BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

DAVID DUNNINGTON, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	)	Case No. R-DEMO-16-002 FINDINGS, CONCLUSIONS AND ORDER OF THE BOARD

INTRODUCTION

Hearing.

This matter came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair, and VICKY BOWDISH, Member. The hearing was held on January 25, 26, and 27, 2017, at 110 Capitol Court, Olympia, WA. Appellant and Respondent submitted their closing arguments on March 15, 2017.

Appearances.

Present was Appellant David Dunnington, represented by Scott Kee, Attorney at Law. Kari Hanson, Senior Assistant Attorney General, represented the Respondent, Department of Corrections (DOC).

Nature of Appeal.

This is an appeal of a demotion. Respondent alleges that Appellant failed to respond to a coding error resulting in the early release of many offenders over a period of approximately three years. Respondent further alleges Appellant was rightfully held accountable as one of several employees responsible for delaying the coding correction.

WITNESSES

For Appellant.

David Dunnington, Information Technology Specialist 5; Dan Pacholke, Former Secretary, DOC; Deepak Sadanandan, Information Technology Systems/Applications Specialist 6; Mark Quimby, Assistant Director, WA Tech; and Sue Schuler, Information Technology Specialist 5. Mark Ardiel, Technology Principal, Sierra-Cedar, provided a signed written statement.

For Respondent.

Julie Martin, Assistant Secretary, DOC; Marcos Rodriguez, HR Director; Robert Westinghouse, Attorney at Law; David Postman, Governor's Chief of Staff; Dan Pacholke, Former Secretary, DOC.

PRELIMINARY MATTERS

Motion in Limine.

On January 20, 2017, Respondent submitted a Motion in Limine. The motion requested to exclude documents submitted by Appellant after the date of his demotion. The motion also requested the exclusion of documents not considered by the Appointing Authority, Dan Pacholke, Former Secretary of DOC, in making the decision to demote Appellant.

Respondent opposed Appellant's request to limit the documents, asserting consideration should be given to any documents showing lack of merit for Appellant's demotion.

The Board denied Appellant's Motion in Limine, stating they do not necessarily follow the rules of evidence and may need to consider the evidence outlined in the motion. The Board further stated they consider objections and admissibility during testimony.

Motion to Exclude Witnesses Present at the Time of other Witness' Testimony.

Appellant requested a motion to exclude witnesses present during the testimony of other witnesses. Appellant contended witnesses should not have the benefit of hearing other testimony, thus acquiring information they could use during their own testimony. Appellant noted this is part of court protocol under *Rules of Evidence*.

Respondent agreed to disallow witnesses from hearing the testimony of other witnesses, with the exception of DOC's Assistant Director of Administrative Services (HR Director), Julie Martin.

Appellant agreed to allow Julie Martin to be present during witness testimony.

FINDINGS

Appellant has been an employee for Respondent DOC for approximately 25 years. At the time of his demotion, Appellant was Acting Deputy Chief Information Officer (CIO) at DOC Headquarters in Olympia, WA. Appellant's permanent position was in the IT Business Unit as an Information Technology Specialist/Applications Specialist (ITS/AS) 6. His working title was IT Business Manager for Prisons. Appellant reported to Jeanette Sevedge-App, Deputy CIO of IT Development & Project Management.

By letter dated March 4, 2016, Dan Pacholke, Secretary of DOC, notified Appellant of his demotion to ITS 5 with an effective date of March 21, 2016.

Appellant filed a timely appeal with the Personnel Resources Board on April 14, 2016. Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC.

Prior to 2002, offenders' good time was based on time served in prison and did not include time served in city or county jails. In *re King* (2002), the Washington State Supreme Court ruled that certain offenders must receive good time earned in city and county jails before going to prison.

