BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JAMES DONALDSON, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DISM-01-0056 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 Washington State Penitentiary, Superintendent's Conference Room, Walla Walla, Washington, on May 9, 2002. RENÉ EWING, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant James Donaldson was present and was represented by Rene Erm, Attorney at Law, of Reese, Baffney, Schrag & Frol, P.S. Amy Cook, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of published employing agency policies for engaging in a personal and sexual relationship with a known family member of an inmate.

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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); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant James Donaldson was a Correctional Officer 2 and permanent employee for Respondent Department of Corrections at the Washington State Penitentiary. 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 July 20, 2001.

2.2 By letter dated June 20, 2001, John Lambert, Superintendent, notified Appellant of his suspension without pay from June 21, 2001 through July 5, 2001, followed by his immediate dismissal effective the end of his shift on July 5, 2001. Superintendent Lambert charged Appellant with neglect of duty, gross misconduct and willful violation of employing agency policies for engaging in a personal and sexual relationship with a known family member of an inmate.

2.3 Appellant began his employment with the Department of Corrections in 1981. Appellant has no history of prior discipline and his performance evaluations reflect that he was a highly competent correctional officer who met or exceeded normal work requirements. On March 12, 1998, Appellant received a letter of commendation for his role in defusing an inmate fight and on February 24, 2000, he received a letter of recognition for his part in preventing contraband from being brought into the institution by a visitor.

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2.4 On March 8, 2002, Respondent moved for Summary Judgment dismissing Appellant's appeal on the basis that Appellant admitted that he engaged in a personal relationship with Irma Espinoza, the sister of an inmate, in violation of DOC policy. By order dated April 15, 2002, The Board granted Respondent's motion in part concluding that, "No genuine issues of material fact existed whether beginning in November 2000, Appellant engaged in a personal and sexually intimate relationship with Ms. Espinoza, that he came to know her through his job as a Visiting Room Correctional Officer, that he sent her cards and flowers, and that he went to her parent's home for one (or more) meal(s)." The Board ordered that at the hearing on the merits, it would not be necessary for Respondent to prove that these events occurred, and that the only remaining issue was whether the sanction of dismissal was appropriate.

2.5 Respondent has adopted Policy 800.010 that outlines ethical requirements for employees and prohibits them from using their positions to secure special privileges for personal gain or advantage. The policy directs employees, when in doubt as to whether they committed a potential violation of the policy, to consult with their supervisor and/or human resource personnel. Respondent has also adopted DOC Policy 801.006 that prohibits employees from engaging in personal relationships with offenders, their family members or close personal associates. The policy requires employees to report unofficial contacts with an inmate's family members on a Report of Contact with an Offender form. Appellant acknowledged his receipt of the institution's employee handbook and policies and directives in 1982 and 1993.

2.6 During the hearing held on May 8, 2002, the Board heard testimony from Appellant and viewed the videotaped deposition of Superintendent John Lambert, the appointing authority who terminated Appellant's employment.

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2.7 Appellant admitted to having a relationship with Irma Espinoza, the sister of a WSP inmate. He testified that he exercised poor judgment when he engaged in the relationship after he met Ms. Espinoza while working in the visiting room. Appellant denies that the relationship had a negative impact on his ability to perform his duties as a Correctional Officer 2 and he denies that he showed favors or special consideration to the Espinoza family or the inmate. Appellant also testified that he was not attempting to conceal his relationship with Ms. Espinoza and the relationship could not have been kept a secret from others in the visiting room. Appellant testified that a number of other correctional officers, who were not disciplined for their actions, also engaged in relationships with inmate family members, including one officer who married the ex-wife of an inmate.

2.8 Appellant testified that he did not complete an offender contact form because he did not consider Ms. Espinoza an offender; because he did not want to create undue hardship on her family; and because the relationship was over and he did not feel it was necessary. Appellant testified that when first confronted about the relationship he admitted the truth and acknowledged that he had made a mistake and was sorry for what he did.

