BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROBERT STAMEY, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	)))))))))))	Case No. RULE-00-0040 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 at the office of the Personnel Appeals Board in Olympia, Washington, on July 21, 2000.

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

1.3 **Nature of Appeal.** This is an appeal of an alleged violation of WAC 356-15-030(1)(a). Appellant asserts that Respondent violated this provision mandating that he perform work-related duties outside of his scheduled work shift without compensating him with overtime pay.

Citations Discussed. WAC 358-30-170; WAC 356-15-030.

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III. FINDINGS OF FACT

2.1 Appellant Robert Stamey is a Correctional Officer and permanent employee for Respondent Department of Corrections at Cedar Creek Corrections 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 December 9, 1999.

2.2 At an undetermined date in 1997, Cedar Creek Corrections Center implemented a procedure which required correctional officers to arrive at the institution early enough to receive equipment and report to their assigned unit for "pass down." Pass down is a procedure in which oncoming correctional staff report to their posts for duty and are briefed by off-going staff on any important or pertinent information regarding the unit and inmates which occurred during their shift.

2.3 The current procedure for correctional employees at Cedar Creek Corrections Center requires that correctional employees report to their sergeant's station upon arriving at the institution, pick up their equipment and sign-in on a log sheet. Correctional officers then report to their posts and meet with the off-going shift employee to receive any information of a significant nature which occurred during the previous shift. Respondent requires that all correctional officers take responsibility over their assigned post at the beginning of their scheduled shift time. The institution has three, eight-hour shifts which do not overlap.

2.4 Both Appellant and Respondent agreed that on the average, pass down takes anywhere from one to six minutes, but on occasion, can take as long as ten minutes.

2.5 On November 6, 1999, Appellant submitted an Overtime Request/Approval form asking that he be paid 48 hours of overtime dating back to 1997 through November 6, 1999. Under the reasons for overtime, Appellant wrote, "per coach version 1.1 – DOP/Step. 1997 – 'arrive on post early for pass down."

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2.6 On November 15 or 16, 1999, Captain Michael Overland notified Appellant that his request for overtime was denied.

2.7 On December 9, 1999, Appellant filed an appeal with this Board. Appellant alleged that Respondent violated WAC 356-15-030(1)(a) by requiring him to arrive and begin work early enough to receive a pass down. Appellant alleged that the department was mandating that he perform work duties outside of his scheduled shift without paying him overtime. As a remedy, Appellant requested that he be awarded retroactive reimbursement for the time worked prior to the beginning of his shift since the inception of the procedure in 1997.

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues it is a violation of WAC 356-15-030(1)(a) for management to mandate that he arrive at work early enough to conduct state business during his personal time without compensating him with overtime pay. Appellant argues that it is not necessary for the department to conduct business in this manner, and he asserts that all significant events which occur are memorialized in a log that must be read by all on-coming correctional officers. As a remedy, Appellant requests that he receive one tenth of an hour of overtime pay for an average of 20 days worked per month retroactive to 1997.

3.2 Respondent argues that correctional officers are required to arrive at their posts ready to take over, having done all the preliminary activities required to properly relieve the previous shift. Respondent agrees that it takes approximately six minutes to complete pass down. Respondent further contends that the six minutes preliminary time used by correctional officer to get debriefed is a *de minimis* amount of time and is not compensable time.

IV. CONCLUSIONS OF LAW

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

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

4.3 The issue here is whether Respondent is violating WAC 356-15-030 by requiring Appellant to arrive at his assigned work unit an average of six minutes prior to the beginning of his shift time in order to receive pass down without paying him overtime. WAC 356-15-030(1)(a) outlines the conditions which constitute overtime and reads, "For full-time employees, work in excess of the workshift within the work day." WAC 356-15-030(2) requires that "scheduled work period employees shall receive overtime compensation for work which meets subsection (1)(a) through (d) of this subsection."

4.4 There is no dispute that Respondent requires Appellant to report to work "early enough" to receive pass down and that on the average, pass down takes approximately six minutes. Although Respondent argues that the time Appellant spends participating in pass down is *de minimis*, the merit system rules only address "work performed in excess of the workshift within the work day." The time Appellant participates in pass down is work related and is work performed in excess of his assigned workshift day. We agree with Appellant that he should receive overtime pay for time Respondent requires him to report to work prior to the beginning of his work shift in order to receive pass down.

4.5 Appellant has met his burden of proving that Respondent violated WAC 356-15-030 when it failed to compensate him with overtime pay for time Respondent required him to begin work early to perform preliminary tasks necessary to his job. In fashioning a remedy, this appeal provides us with a unique set circumstances: Appellant was aware of Respondent's violation of WAC 356-15-030 on an unknown date in 1997. However, Appellant did not file an appeal with this Board until December 9, 1999. WAC 358-20-040(e) indicates that an appeal must be received in writing at the Personnel Appeals Board within 30 days after "the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim under WAC 358-20-020 or the stated effective date of the action, whichever is later."

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4.6 Appellant reasonably knew in 1997 of Respondent's violation, which was well in advance of December 9, 1999. Therefore, we conclude that the scope of Appellant's appeal should be limited to the 30 days prior to December 9, 1999, through the present. Appellant's appeal is granted, and he should receive overtime compensation for one tenth of an hour for each day he reported to work early beginning 30 days prior to December 9 , 1999 through the present.

4.7 Having reviewed the files and records in this matter and being fully advised in the premises, the Board enters the following:

V. ORDER

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

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

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Leana D. Lamb, Member

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