As a result of *re King*, the good time earned in city and county jails would be combined with good time earned in prison, subsequently granting some offenders an earlier release date. To comply with this ruling, DOC changed the coding in their Offender Management Network Information (OMNI) system. This coding correction was referred to as the "King fix," after the Supreme Court's ruling in *re King*. DOC's error in the coding change, however, caused OMNI to miscalculate early release dates, giving offenders more good time than statute allowed. The result of the error in coding was the early release of over 2,100 offenders since 2002.

Clearquest is the database used to track programming changes in OMNI.

IT programming changes are released every eight weeks in maintenance releases, or "M releases." Each M release is assigned a number, such as M34. When an M release is forwarded to a higher number, M34 to M35 for example, the program deployment is forwarded to the next eight-week period.

An IT Service Request was prepared by Wendy Stigall, Program Administrator of Corrections Records, on December 27, 2012. The change order stated, "ASAP this needs to be Records/SSTA priority." The order specified the current programming was allowing more than the maximum amount of good time to be applied to offenders' base sentences. The programming was corrected approximately three years later in December, 2015.

An independent investigation concerning the delayed coding correction was conducted by the law firm of Yarmuth Wilsdon, PLLC.

Appellant was one of several employees DOC held accountable for delaying the coding fix to accurately calculate offenders' good time. Sue Schuler, ITS 5, and Ms. Stigall received letters of reprimand; Kathy Gastreich, Director of Risk Management, was removed from her exempt position and placed in a Washington Management Service (WMS) position; Denise Doty, Assistant Secretary, and Doug Hoffer, Chief Information Technology Officer, both resigned.

By letter dated March 4, 2016, Respondent informed Appellant of his demotion to ITS 5 effective March 21, 2016. Respondent alleged, in part, that Appellant:

- Repeatedly delayed implementation of the King fix over a nearly three year period;
- Removed the "must fix" designation for the King fix from the Clearquest OMNI IT tracking system; and
- Lowered the severity level of the King fix from a level two to a level three.

The coding correction was handled by an independent contractor, Mark Ardiel.

Until Appellant's demotion, Appellant had no prior verbal warnings, counselling, letters of reprimand or other disciplinary actions during his 25 plus years employment with DOC.

ARGUMENTS OF THE PARTIES

Appellant.

Appellant seeks reinstatement of his ITS/AS 6 position and contends the permanent demotion to an ITS 5 is unsubstantiated. Appellant contends the Governor's Office conducted a rushed and misguided investigation that resulted in many false conclusions. Appellant further contends the two attorneys hired for the investigation had no IT experience as confirmed by the testimony of one of the attorneys, Robert Westinghouse.

Appellant states he was provided the 52-page investigative report along with hundreds of pages of exhibits only 48 hours prior to the pre-disciplinary meeting. Appellant contends he was not able to review the report thoroughly prior to the meeting, rather this task took several weeks after the decision was made to demote him. Appellant asserts that prior to the investigators releasing their final report to the Governor's Office, they did not have sufficient time to explore Appellant's arguments to the report. Appellant alleges the decision was finalized prior to the pre-disciplinary hearing. Appellant further alleges his counter information was not considered prior to the

Governor's press conference where he was announced as the one primarily responsible for the coding errors.

Appellant argues that he did not autonomously delay the work order for the King fix. Some of the misinformation Appellant points to includes allegations that he moved M releases to later dates; removed the must fix designation; lowered the severity level of the King fix; and changed the King fix from a defect to an enhancement.

Appellant asserts he was not the only one who had the authority to move a Clearquest item to a later M-release date. Rather, several individuals had this ability and did take this action.

Appellant opposes Respondent's accusation that he removed the "must fix" designation in OMNI. In reality, Appellant states this designation was never removed, as declared by a written statement from Mark Ardiel and by the testimony of Mr. Quimby. Appellant further states the Clearquest printed versions, from which the investigators based their allegation, do not show all the "must fix" designations. Rather, these designations appear online only.

