivers Corrections Center, Special Offender Center. 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 February 17, 1998.

2.2 Appellant began his employment at the Special Offender Center in 1990. By letter dated January 15, 1993, Appellant received a three-month reduction in salary for giving the appearance of sleeping while performing a suicide watch.

2.3 By letter dated January 28, 1998, Dennis Thaut, Superintendent of the Twin Rivers Corrections Center/Special Offender Center, informed Appellant of his 10 percent reduction in salary effective February 13, 1998 through August 12, 1998. Mr. Thaut charged Appellant with neglect of duty, gross misconduct and willful violation of published agency rules and outlined two separate incidents of alleged misconduct in which Appellant (1) failed to read a log book upon his return to work from a five-day absence, (2) used an improper method to restrain inmates and (3) brought a loaded pistol onto institution grounds.

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Charges 1 and 2

2.4 From June 27, 1997 through July 1, 1997, Appellant was on authorized leave. Appellant returned to work on July 2, 1997. Respondent's post orders require that when correctional officers report to their post assignments they read entries made in the log books of their posts, including the booth log book and the management log book. The purpose of a log book is to ensure that important information regarding inmates, procedural changes and other pertinent data is passed along to custody staff. Appellant was aware of the requirement to read the log books upon reporting for duty.

2.5 When Appellant returned to work on July 2, a new management log book for the month of July had been started and the June management log book for his post had been placed in his unit supervisor's office. Appellant admits that he reviewed the July management log book, however, he did not read the June management log book which contained a change in the procedure for placing restraints on inmates. The change in restraints was logged in the management log book on June 27 and was effective as of that date. It was an acceptable practice for staff to enter the unit supervisor's office to review log books.

2.6 On July 2 and 3, Appellant applied restraints to inmates using the method of restraint utilized prior to June 27 and no longer authorized by Respondent.

Charge 3

2.7 On July 12, 1997, Appellant consented to a search of his personal belongings and vehicle. During the search of the vehicle, institutional staff discovered, in the console of Appellant's vehicle, a pistol with a round of ammunition in the chamber and a loaded magazine of ammunition. The search was conducted after another correctional officer informed the institution that Appellant was bringing a weapon onto the grounds.

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2.8 DOC Division of Prisons Policy #420.200 authorizes the superintendent of the institution to store personal weapons in the armory if personal weapons are inadvertently brought on grounds by staff or visitors. The policy further provides that firearms and/or ammunition may not be left in an unattended vehicle at any time except when the vehicle is securely locked and under the direct observation of staff who are aware the vehicle contains firearms and/or ammunition. The Department of Corrections Employee Handbook advises employees that they are not allowed to use or possess firearms on duty, unless authorized by the department. The handbook also warns employees that in an attempt to control contraband, which includes weapons, any employee and his/her vehicle is subject to search while on department-operated premises. Appellant was aware of the institution's policy and practice.

2.9 Dennis Thaut, Superintendent, was Appellant's appointing authority. In determining what level of discipline to impose on Appellant, Mr. Thaut reviewed Appellant's employment history and noted that Appellant had received prior formal disciplinary action for an incident involving a safety and security issue. Mr. Thaut took into consideration that Appellant was an experienced officer who was aware of his duty to read post logs and of his duty to keep weapons off institutional grounds. Mr. Thaut further considered that if Appellant had accidentally brought a weapon onto the institution, Appellant knew of the steps to take to ensure that the gun was safely stored. However, Mr. Thaut concluded that Appellant, despite his experience and his knowledge of the department's policies, failed to act responsibly and professionally. Mr. Thaut believed that Appellant's actions impacted the department's ability to ensure the safety and security of the institution. Mr. Thaut ultimately concluded that at 10 percent reduction in salary for six months was the appropriate sanction.

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant had a duty to read the log book but he failed to do so when he returned to work on July 2. Respondent argues that although Appellant may have been uncomfortable in entering his supervisor's office to read the logbook, Appellant, nonetheless, had a duty to ensure that he was well-informed. Respondent argues that as a result of Appellant's failure to read the log, he improperly applied restraints to inmates during a period of two days. Respondent argues that Appellant neglected his duty, willfully violated agency policy and `committed gross misconduct when he brought a weapon onto the institution. Respondent argues that Appellant's contention that he had simply forgotten to remove the gun on the previous day is not plausible because it was reported to the institution that Appellant carried the gun with him on a routine basis. Respondent argues that it has met its burden of proving the charges and asks that the sanction be upheld.

3.2 Appellant argues that he did not read the June log book because it was kept in his supervisor's office and he did not feel comfortable entering the office and did not feel it was in his best interest to remove the log book from her desk. Appellant argues that when he returned to work on July 2, he asked if there had been any changes but no one advised him of the new restraint procedure. Appellant admits he failed to read the log book, but asserts that he did not have knowledge of the new restraint method when he applied the previous procedure on inmates. Appellant asserts that once he did have knowledge of the new procedure, he complied. Appellant argues that his actions do not constitute misconduct nor did they interfere with the agency's ability to carry out its mission.

Appellant asserts that he ordinarily carried a gun for his personal protection during his non-working hours. Appellant argues that he did not intentionally bring a weapon onto institutional grounds and that he had simply forgotten to take the gun out of his vehicle after attending a job fair on behalf of the institution the previous day. Appellant argues that while his action may have been

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negligent, it was not gross or flagrant and he denies that he willfully violated the institution's policy.

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 Appellant was aware of his duty to read the log book. As a consequence of his failure to do so, Appellant used a method of restraint no longer authorized by the institution. Appellant was also aware that he was prohibited from bringing weapons onto institutional grounds. Appellant knew what steps to take to ensure that weapons inadvertently brought to the institution were safely secured. Respondent has met its burden of proving that Appellant neglected his duty when he failed to read the log book, when he used an unauthorized method to restrain inmates on July 2 and 3, 1997, and when he brought a weapon onto the institution grounds.

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4.5 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).

4.6 Appellant's action in bringing a weapon onto institutional grounds and his failure to take the appropriate steps to secure the weapon adversely affected the agency's ability to ensure the safety and security of the institution. Appellant's actions rose to the level of gross misconduct. However, Respondent has failed to prove that Appellant's failure to read the log book and his use of an unauthorized method of restraint constituted gross misconduct.

4.7 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).

4.8 Respondent has met its burden of proving that Appellant willfully violated agency policy when he brought a loaded weapon with additional ammunition onto institutional grounds. Although Appellant argues that he did not know he had the gun in his vehicle, Respondent has proven that Appellant had knowledge of the policy prohibiting weapons from being brought onto institutional grounds and that Appellant failed to comply with that policy.

4.9 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

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4.10 In assessing the level of discipline imposed here, the Board finds that the disciplinary sanction of a 10 percent reduction in salary for six months is warranted especially when considering the egregious nature of the security risk to the institution created by Appellant when he brought a loaded weapon onto institutional grounds. Respondent has met its burden of supporting the charges and proving that the penalty imposed was appropriate under the facts and circumstances. Therefore, the disciplinary sanction should be upheld and the appeal should be denied

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Sam Woods is denied.

DATED this _____ day of _____, 1999.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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