2.9 Mr. Lambert testified that the institution would not have known of Appellant's relationship with Ms. Espinoza had she not complained to the institution in April 2001. Mr. Lambert testified that the impact to Ms. Espinoza and her family was a factor in his decision to terminate Appellant, because the Espinoza family feared retaliation and were concerned that the inmate would be transferred to another institution, which would end their ability to visit him on a weekly basis.

2.10 Mr. Lambert concluded that Appellant, as a long-term officer, should have been aware of the agency's policy on employee relationships with offenders, but that he violated the policy and failed to notify the institution of his contact with Ms. Espinoza. Mr. Lambert noted that Appellant posed hypothetical questions regarding employee and offender family contact with two supervisors

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who both indicated that such a relationship would be a violation of policy and a career-ending move. However, despite this information, Appellant was not forthcoming about his relationship with Ms. Espinoza until after she reported their contact.

2.11 In determining the level of discipline, Mr. Lambert reviewed the employee conduct report and interviews of witnesses; he considered Appellant's responses to the allegations; and he weighed Appellant's 20-year career with the department. Mr. Lambert concluded that Appellant lost his credibility as an officer and crossed the line when he put himself in a position where the inmate population could target him by engaging in a relationship forbidden by policy. After weighing these factors against Appellant's duty and responsibility and the agency's policies, Mr. Lambert concluded that Appellant lost credibility as a correctional officer and could not effectively work at the institution. Therefore, he concluded that Appellant's immediate suspension, followed by dismissal, was the appropriate sanction.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant was dishonest when he concealed his relationship with Ms. Espinoza and was forthcoming with information only after he was confronted about his relationship with her. Respondent argues Appellant knew or should have known how egregious his behavior was and what jeopardy he placed himself in by engaging in a relationship with an inmate's sister, especially in light of his 20 years experience as a correctional officer and his training in the corrections field. Respondent argues that Appellant blatantly disregarded agency policies when he continued to pursue a relationship that could endanger himself, inmates and other staff. Respondent argues that Appellant could no longer be trusted to follow DOC policy and that his deliberate actions justify dismissal.

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3.2 Appellant asserts that he is a 20-year employee with a good record and commendations who made a mistake that he readily admitted to from the very start. Appellant admits that he engaged in a personal relationship with the sister of an inmate, but he contends the relationship was short in duration and had no negative implications on his employment at the institution. Appellant further denies that he showed the inmate favoritism or that he engaged in any inappropriate behavior toward Ms. Espinoza after the relationship was terminated. Appellant argues that he was confused about the institution's policy, which he received 19 years ago, regarding relationships with inmate families and his interpretation that the policy was only directed at inmate wives. Appellant further contends that other correctional officers have engaged in relationships with inmate family members and wives and were not terminated. Appellant asserts that he is still capable of performing his job duties and he denies that he is a potential security risk. Appellant argues the superintendent acted overly harsh to end his career on one mistake.

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).

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

4.6 Respondent has met its burden of proving by a preponderance of the credible evidence that Appellant neglected his duty and violated agency policy when he entered into a relationship with an inmate's sister and when he failed to report that relationship. It is clear from the record that Appellant would not have reported the relationship had the institution not been notified by the Espinoza family. Appellant's testimony that he did not understand that the relationship violated agency policy is disingenuous, especially when considering the hypothetical questions he posed to superiors regarding employee relationships with offenders. Appellant understood his actions were wrong, he was not forthcoming with his employer and his actions irreparably harmed his trustworthiness as a correctional officer. Appellant's misconduct rises to the level of gross misconduct.

4.7 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. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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4.8 Appellant had a good record as an employee and he had no prior discipline. However, under the facts and circumstances of this case, we cannot conclude that Appellant's termination was too severe a sanction. Appellant's misconduct undermined the institution's trust in him and posed a security risk to Appellant and other staff. Therefore, the appeal of James Donaldson should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of James Donaldson is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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