Appellant contends the investigators misunderstood the difference between a defect and an enhancement. Appellant pointed out that witnesses testified the King fix was properly labeled an enhancement as a result of the OMNI group consensus. Along the same line, Appellant contests the accusation that he unilaterally decided to change the King fix to a severity level 3 (low priority). Appellant argues that as a result of the OMNI group consensus, all enhancements were changed to a severity level 3, not just the King fix.

Respondent.

Respondent believes the permanent demotion of Appellant is appropriate and alleges the King fix underwent a three year delay, primarily at the hands of Appellant, while less important corrections to the OMNI system were implemented. This delay caused the early release of many offenders, putting the public at risk.

Respondent asserts Appellant failed to perform the duties of a high-level IT position. Respondent further asserts that Appellant was in a position where he had numerous opportunities to correct the King fix in a more timely fashion.

Respondent acknowledges that Appellant was not the only one responsible for the delay of the King fix. However, given his position as an ITS/AS 6, he should be held to a high standard of conduct. Instead, asserts Respondent, Appellant blamed others for the delay. Respondent cites Appellant's position description (PD), which states, in relevant part:

> "…This position plays a vital role in improving public safety by ensuring the institutions have the software to effectively and safely operate institutions and manage offenders."

Respondent states Appellant received a change order for the King fix from DOC Records Manager, Wendy Stigall on December 12, 2012. Ms. Stigall wrote on the change order:

> "This needs to be a Records/SSTA priority. All current ERDs (early release dates) when there is a mandatory/enhancement are in error."

Respondent asserts this note should have prompted Appellant to inquire further into the nature of this request.

Respondent argues that, rather than speaking with Ms. Stigall and determining on his own whether or not the King fix could be delayed, he relied on his subordinate, Ms. Schuler, to speak with Ms. Stigall.

Respondent's closing argument states:

> "Mr. Dunnington's failure to explain the delays, as well as the repeated delays themselves, and his failure to inquire directly about the urgency and potential impacts of this particular fix, are all inconsistent with the level of accountability and expertise expected of an individual in Mr. Dunnington's position as the IT Business Manager for Prisons."

Respondent asserts the "must fix" designation was viewable online for the three-year period, even though it was not present on printed versions. As such, Respondent questions if Appellant neglected his duty as an IT manager.

Respondent points out that Appellant acknowledged in his testimony that problems exist "if the system's working as it's designed, but it's producing wrong information." Therefore, Respondent asserts Appellant should have taken "ERD" written on the change order more seriously since it was producing wrong information.

CONCLUSIONS

The Personnel Resources Board has jurisdiction over the parties and the subject matter.

In a hearing of an appeal for 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 Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances (WAC 357-52-110).

When considering whether there was just cause for a disciplinary action, the Board considers factors such as whether the employee was aware of the job expectations, rules or policies allegedly violated; whether the employee was aware of the need to comply with the rules or policies or to

improve performance; whether the employee had an opportunity to demonstrate compliance or improvement; whether the discipline was imposed for good reason; whether the disciplinary process and procedures followed were appropriate and whether the sanction imposed was sufficient to prevent recurrence, to deter others from similar misconduct and to maintain the integrity of the program.

Appellant was aware of the coding error when he received a change order in 2012 after Ms. Stigall submitted a change order to DOC's IT group. Appellant received the change order and assigned it to Sue Schuler, Business Analyst. Three years passed before the coding error was resolved. During this time, many offenders were released from prison early.

Appellant's position objective in his most recent PD dated December 11, 2012, states:

> As a member of the senior management team in the IT Department, the IT Business Manager is responsible for the understanding of agency business needs and implementing system functionality to support agency operations at institutions. This position plays a vital role in improving public safety by ensuring corrections workers have robust systems **that meet their business needs and aligns with current legislation, correctional laws and agency policy.** This position plays a vital role in improving public safety by ensuring the institutions have the software to effectively and safely operate institutions and manage the offenders. [emphasis added]

Task 1 in Appellant's PD states:

> Criticality of Need – **Examine all system enhancement requests and system defects to determine criticality and relative priority for detailed analysis and implementation through schedule Maintenance Releases (M Releases) or Hot Fixes.** Consult with business on work stoppage issues and effective work-arounds

> to meet business needs. **Identify organizational impacts and safety needs in determining criticality.** [emphasis added]

The Board agrees with Respondent's assertion that Appellant's position as an ITS/AS 6, Business Manager for Prisons, carries a high standard of conduct and Appellant should have inquired further into the ERD and priority status of the change order for the King fix.

Appellant viewed the ERD note on the change order for three years and continued to allow the M-release date to carry forward to late 2015 when the programming vendor, Mark Ardiel, implemented the coding fix. The Board questions why Appellant did not further analyze the criticality of this change order and relay this to Mr. Ardiel given one of Appellant's main tasks, as stated in his PD, was to "examine all system enhancement requests and system defects to determine criticality and relative priority for detailed analysis and implementation through scheduled Maintenance Releases or Hot Fixes." Although Mr. Ardiel was the vendor responsible for carrying out the coding fix, the Board questions why Appellant did not analyze the order and expedite the priority of the fix.

Appellant was aware of the expectations of his job, outlined in his PD. He was also aware that the meaning of "ERD," present on the IT change order, meant "early release date." The Board finds Appellant did not carry out the critical expectations of his position and correlating PD, causing a direct impact to public safety. As such, the Board finds a nexus between Appellant's actions and the King fix delay and therefore, concludes discipline is warranted.

When determining whether the discipline was reasonable, the Board considered additional factors brought forth during the hearing. These factors included:

- The original investigation showed printed copies of the change orders indicating that Appellant removed the "must fix" designation from the change order.

Testimony disproved this allegation when the Board learned the "must fix" is not displayed on printed versions of the orders. As such, Appellant did not remove the "must fix" designation.

- The Board learned that many individuals had the ability to and did change the M release date for the King fix, not just Appellant. As such, Appellant was not solely responsible for forwarding the M release dates.

- The King fix coding correction order was changed from a "defect" to an "enhancement" through the consensus of the OMNI group, rather than through the decision of Appellant. The Board discovered through testimony that the OMNI group as a whole decided to change the severity rating to the minimum level 3 for all enhancements. Since the King fix was changed to an enhancement through discussion of the OMNI group, and all enhancements were agreed by the OMNI group to be rated at level "3," Appellant was not solely responsible for the severity level change, nor the change from a "defect" to an "enhancement."

Appellant was accountable to examine change orders, determine their criticality, and set the priority. However, the Board learned throughout the course of the hearing that Appellant was not solely responsible for some of the allegations in the investigative report.

Appellant had no prior verbal warnings, counseling, letters of reprimand, or other disciplinary actions in the 25 years he has served DOC. Discipline needs to be such that it is reasonable for the misconduct and sufficient to prevent recurrence, to deter others from similar misconduct and to maintain the integrity of the program. In light of the information presented at this hearing, the Board finds a 12-month temporary demotion to ITS 5 is reasonable and sufficient to prevent recurrence, and to maintain the integrity of the program.

Respondent has not met the burden of proof and did not establish just cause for Appellant's permanent demotion. Therefore, Appellant's discipline should be modified to a temporary 12-month demotion and restored to his permanent position as ITS/AS 6 effective March 22, 2017.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED the appeal of David Dunnington is granted in part and the disciplinary sanction is modified to a 12-month temporary demotion to Information Technology Specialist 5 for the period of March 21, 2016 to March 21, 2017. Appellant is to be restored to an Information Technology Systems/Applications Specialist 6 effective March 22, 2017.

DATED this _____ day of _____, 2017.

WASHINGTON PERSONNEL RESOURCES BOARD

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NANCY HOLLAND YOUNG, Chair

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VICKY BOWDISH, Member